

**IN THE COURT OF II-ADDITIONAL SENIOR CIVIL
JUDGE & JMFC., AT KOLAR**

: PRESENT :

Smt. REHANA SULTANA, B.A.L., LL.B.,
II-Addl. Senior Civil Judge & JMFC.,
Kolar.

DATED 30TH DAY OF JANUARY 2025

O.S. NO.191/2024

Plaintiff/s : Smt. Kadiramma
(Rep. by Sri.**C.N.N.**, Advocate)
-Vs.-
Defendant/s : Sri. M. Venkataramana
Reddy & Another.
(Rep by Sri.**S.D.C.**, Advocate)

PARTIES TO IA No.I

Applicant/s : Smt. Kadiramma
-Vs.-
Opponent/s : Sri. M. Venkataramana
Reddy & Another.

ORDERS ON IA NO.I**U/o 39 RULE 1 & 2 R/W SEC.151 OF CPC**

The counsel for the applicant/plaintiff has filed IA No.I U/o 39 Rule 1 and 2 r/w Sec.151 of CPC., seeking ex-parte temporary injunction order against defendants restraining them, from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule property, till disposal of the suit in the interest of justice and equity.

2) Per-contra opponents/defendants have filed memo stating to treat the written statement filed by them as objection to IA No.I.

3) I have heard the arguments on I.A. No.1 by defendants' counsel, perused the written arguments filed by plaintiff's counsel.

4) Following points arise for my consideration are as under:-

- 1. Whether the plaintiff has made out prima-facie case?**
- 2. Balance of convenience lies in whose favour?**
- 3. Whether the irreparable loss or hardship will be caused to the plaintiff, if injunction is not granted?**
- 4. What order?**

5) My findings on the above points are as follows:-

Point No.1 to 3 : In the **Negative**

Point No.4 : As per final order,
for the following;

REASONS

6) **Point No.1:** The applicant/plaintiff in the annexed affidavit to I.A.No.I, has stated that, she is in actual physical possession and enjoyment of the suit schedule properties having been acquired the same under a **Family consent deed dated 22.09.2023 duly executed by her brother and brother's** wife by relinquishing their right over the same. She was put in possession and till now she has continued to be in actual physical possession. On her application for change of katha in her name in respect of the suit schedule properties the defendants have objected for the same by laying false claim and hence her application for change of katha is pending and authorities have directed to get a decree. The defendants along with their henchmen came near the suit schedule properties with a sole intention to interfere and to oust her on the basis of fabricated and created documents. Though she resisted the defendants with the help of neighbours, but as the defendants are high handed persons having men and materials behind their back, it is very much difficult for her to resist them. Even

her efforts in approaching the local police and lodging the complaint against the defendants also went in vain as the police have not taken any action against the defendants by saying that the matter is civil in nature. She has got prima facie case on merit. The balance of convenience lies in her favour rather than the defendants. If the order of injunction as prayed for is not granted she will be put to greater hardship, injustice, inconvenience, misery and loss. On the other hand no much hardship would be caused to the defendants in any manner. Hence, this application.

7) Per contra, defendants have filed memo to treat their written statement as objection to the interim application. In the written statement defendants have contended that, the plaintiff has approached court based on **created unregistered consent deed dated: 22-09-2023 alleged to be executed by one Eshwaramma W/o Gangappa, Chalapathi S/o Kadirappa and his wife Lakshmiddevamma, and one Arunamma W/o Venkateshappa, but the above referred Eshwaramma, Chalapathi, Lakshmiddevamma and Arunamma are not the owners of suit schedule properties and they have no source of title to execute the unregistered consent deed.** Based on unregistered document the plaintiff is claiming the

suit schedule properties by filing the suit for declaration of title and permanent injunction.

8) Further, the defendant No.1 is the absolute owner and in peaceful possession and enjoyment of the vacant site property bearing Kaneshmari No.86 to an extent of East-West: 20 yard and North South: 20 yard (60 x 60 feet) consisting one Tamarind Tree situated at Mullahalli Village, Sugatur Hobli, Kolar Taluk. **The suit schedule property originally belongs to one M.S. Sonne gowda who is the grandfather of defendant No.1** and during the life time of Sonne gowda due to his love and affection on defendant No.1, **he had executed the registered gift deed in favour of defendant No.1 on 02-11-1973 in respect** of Kaneshmari No.86 to an extent of East West: 20 yard and North South: 20 yard (60 x 60 feet), situated at Mullahalli Village, Sugatur Hobli, Kolar Taluk and on the same day he had delivered the physical possession of the said property to the defendant No.1. At a time of execution of the registered gift deed the Mullahalli Village comes within the limits of Thotli Mandal Panchayath and in the year 1993 the Mullahalli Village comes within the limits of Madanahalli Gramapanchayath.

