

KAMS020000902023



O.S.No.50/2023

**IN THE COURT OF THE VI ADDL. SENIOR CIVIL JUDGE
& J.M.FC., AT MYSURU**

Present

Sri.C.N.Chandan
B.Sc., LL.B.,
VI Addl. Sr. Civil Judge & J.M.FC., Mysuru.

Dated this the 1st day of July 2024

O.S.No.50/2023

PLAINTIFF/S :

Smt. Pramoda Devi Wadiyar,
W/o Late H.H. Srikantadatta
Narasimha Raja Wadiyar,
aged about 67 years,
R/at F-1, Fort Mohalla,
The palace,
Mysuru-570001.

(By Sri.**M.S.**, Advocate)

Vs.

DEFENDANT/S:

1. Mahadeva Shetty,
S/o Late.Siddamma and
Late.Jawara Shetty, Major,
2. Smt.Nagamma,
W/o Mahadeva Shetty,
Major,

3. H.M.Rajesh,
S/o Mahadeva Shetty, Major,
4. Sri. H.M.Mahesha,
S/o Mahadeva Shetty, Major,

Defendants No.1 to 4 are residents of
Hulakanahundi Village, Sosale Hobli,
M.Kebbehundi, T.Narasipura Taluk,
Mysuru District 571110.

5. N.Suryanarayana,
S/o Late.N.V.Krishnaiah,
Major,
R/o No.6, Hanuma Sadana,
Lalitha Mahal Cross Road,
Behind Pump Road, K.C. Layout,
Mysuru 570011.

(Defendants N.1 to 4 represented by
Sri.V.M.P., Advocate, Defendant No.5
represented by Sri.R.L., Advocate)

Parties to IA No.2

**Applicant/ Plaintiff : Smt. Pramoda Devi
Wadiyar,**

Vs

**Opponents/Defendants : Sri. Mahadeva Shetty and
others**

ORDERS ON IA No.2

The plaintiff has filed IA No.2 under Order 39 Rule 1 and 2 of CPC, seeking to restrain the defendants no.1 to 5 from alienating the suit property or creating charge of suit property in favour of third person till disposal of the suit.

2. In support of applications, the plaintiff has sworn to an affidavit and it is submitted that the memorandum of the plaint is to be considered as part and parcel of the application. On perusal of the plaint averments and averments in affidavit annexed to the application, wherein it can be seen that the present suit filed by the plaintiff against the defendants to declare that the plaintiff is the absolute owner of the suit schedule property and to declare that the register confirmation deed dated 07.11.2013, which is registered in the office of the Sub Registrar, Mysuru North is null and void and for recovery of possession.

3. The plaintiff alleges that earlier the suit belongs to his highness the then Maharaja of Mysore Shri Jayachamarajendra Wadeyar who is the father- in -law of Plaintiff. It is alleged that during the life time of his highness Maharaja of Mysuru Shri Jayachamarajendra Wadeyar (**for brevity herein referred as Maharaja**) was in possession and enjoyment of the said land and after his demise the husband of plaintiff succeed to the captioned property of Maharaja and after the demise of the plaintiff husband, the plaintiff was in lawful possession and enjoyment of captioned land.

4. The plaintiff alleges that neither the husband of the plaintiff nor Maharaja has formed any site or layout in the above said property. However, in the newspaper certain articles were published in which it was published that certain persons have created the fabricated documents in respect of the land and claiming ownership over the portion of the above said Sy.No. After verifying the documents in the office of Sub Registrar of Mysore, the

plaintiff came to know that the plaintiff's husband alleged to have executed Confirmation Deed dated 07.11.2013 and the same has been registered on 07.12.2013 in the office of the Sub Registrar Mysuru North in Book No.1 as document No.05399 (**for brevity herein referred as confirmation deed**), confirming the unregistered Gift Deed dated 05.03.1962 alleged to have been executed by Maharaja through his Secretary Sri. D.G.Balaraj.

5. It is submitted that the alleged Gift Deed executed in 1962 is not a registered document, it is also alleged that after the enactment of Indian Stamp Act. The document of conveyance should be registered. It is alleged that as the Gift Deed is unregistered document, the same is not having an validity in the eye of law and it is also alleged that Siddamma has not accepted the Gift Deed. Thereby, Gift Deed and Confirmation Deed is invalid.

