

KABC0A0024852023



**IN THE COURT OF THE LXXIII ADDL. CITY CIVIL &
SESSIONS JUDGE AT MAYO HALL, BENGALURU.
(CCH-74)**

P r e s e n t :

Smt. Anitha N.P., B.A.L., L.L.M.,
LXXIII Addl.City Civil & Sessions Judge, Bengaluru

Dated this the 15th day of November, 2024.

OS No.25974/2023

Plaintiff:-

Smt. K.V. Geetha,

[By Sri. H.D.,. -Advocate]

Vs.

Defendants:-

Smt. Navaneetha & others,

[For D1 to 3, By Sri.V.C.S.R.,-Adv.]

ORDERS ON IA Nos.1, 3 and 5

The plaintiff filed I.A.No.1 under Order-39 Rule 1 and 2 of C.P.C., to restrain the defendants and their men from putting up construction on suit schedule property till the disposal of the suit.

2. The I.A.No.3 is also filed by the plaintiff under Order-39 Rule 1 and 2 of C.P.C., with prayer to restrain the defendants and their men from interfering with stoppage and disconnection of basic facilities like water and electricity by the defendants on the schedule property till the disposal of the suit.

3. IA No.5 is filed by the defendants under Order-39 Rule 1 and 2 of C.P.C., with prayer to restrain the plaintiff and her men to not to dispossess the defendant No.2 from the suit schedule property till the disposal of the suit.

4. Brief facts of the annexed affidavit of IA No.1 and 3 are as under that:-

The plaintiff has stated that the suit is filed seeking the relief of mandatory injunction, she is absolute owner of plaint A & B schedule properties i.e., property bearing southern portion of site No.6, khatha No.378/A/30 measuring 30 x 14 feet at Devasandra Village, near Chennakeshava Floor Mill Road, K.R.Puram Hobli, Bengaluru East Taluk and southern portion of site No.14 khatha No.243/4/30/1 measuring 30 x

19+15/2 feet at Devasandra Village, K.R.Puram Hobli, Bengaluru East Talulk.

5. According to plaintiff the A schedule property was acquired by Yashodhamma under sale deed dated 07.09.2001. Thereafter the said Yashodhamma executed unregistered Will dated 21.03.2005 in favour of her son P.Ravi who is husband of plaintiff. The said Yashodhamma died on 26.04.2001 thereafter her husband P.Ravi gifted suit A property in favour of plaintiff under gift deed dated 30.05.2023.

6. It is the further case of the plaintiff that plaint B schedule property was acquired jointly by Yashodhamma and the husband of plaintiff under sale deed dated 07.01.2016. After the death of said Yashodhamma the said property devolved on the husband of plaintiff and he gifted the said property under the gift deed dated 30.05.2023. Accordingly, the plaintiff is the owner of A & B schedule properties, the defendants are strangers and inspite of that they are claiming as owners of A & B schedule properties and have encroached the same. When the plaintiff questioned the same the

defendants necked out plaintiff and her husband. A complaint is also registered before the K.R.Puram Police Station in this regard. The defendants have illegally encroached plaintiff A & B schedule properties. When the plaintiff sought the help of police they advised to approach Civil Court. The defendants were given with permission to keep the Ragi Grains and taking the advantage of the same the defendants are claiming right over the suit properties. Accordingly, the plaintiff is having prima-facie case, balance of convenience lies in her favour. If the applications is not allowed she will suffer irreparable loss and injury. Hence, prays to allow the application.

7. In the annexed sworn affidavit of IA No.3 the plaintiff pleaded the very same facts which are pleaded in affidavit of IA No.1 and further pleaded that the defendants taking undue advantage that the plaintiff is a Lady have stopped and disconnected the basic facilities like water and electricity. When the plaintiff convened panchayath the defendants not listened to her words the defendants acts

were restrained by the plaintiff. Accordingly, she prays to allow the IA No.3.

8. In the annexed sworn affidavit of IA No.5 the defendant No.2 has stated that the suit is filed seeking the relief of mandatory and permanent injunction. She is resident of the application schedule property i.e., southern portion of site No.6 khatha No.378/A/30 of Devasandra Village, near Chennakeshava Fllor Mill Road, K.R.Puram Hobli, Bengaluru East Taluk. The plaintiff without having any right over the said property has filed this suit on the basis of created will and gift deed. In the counter claim she is seeking partition of suit schedule property and also sought that the gift deed is not binding on her. If the applications filed by the plaintiff are allowed then the plaintiff will dispossess the plaintiff from the suit property. She is absolute owner of suit schedule property. She is having prima-facie case and balance of convenience lies in her favour. Hence, prays to allow the application.

