

KADW210085652022



**BEFORE THE III ADDL. CIVIL JUDGE &
JMFC., AT
HUBBALLI**

:PRESENT:
SMT. PREETHY.K., LL.M.,
III ADDL.CIVIL JUDGE
& JMFC, HUBBALLI

Dated, this the 7th March 2024

OS No. 775/2022

Plaintiff: 1. Kumar Harsha S/o Megharaj Kalburgi,
Age: 16 years, Occ: Student,
Since minor, represented by his
guardian natural mother Smt. Geeta
W/o Megharaj Kalburgi,
Age: 45 years, Occ: House hold work,
R/o: Flat No.2, 2nd floor, Ever Green
Pride Apartment, New Badami nagar,
Keshwapur, Hubballi – 580023.

(By Sri.R.S.H.Adv)
V/s

Defendant : 1. Sri. Megharaj S/o Shankarsa
Kalburgi,
Age: 53 years,
Occ: Business,
Age: 58 years, Occ: Business,
R/o: Flat No.2, 2nd floor, Ever Green
Pride Apartment, New Badami
nagar, Keshwapur, Hubballi –
580023.

(By Sri.S.I.P .Adv)

Date of institution of the suit	11.10.2022
Nature of the suit	Suit for Declaration and Injunction
Date of the commencement of recording of the evidence	6.4.2023
Date on which judgment was pronounced	7.3.2024
Total Duration	Years/Months/Days 01 04 25

III ADDL. CIVIL JUDGE & JMFC., HUBBALLI

J U D G M E N T

The plaintiff has filed this suit for declaration that, the defendant has no authority to alienate the suit property and for injunction restraining the defendant from alienating or transferring the suit property.

2. Gist of the plaint is as under :-

The plaintiff is minor and is in care and custody of his mother, a natural guardian. The defendant is natural father of minor plaintiff. The suit property is gifted to the plaintiff by his grand-father. The said property was gifted in the name of defendant and plaintiff under registered gift deed dated 16.2.2017. The gift deed is accepted by the plaintiff and defendant and they are in possession of the suit property. Sri.Shankarsa Ramachandrasa Kalburgi is the natural

father of defendant and grand-father of plaintiff. The said Shankarsa Kalburgi was a known businessman and had earned huge property. The said Shankarsa demised on 14.12.2018 and thereafter the names of plaintiff and defendant came to be entered in the CTS records. After the death of Sahnkarsa Kalburgi the defendant took consent deed of his sisters and is registered on 13.3.2019. The said consent deed executed by 4 daughters of Shankarsa Kalburgi. The defendant is addicted to gambling in casino at Goa and other vices. The defendant lost more than 12 crores in gambling. The defendant is a habitual gambler and is not heeding to the advice of well wishers. The defendant obtained consent letter from his sisters only to sell the gifted property. The defendant sold all other properties gifted to him and also sold huge quantity of ancestral gold without the consent of the plaintiff. The suit property belongs to the minor plaintiff. The suit property is the only remained property and the defendant is making hectic efforts to sell it without the consent of the plaintiff. The defendant was getting monthly rent of more than 3 lakhs from the gifted properties. There is no legal necessity to sell the suit property and other properties are sold for his bad habits of gambling, drinking and in casino at Goa. The defendant has not obtained the permission of the court to sell the property of the minor. The defendant has no authority to sell, mortgage or create any charge over

the suit property. The suit property is to safe guard the interest of the plaintiff. There is no legal necessity to sell the suit property. Hence the suit.

3. After service of summons defendant appeared before this court through his counsel and has not chosen to file the written statement.

4. In order to prove his case the natural mother of the plaintiff being his guardian examined herself as PW1 and got marked documents Ex.P.1 to P.4.

5. Heard and perused the materials on record.

6. The following points arise for consideration.

1. Whether the plaintiff proves that, the defendant is trying to alienate the suit property ?
2. Whether the plaintiff is entitled to the relief sought for?
3. What order or decree?

7. The above points are answered as under:

Point No.1	: In the Affirmative
Point No.2	: Partly Affirmative
Point No.3	:As per the following order for the following reasons.

REASONS

8. **Point No.1 :** In order to establish his case, the guardian of the minor plaintiff examined herself as PW-1 and got marked documents at Ex.P-1 to Ex.P-4.

Pw1 filed affidavit in lieu of her examination in chief wherein the entire plaint averments are reiterated and as such it does not require repetition. Ex.P-1 is the certified copy of the Gift deed, Ex.P-2 is the certified copy of the Rectification deed, Ex.P-3 is the Birth certificate and Ex.P-4 is the Mutation entries.

9. On careful perusal of the documents placed Ex.P.1 is the gift deed which evidences that, the suit property came to be gifted in the name of plaintiff and defendant under registered gift deed dated 16.2.2017. Thereafter, the property is mutated in the name of plaintiff and defendant and mutation entries are produced at Ex.P.4. The plaintiff states that, the plaintiff and defendant are in joint possession of the suit property. Ex.P3 is a rectification deed dated 22.2.2017 wherein it is stated that, the donor Shankarasa had 4 daughters and in the gift deed dated 16.2.2017 it is only stated as 3 daughters and as such it is rectified as 4 daughters and as per the gift deed all the daughters are leading their life happily and they have consented to the gift deed. All these materials substantiate the case of the plaintiff that the plaintiff along with defendant is having joint title and interest in the suit property.