9) Further, the defendants contended that defendant No.1 has no worldly knowledge to change the documents in respect of said property in his name before the concerned

panchayath authorities and the correct boundaries of Kaneshmari No.86 to an extent of East West: 20 yard and North South: 20 yard (60 x 60 feet) bounded on East by: Government property West by: Property of Shanubhog Ramappa, North by: Property of Shanubhog Ramappa belongs to Gangana Vataru and South by: Kere Angala consisting one Tamarind Tree and now also the said boundaries is in existence and the defendant No.1 is in peaceful possession and enjoyment of the said property.

10) Further, at the time of execution of registered gift deed the grandfather of defendant No.1 by name M.S. Sonnegowda had also executed another Kaneshmari No. 33/3 which is consisting of stone roofed house. Northern side property belongs to one Ganga and the said Ganga is none other than grandfather of defendant No.2 by name Munivenkataramanappa and he is in peaceful possession and enjoyment of northern side of defendant No.1's property. Defendant No.2 being the absolute owner and enjoyment of northern side of defendant No.1's property and now the plaintiffs are claiming the properties belongs to defendant No.1 and 2 without any document. Based on the registered gift deed, the defendant No.1 gave a representation to the respondent No.1 on 30-09-2022 to recognize the katha in the name of the defendant No.1 and at that time the plaintiff

had filed objections before the Madanahalli Gramapanchayath and then the Madanahalli Gramapanchayath have issued endorsement on 11-10-2023 and then the defendant No.1 had filed appeal before the Taluk Panchayath, Kolar by filing appeal in VPC No. 40/2023 and now the said appeal is pending for adjudication.

11) Further, the defendants contended that there is no any document stands in the name of plaintiff or above referred persons by name Eshwaramma, Chalapathi, Lakshmidevamma and Arunamma and also Shabarish in the office of Thotli Gramapanchayath or Madanahalli Gramapanchayath or their ancestors and how the above said persons have executed the consent deed in favour of plaintiffs in respect of suit schedule properties. When the above said persons have no right to execute the consent deed the question of claiming the suit schedule properties by the plaintiffs based on alleged consent deed dated: 22-09-2023 does not arise. The plaintiff or the above said persons never in possession over the suit schedule properties and the Eshwaramma, Chalapathi, Lakshmidevamma, Arunamma and Shabarish are not residing at Mullahalli Village at any point of time and how they have acquired the suit schedule properties and what is the relationship between above said persons and suit schedule properties. The plaintiff never

disclosed single word in her plaint how the said persons have acquired the suit schedule properties. The plaintiff is having one house property in VP Katha No./ Junger No.7 to an extent of East West: 26 feet and North South: 11 feet bounded on East by: Road, West by: property of Basappa, North by: Property of Gopalareddy and South by: Government property and in the said house the plaintiff is residing. Except that property she is not having the suit schedule properties, but she is claiming the entire suit schedule properties without any piece of document. Hence they prayed to dismiss the application.

12) It is worth to note that to obtain temporary injunction plaintiff must satisfy the Court with respect to existence of prima-facie case, irreparable injury likely to be suffered by him and balance of convenience lies in his favour.

13) Let us browse the materials placed by the parties to the lis to unmask the truth regarding plaintiff's contention and also to determine whether plaintiff has made out prima-facie or not. Plaintiff claims his title and possession in the suit properties and apprehended that defendants are interfering in the suit-schedule properties taking advantage of the katha in their name.

