



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE R. NATARAJ

REGULAR FIRST APPEAL NO. 119 OF 2025 (DEC/INJ)

BETWEEN:

1. SMT. H R GOWRAMMA
W/O. SRI. H.M. RUDRAKUMAR,
AGED ABOUT 45 YEARS,
2. KUM. SHUBHA
D/O. SRI. H.M. RUDRAKUMAR,
AGED ABOUT 14 YEARS,
3. KUM. HARINI @ HARSHITHA
D/O. SRI. H.M. RUDRAKUMAR,
AGED ABOUT 12 YEARS,

APPELLANTS 2 AND 3 ARE MINORS
AND THEY ARE REPRESENTED BY
THEIR NATURAL GUARDING/MOTHER
APPELLANT NO.1 AND ALL ARE
R/AT NO.4, "KALLESHWARA NILAYA",
12TH CROSS, SHIVAPURA,
NEAR NATIONAL PUBLIC SCHOOL,
NELAGADARANAHALLI,
BENGALURU - 560 073.

...APPELLANTS

(BY SRI. R.B. SADASIVAPPA., ADVOCATE)

AND:

1. SRI H.M. RUDRAKUMAR
S/O. SRI. MAHESHWARAPPA,
AGED ABOUT 55 YEARS,
ADVOCATE
R/AT "MAMATHA APARTMENT",
2ND FLOOR, 4TH MAIN,





GANDHINAGAR,
BENGALURU - 560 009.

2. SMT. LATHA
W/O. SRI. G.S. RAJU,
AGED ABOUT 50 YEARS,
R/AT NO.9, "BASAVESHWARA NILAYA",
RAJESHWARINAGAR,
1ST CROSS, LAGGERE,
BENGALURU - 560 058.

...RESPONDENTS

(BY SRI. AJITH A SHETTY, ADVOCATE FOR R1;
SRI G.K.SHIVAPRAKASH, ADVOCATE FOR R2)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE ORDER DATED 19.10.2024 PASSED ON PRELIMINARY ISSUES IN OS.NO.4589/2017 ON THE FILE OF THE X ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DISMISSING THE SUIT FOR DECLARATION AND INJUNCTION.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R. NATARAJ

ORAL JUDGMENT

The plaintiffs, in O.S.No.4589/2017, have filed this appeal challenging an order dated 19.10.2024 passed by X Additional City Civil and Sessions Judge, Bengaluru, by which the suit was dismissed on a preliminary issue.

2. The suit in O.S.No.4589/2017 was filed for a declaration that a deed of gift dated 19.07.2013 executed by



defendant No.1 in favour of defendant No.2 is null and void and to restrain defendant No.1 from alienating or creating any right or any encumbrance in respect of the suit property until the marriage of plaintiff Nos.2 and 3.

3. Briefly stated averments made in the plaint are that, plaintiff No.1 is the wife of defendant No.1 and plaintiff Nos.2 and 3 are their children. Defendant No.2 is the sister of defendant No.1. It is stated that defendant No.1 owned the suit property and he had constructed a house in the year 2012, for which plaintiff No.1 had purportedly contributed. However, defendant No.1 abandoned the matrimonial home on 01.10.2015 and thereafter to avoid the claim of the plaintiffs, executed a gift deed in respect of the suit property in favour of defendant No.2 on 19.07.2013. The plaintiffs claimed that they are residing in one of the flats constructed in the suit property and the gift deed is designed to ensure that the plaintiffs are evicted from the suit property. Therefore, the plaintiffs sought for a declaration that the gift deed is null and void and for consequential injunction to restrain defendant No.1 from



causing any encumbrance over it until the marriage of plaintiff Nos.2 and 3.

4. The defendants entered appearance and filed their written statement denying the contention of the plaintiffs that plaintiff No.1 had contributed to construct a building over the suit property. They also claimed that defendant No.1, being the lawful owner of the suit property, had validly executed a gift deed bequeathing the suit property in favour of defendant No.2 and therefore, the suit of the plaintiffs is not maintainable as they did not have any proprietary interest in the suit property. Based on these contentions, the trial Court framed issues.

5. The trial Court, in terms of an order dated 19.06.2024, framed two additional issues, which are as follows:

- 1) Whether the suit in the present form is maintainable in view of the bar contemplated under Section 41(j) of Specific Relief Act, 1963?*
- 2) Whether the suit is maintainable in view of the bar contemplated under Section 41 (h) of the specific relief act.?*

The aforesaid issues were treated as preliminary issues.



6. The trial Court, after considering the contentions urged on these two preliminary issues, held that a civil suit can be filed in respect of a property only if the plaintiffs have personal interest in the matter and if the apprehension of the plaintiffs was that the defendants are trying to dispossess the plaintiffs from the suit property, they ought to have filed for perpetual injunction to restrain the defendants from dispossessing from the suit schedule property. Consequently, the trial Court held that the suit filed is not maintainable in view of Sections 41(h) and 41(j) of the Specific Relief Act (for short 'the Act, 1963) and answered both the preliminary issues in favour of the defendants and consequently, dismissed the suit as not maintainable. Being aggrieved by the said order passed by the trial Court, the plaintiffs are before this Court.