9. The plaintiff has filed objections to IA No.5 and the defendants filed memo to treat their written statement as objections to IA No.1 & 3.

10. In the objection to IA No.5 the plaintiff has stated the very same facts as stated in the affidavit of IA No.1 & 3.

11. The defendants in their written statement have contended that the defendant No.2 executed an agreement of sale on 10.11.2010 in favour of defendant No.3 for consideration of Rs.7 lakhs and the defendant No.3 has paid Rs.6 lakhs as advance and further paid Rs.1 lakh on 14.08.2022 in respect of suit B schedule property. That apart the defendant No.3 filed suit for specific performance against defendant No.2 and it was ended in compromise on 06.11.2004. The defendant No.2 has handed over the original sale deed dated 06.11.2004. The plaintiff has suppressed the said fact. The gift deed dated 07.01.2016 is created it is the defendant No.3 who is in possession of B schedule property and he is absolute owner of said property, the suit A schedule property is ancestral and joint family property. The plaintiff is not in possession of suit schedule property. After

the death of Yashodhamma the succession is opened. It is the defendant No.2 who is residing in portion of A schedule property. Accordingly, the defendants No.1 & 2 have sought for partition of 1/3 share and for declaration that the gift deed dated 07.01.2016 and two gift deeds dated 30.05.2023 is not binding on defendants. Accordingly, prays to reject IA No.1 and 3.

12. Heard arguments of both sides, perused the applications, annexed affidavits, objections, pleadings and available materials placed on record.

13. The following points that arisen for consideration:-

- 1) Whether plaintiff has made out a prima-facie case to grant the relief sought under IA No.1 and 3?
- 2) Whether defendant No.2 has made out a prima-facie case to grant the relief sought in IA No.5?
- 3) Whether plaintiff establishes that balance of convenience lies in her favour?
- 4) Whether defendant No.2 establishes that balance of convenience lies in her favour
- 5) Whether plaintiff is entitled for relief of temporary injunction as prayed for in IA No.1 & 3 otherwise irreparable injury will cause to her?

6) Whether defendant No.2 is entitled for relief of temporary injunction as prayed for in IA No.5 otherwise irreparable injury will cause to her?

7) What order?

14. My findings on the above points are as under:-

Point No.1 : **Partly in the Affirmative.**

Point No.2 : **Partly in the Affirmative.**

Point No.3 : **Partly in the Affirmative.**

Point No.4 : **Partly in the Affirmative.**

Point No.5 : **Partly in the Affirmative.**

Point No.6 : **Partly in the Affirmative.**

Point No.7 : As per final order
for the following:-

REASONS

15. Point No.1 to 6:- Admittedly the suit is filed by the plaintiff as against the defendants seeking the relief of mandatory injunction, permanent injunction and for such other further reliefs.

16. The defendants No.1 to 3 also sought counter claim in their written statement with prayer to effect partition of suit schedule property and for declaration that the gift deeds

dated 07.01.2016, 30.05.203 and 30.05.2023 are not binding on their share.

17. According to plaintiff she is absolute owner of suit A & B schedule properties by virtue of gift deed executed by her husband P.Ravi. According to plaintiff the suit A schedule property was originally belongs to Yashodhamma who is mother-in-law of plaintiff and she executed an unregistered will dated 21.03.2005 in respect of A schedule property in favour of her son who is husband of plaintiff. Subsequently, after the death of Yashodhamma the husband of plaintiff executed gift deed in respect of plaint A schedule property in favour of plaintiff. That apart according to plaintiff the B schedule property was belongs to Yashodhamma and husband of plaintiff and after the death of Yashodhamma the entire property was belongs to her husband and he gifted said property to plaintiff.

18. On the contrary the defendants denied the title and possession of plaintiff and also denied the execution of gift deeds.

19. The plaintiff so as to establish prima-facie case in her favour has relied upon original sale deed dated 07.09.2001 gift deed dated 30.05.2023 executed by the husband of plaintiff. Another gift deed executed by defendant No.2 in favour of husband and mother-in-law of plaintiff on 07.01.2016, Will, photos and CD.

20. On the contrary the defendants in order to establish prima-facie case in their favour at this stage have not produced any document.