10. Further, the plaintiff is constrained to file this suit alleging that the defendant is attempting to alienate the suit property. The plaintiff is making a serious allegations that the defendant is in the habit of

gambling and other bad vices and towards the said bad habits the defendant had sold other properties movable and immovable and it is alleged that he is trying to sell even the suit property. It is pertinent to note that, in this case, the defendant though appeared before this court through his counsel did not chose to contest the case. The oral and documentary evidence placed by the plaintiff has remained unchallenged. The defendant is aware about all the allegations made by the plaintiff and as such non rebuttal of the said allegations leads to draw an adverse inference against the defendant. In the absence of any challenge to the oral and documentary evidence placed by the plaintiff, this court has no other option but, to believe the case of the plaintiff. At Ex.P.1 the property is gifted to the minor plaintiff. The plaintiff alleges that, the defendant is attempting to sell the property. Hence Point No.1 is answered in **Affirmative**.

11. **Point No.2** : In this case, the plaintiff is seeking declaration that the defendant has no right to sell the suit property as well an injunction to restrain him from alienating the suit property. As for the relief of declaration is concerned it is a negative relief and as such it cannot be considered. In ***Krishna Bhagya Jala Nigam Limited, Rep. by its Executing Engineer, KBJNL V/s T. Prabhakar Reddy S/o Krishna Reddy, the Hon'ble High Court of Karnataka*** has held as under,

"12. Whenever a declaration is sought by the plaintiff to enable an order of declaration, the plaintiff has to establish the following:

- (i) The right of the plaintiff i.e, the plaintiff is entitled to any legal character or any right as to property.**
- (ii) The infringement i.e, that the defendant is denying, or interested to deny the plaintiff's title to such legal character or right.**
- (ii) The declaration i.e, the declaration sought is that the plaintiff is entitled to such legal character or right.**
- (iv) The consequential relief i.e, where the plaintiff is able to seek further relief than mere injunction, he seeks such relief.**

13. Section 34 of the Specific Relief Act does not sanction every form of declaration, but only a declaration that the plaintiff is entitled to 'any legal character or any right as to any property'.

Though Section 34 of the Specific Relief Act is not exhaustive, a declaration can be granted independently of the provisions of this Section. That does not mean the plaintiff is entitled to any form of declaration, more particularly, a declaration which is virtually in the form of injunction. The Court will not make a declaration of mere facts which are not ripe for determination of their legal consequences. The Court will not grant any declaration on mere speculative grounds, unless the plaintiff establishes his some right based on which relief of declaration is sought.

16. On perusal of the relief sought at Sl.No.1, this Court would find that the

plaintiffs intend to restrain the defendants from recovering the amount from the plaintiffs and seek a declaration that the defendants are not entitled to recover the sum. Such a negative declaration could not have been entertained by the Courts. Both the Courts have granted a negative declaration holding that the defendants are not entitled to recover. The relief of declaration granted by both the Courts in holding that the defendants are not entitled to recover a sum of Rs.25,071-58/- and Rs.65,342-50/- is palpably erroneous and contrary to the dictum laid down by the Apex Court in the case of Hardeh Ores (P) Ltd. Vs. Hede and Company reported in (2007) 5 SCC 614...."

Thus, in the above decision it is clearly stated that, a negative declaration cannot be granted under section 34 of Specific Relief Act. No doubt the facts and circumstances of the case is not similar to the case on hand however, the ratio laid down as regards negative declaration applies and as such this court placed reliance on the said decision. In the case on hand also a declaration sought is a negative declaration and as such it cannot be granted. Even otherwise the defendant also stands in the position of owner of the property and as such a declaration against the true owner and against his rights in the property cannot be negated.

12. Further, in respect of the relief of injunction it appears that, the plaintiff is entitled for the same. The plaintiff is son of defendant and is making serious

allegations that the defendant is addicted to gambling and other bad vices. The defendant has not chosen to rebut the same. The plaintiff is a minor and his interest needs to be protected. The oral and documentary evidence placed by the plaintiff is not challenged. In spite of knowing the allegations the defendant has not bothered to challenge it. The conduct of the defendant before this court probabalises the case of the plaintiff. The defendant cannot act adverse to the interest of the plaintiff. Hence point is answered in **Partly Affirmative**.

13. **Point No.3.**: In view of the discussion and findings at above point, this Court proceeds to pass the following:-

ORDER

The suit of the plaintiffs is hereby partly decreed with cost.

The defendant, his agents, servants or any other persons acting under him are hereby restrained by way of permanent injunction from alienating, transferring or creating any charge over the suit property

Draw decree accordingly.

(Directly dictated to the Stenographer, and after corrections, signed and pronounced by me in open Court on this **7th March 2024**)

(PREETHY.K)
III Addl.C.J & JMFC.,
Hubballi

ANNEXURE**List of witnesses examined on behalf of Plaintiff :**

PW.1 : Geeta Kalburgi

List of documents marked on behalf of the Plaintiff:

Ex.P1 : Gift deed
Ex.P.2 : Rectification deed
Ex.P3 : Birth certificate
Ex.P4 : Mutation entries

List of witnesses examined on behalf of Defendant:

NIL

List of documents marked on behalf of the Defendant:

III Addl.C.J & JMFC.,
Hubballi