7. The learned counsel for the plaintiffs submitted that the trial Court committed an error in framing two issues on the basis of Sections 41(h) and 41(j) of the Act, 1963. He contends that at any rate, these two issues could not have been treated as preliminary issues as they had a bearing on the other issues framed by the Court. He contends that preliminary issue can be



framed only when those issues goes to the root of the matter such as jurisdiction of the Court to try the suit or any other lawful defences such as *res judicata* etc. In this regard, he relied upon the judgment of a full Bench of this Court in the case of **Venkatesh R.Desai v. Smt.Pushpa Hosmani and ors.** reported in **AIR 2019 KARNATAKA 47**, where the full Bench of this Court held "where the question of Court fee is linked to jurisdiction, a defendant has a right to raise objection and the Court should decide it as a preliminary issue. But in those cases where the suit is filed in Court of unlimited jurisdiction, the valuation disclosed by the plaintiff for payment of amount of Court fee on relief claimed in plaint or memorandum of appeal should be taken as correct. This does not preclude the Court even in suits filed in Courts of unlimited jurisdiction from examining if the valuation, on averments in the plaint. is arbitrary".

8. He also referred to the judgment of the Apex Court in the case of **Sathyanath and anr. v. Sarojamani [Civil Appeal No.3680 of 2022]**, where the Hon'ble Apex Court,



after considering the provisions under Order XIV, held as follows:

"20. The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext."

9. He, therefore, contends that the reasoning of the trial Court that the plaintiffs were bound to sue for perpetual injunction and therefore, the bar under Section 41(h) of the Act, 1963 was applicable is misplaced. Likewise, he contends that the trial Court assumed that the plaintiffs did not have any



personal interest in the property while plaintiff No.1 had specifically mentioned that she had contributed for construction of the building over the suit schedule property. He, therefore, contends that the trial Court committed an error in answering preliminary issues against the plaintiffs and in favour of the defendants.

10. Per contra, the learned counsel for defendant No.2 submitted that there is no embargo in law against considering issues framed as preliminary issues and determining the suit on such preliminary issues. He contends that the plaintiffs do not dispute the fact that the suit property was owned by defendant No.1 and that the plaintiffs did not have any right, title or interest in the suit property. He contends that the only claim of plaintiff No.1 was that she had contributed some money towards constructing a building over the suit property. If that be so, he contends, that the plaintiffs' suit must have been one for recovery of money rather than challenging the gift deed executed in favour of defendant No.2. He, therefore, contends that the plaintiffs ought to have sought for correct reliefs rather than seeking for a declaration that the gift deed dated



19.07.2013 is null and void. Besides this, he contends that the plaintiffs categorically admit that they did not have any personal interest in the suit property and hence, the trial Court was right in exercising jurisdiction to set at nought a mischievous suit filed by the plaintiffs. In support of his contention, he relied upon the judgment of the Apex Court in the case of ***Santosh Kumar v. Ashok Chand and Ors.*** reported in ***AIR 2021 SC 2710***.

11. I have considered the submissions made by the learned counsel for the plaintiffs and the learned counsel for defendant No.2.

12. The Hon'ble Apex Court in ***Sathyanath and another, referred supra*** while considering the contours of Order XIV Rule 2 of CPC, held that it is only those suits that fall within the ambit of Order XIV Rule 2 (a) and (b) that a preliminary issue could be framed and the suit could be disposed of. However, in respect of those suits which fall beyond or outside the scope of Order XIV Rule 2 (a) and (b), the Courts cannot frame a preliminary issue and decide the suit.



13. In the case on hand, the plaintiffs claimed that the suit property belonged to defendant No.1 and that an apartment complex was constructed thereon and in one of the apartments, the plaintiffs were residing. Plaintiff No.1 claimed that she had also contributed some money for constructing the apartment and therefore, defendant No.1 could not have executed a gift deed bequeathing not only the suit property but also the apartment constructed thereon.

14. In India, the concept of dual ownership is recognized and while plaintiff No.1 could be a part owner of the building constructed, defendant No.1 could be the owner of the property. Therefore, this question has to be determined by the trial Court after a full-fledged trial. It could not have considered the suit of the plaintiffs by applying Sections 41 (h) and 41 (j) of the Act, 1963 and it could not have dismissed the suit by applying Sections 41 (h) and 41 (j) of the Act, 1963. The discretion to grant reliefs by the trial Court is guided by Sections 41 (h) and 41 (j) of the Act, 1963 and that itself cannot become a ground for rejection of the plaint at the



threshold. In that view of the matter, the impugned order passed by the trial Court is erroneous and calls for interference.

15. Consequently, this appeal is ***allowed***. The impugned order passed by the trial Court is set aside. The trial Court is directed to take up the suit for trial on merits and thereafter decide all issues including the preliminary issues framed by him accordance with law. The parties shall appear before the Trial Court on **15.06.2026**.

Sd/-
(R. NATARAJ)
JUDGE