21. The plaintiff as well as defendant No.2 are claiming right in respect of the plaint A schedule property and the defendants are also seeking partition of suit schedule property and to allot their 1/3 share. The documents relied on by the plaintiff shows that Yashodhamma acquired the plaint A schedule property under the sale deed dated 07.09.2001 and subsequently, she bequeathed the said property in favour of her son P.Ravi who is none other than husband of the plaintiff. The copy of Will relied on by the plaintiff shows that said Yashodhamma is having three children and they are P.Ravi, the husband of plaintiff,

P.Navneetha W/o V. Venkatram and P.Sujatha i.e., the husband of plaintiff and defendant No.1 & 2. Subsequently, the said P.Ravi gifted suit A schedule property in favour of this plaintiff. The gift deed dated 07.01.2016 shows that the defendant No.2 gifted site No.14 khatha No.243/4/30/1 i.e., B schedule property in favour of P.Ravi and Yashodhamma who are none other than brother and mother. Subsequently, on 30.05.2023 the said P.Ravi gifted the B schedule property also in favour of his wife i.e., plaintiff.

22. Under the will dated 21.03.2005 Yashodhamma bequeathed her $\frac{1}{2}$ portion in suit A schedule property i.e., southern side portion of suit A schedule in favour of her son excluding her daughters defendant No.1 & 2.

23. The plaintiff also produced copy of FIR, khatha extract. The khatha extract of site No.6 shows the name of Yashodhamma to the extent of 30 x 28 feet.

24. In the Will relied on by the plaintiff it is stated that the said Yashodhamma has already given $\frac{1}{2}$ portion in site No.6 to defendant No.3 who is husband of defendant No.1 under sale deed towards Harisina Kunkuma to defendant

No.1. During the course of arguments it was argued by the defendants that the sale deed is absolute sale deed and no such recital that it is given towards Harisina Kunkuma to defendant No.1. It is necessary to note that Yashodhamma as well as husband of plaintiff got property i.e., B schedule from defendant No.2. However, after the death of Yashodhamma the husband of plaintiff gifted the entire property of his share and also the share of his mother Yashodhamma. The defendant No.1 & 2 being daughters of Yashodhamma are not given with any share in the share of Yashodhamma in the plaint B schedule property. The defendants are excluded from the Will and the said fact requires full pledged trial and at this interim stage the court cannot decide the rights of the parties over the suit schedule property. Admittedly, the husband of plaintiff and defendants No.1 and 2 are children of Yashodhamma. Under the circumstances and as the defendants are seeking partition of their share in the suit schedule property and as the defendants are seeking for cancellation of gift deeds dated 07.01.2016 and 30.05.2023 the same requires full pledged trial. Accordingly, at this stage

the plaintiff as well as defendant No.2 have established prima-facie case in respect of IA No.1 & 5 in part. That apart the specific assertion of the plaintiff is the defendants are disconnecting water and electricity connection. Water and electricity are basic essentials and without which one cannot live in this society. The defendants who are also living in the same properties cannot disconnect said basic facilities. Accordingly, the plaintiff has establish prima-facie case in respect of IA No.3.

25. When there is a prima-facie case as discussed above the balance of convenience lies in favour of plaintiff in respect of IA No.1 & 3 in part and in favour of defendant No.2 in part in respect of IA No.5. Since plaintiff and defendants are now residing in the plaint schedule properties it is necessary to order both parties to maintain status-quo in respect of IA No.1 & 5 relief is concerned and accordingly, IA No.1 & 5 requires to be allowed with a direction to both parties to maintain status-quo. Similarly in respect of IA No.3 is concerned the defendants are to be restrained from stopping and disconnecting water and electricity connection

to the plaint schedule properties otherwise the plaintiff will suffer irreparable loss and injury. **Accordingly, I have answered point No.1 to 6 partly in the Affirmative.**

26. Point No.7:- In view of the reasons given above, I proceed to pass the following:-

ORDER

I.A.No.1 filed by plaintiff U/O.39 Rule 1 & 2 r/w sec.151 of CPC & **IA No.5** filed by defendant No.2 U/O.39 Rule 1 & 2 r/w sec.151 of CPC **are hereby allowed** for the following relief.

Plaintiff and defendants are directed to maintain status-quo in respect of suit schedule properties and the property shown in IA No.5 till disposal of the suit.

IA No.3 filed by plaintiff is **hereby allowed.**

The defendants and their men are restrained from stopping or disconnecting

water and electricity to the plaint schedule
properties till disposal of the suit.

Both parties are directed to bear
their own costs.

--

(Dictated to the stenographer, transcribed by her and then
corrected and pronounced in the open court on this day of
15th day of November, 2024)

(Anitha N.P.)
LXXIII Addl.CC & SJ,M.H.Unit,
Bengaluru.