14) To show the prima-facie case plaintiff has produced the following documents;

- Xerox copy of Family consent deed 22-09-2023 which reveals that Eashwaramma, Lakshmidevamma and Smt. Arunamma have executed the same in favour of Smt. Kadiramma [Plaintiff] in respect of suit schedule properties.
- Copy of Genealogical Tree of family of plaintiff.
- Copy of demand register extract for the year 1982-83 and 1992-93 which reveals that Ganga S/o Muddappa was rounded off and the name of Venkateshappa S/o late Obalappa is mentioned.
- Copy of Tax Assessment register extract for the year 2004-05 in respect of suit schedule properties.
- Copy of Endorsement issued by Madanahalli Grama Panchayath, Kolar Taluk to plaintiff to inform them about the ownership of suit schedule properties.
- Copy of mutation register extract in MR No.100-20/1993-94 which is not legible.

- Copy of the three letters submitted by plaintiff to CEO, Kolar Taluk Panchyath to change katha in her name in respect of suit schedule properties and also requesting that not to change katha in any other persons name.
- Copy of letter submitted by V. Gangawwa to Mandal Panchayath, Kolar to change katha in her name in respect of site katha No.74-75.
- Copy of paper publication published by Taluk Panchayath stating to file objection within 15 days from the public to change of katha in respect of Katha No.74 and 75 vacant site situated at Malavalli Village.
- Copy of mahazar conducted by the surveyor in katha No.74 and 75 of Malavalli Village.
- Copies of photographs of suit schedule properties.
- The gift deed dated; 2-11-1973 executed by M.S. Sonnegowda in favour of Venkatarama Reddy S/o Munishamireddy in respect of khaneshumari Nos.33/3, 86 and 36 of Mullahalli Village, Sugutur Hobli, Kolar Taluk .

15) The defendants have not produced any documents in support of their case.

16) Settled position of law is that, to seek discretionary relief of temporary injunction, plaintiff must satisfy the court with respect to existence of prima- facie case, irreparable injury likely to be suffered by him and balance of convenience lies in his favour.

17) It is worth to note that, the plaintiff claims that, she is the owner of suit schedule property i.e. unregistered consent deed dated 22-9-2023, alleged to be executed by one Eshwaramma W/o Gangappa, Chalapathi S/o Kadirappa and his wife Lakshmiddevamma, and one Arunamma W/o Venkateshappa, *but defendant objects that the above referred Eshwaramma, Chalapathi, Lakshmiddevamma and Arunamma are not the owners of suit schedule properties and they have no source of title to execute the unregistered consent deed.*

18) It is worth to note that under the unregistered consent deed title is not passed to the plaintiff. Further defendant contends that executant are not owners of the property, other documents produced by the plaintiff are not title documents.

19) The documents produced by the plaintiff reveals that plaintiff has no prima facie case. Whether the plaintiff has created the consent deed or not is to be decided only

after full fledged trial. But the material placed before the court shows that relationship between the parties is disputed and further defendant alleges that consent deed is created document.

20) Plaintiff has produced G-tree, demand register extract, assessment register extract, endorsement issued by PDO, MR Extract, public notice, Photographs, Gift Deed, Electricity bills, police complaint and Representation given to Tahasildar. Further defendants have denied the case of plaintiff, but not produced any documents in support of their version. Who is in possession, who is owner of suit property, how they acquired title of the property, whether executants of the consent deed are having title in the said property, all these facts shows that there is triable issue involved in the matter and to decide all these issues full fledged trial is required. These issues are also required trial to decide. Whether there is consent or not, the same has to be decided in full fledged trial. At the moment, the discussion supra manifests, the plaintiff has failed to demonstrate the existence of prima-facie case to get an order of not to interfere. Hence this point is answered in **Negative**.

21) Point No.2 and 3:- Both these points are inter connected with each other and in order to avoid repetitions of

facts, these points are taken together for common consideration.

The above findings shows that the plaintiff has failed to demonstrate the existence of prima-facie case in his favour. Hence, the above points does not survive for consideration. Accordingly, these points are answered.

22) Point No.4:- By virtue of above findings, Court proceeds to pass the following;

ORDER

**I.A.No.I filed by the plaintiff under
Order 39 Rule 1 & 2 R/w. Sec.151 of CPC
is hereby dismissed.**

No order as to costs.

(Dictated to the **Stenographer Grade-III** directly on computer, typed by him, revised, corrected, signed and then pronounced by me in the open court on this the **30th day of January 2025.**)

Sd/-
(REHANA SULTANA)
II-Addl. Senior Civil Judge & JMFC,
Kolar.