6. It is alleged that the confirmation Deed is concocted document. the husband of the plaintiff who

alleged to have executed confirmation Deed dated 7.12.2013 died with 3 days of execution of alleged confirmation deed. It is also submitted that the husband of the plaintiff was suffering from serious health issues and he was under treatment at his residence in Bangalore from 28.11.2013 to 10.12.2013. In furtherance it is submitted that that the husband of the plaintiff died on 10.12.2013 in Vikram Hospital, Bangalore. Under these circumstances it is highly impossible for husband of the plaintiff to travel from Bangalore to Mysuru for attending Registration process. It is submitted that the Sub Registrar committed mistake in admitting and registering the document.

7. The plaintiff after noticing the above facts, she has lodged the complaint on 18.06.2014 with Lokayuktha Mysure against the Registrar and Sub Registrar of Mysuru North for creating the fabricated documents.

8. It is submitted that the 5th defendant has tress passed into the suit schedule property and try to erect the

shed. But the plaintiff tried to resist the illegal and high handed act of the defendants. But wherein the defendant overpowered the Plaintiff.

9. It is submitted that the documents referred above are concocted document no right, title or interest has conveyed to one Siddamma or defendant no.1 to 5. In fact, the plaintiff is the absolute owner of the suit property as on today. Through this IA. The plaintiff is seeking to restrain the defendants from alienating or creating charge in favour of third party. It is the apprehension of the Plaintiff if the defendants sells or creates charge in respect of the 3rd party then the plaintiff will be put to be irreparable hardship, it cannot be compensated in terms of money and it is also submitted that if the defendant succeeds in alienating suit property or creating charge than it will leads multiplicity of proceedings. On this ground sought to allow the application.

10. In response to the suit summons defendants have marked their appearance before this court. Defendant

no.5 filed written statement and objections to the IA.1. On perusal of the order sheet on 18.03.2024 wherein it shows that the counsel for the defendant no.5 filing memo adopting the objection of IA No.1 as the objection of IA No. 2.

11. In the objections defendant no.5 has taken the contention that the defendant have not interfered with the property of the plaintiff nor dispossessed the plaintiff . It is the contention of defendant no 5 that the defendant no.1 to 4 have sold the suit property in his favour through Registered Sale Deed dated 06.10.2022 and which is pending before District Registrar, Mysore under Section 45A of Karnataka Stamp and Registration Act.

12. It is the contention of the defendant no.5 that, the plaintiff has no Locus-standi to file the above suit, as she is not having any manner of right, title or interest over the suit property. It is contended that the present suit is filed with an intention to grab the property by creating

illusory cause of action. It is submitted that as the suit is filed after lapse of 60 years from the date of execution of the gift deed the plaintiff has waived her right by way of acquiescence, and the as present suit which is barred by limitation.

13. In addition to that it is submitted that the Maharaja of Mysore executed the Gift Deed dated 05.03.1962 in favour of he one Siddamma and the husband of the plaintiff has execute the confirmation Deed date 07.11.2013. the katha earlier standing in the name of Siddamma in Form No.10 by Hanchya Grama Panchayath of Allanahali Village. Siddamma died on 19.01.2019 leaving behind her legal heirs and based upon the consent of the family member defendant no.1 came to the absolute owner of the suit property and the katha is mutated in his name in Alanahalli Gramapanchayath and he was also paying tax regularly.

14. It is the contention of the defendant no.5 that in order to meet the family necessities defendant no.1 along with his family members have executed Sale Agreement dated 05.08.2021 and then executed Sale deed dated 06.10.2022 and it is pending for registering for payment of Stamp Duty.

15. The defendant contends that the allegation made in the plaint that the husband of plaintiff was suffering from illness is false. It is contended that the plaintiff has approached this court with unclean hand as she has no manner of right, title or interest for the suit property. Hence, sought to dismiss the application.

16. Defendant no.1 to 4 filed objections to the IA and it is contend that they have already sold property in favour of defendant no.5. under this circumstances question of alienating suit property in favour of third party does not arise. On these ground sought to dismiss the application.

17. Heard arguments on both sides. Perused materials placed on record.

18. The points that would arise for my consideration are as under:-

- 1. Whether the plaintiff proves that prima facie case lies in favour of the plaintiff ?**
- 2. Whether plaintiff proves that the balance of convenience lies in favour of the plaintiff ?**
- 3. Whether the plaintiff will put to irreparable loss and injury if the order of temporary injunction is refused?**
- 4. What order?**

19. My answer to the above points are as under:

Point No.1 : In the Affirmative.

Point No.2 & 3: In the Affirmative.

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

REASONS

20. **Point No.1:-** In order to grant the relief of temporary injunction the plaintiff has establish that there is prima-facie case in her favour. It is needless too say that the prima-facie case means the plaintiff has to show that there is a triable case. The present suit is filed by the plaintiff for the relief of declaration to declare that the confirmation Deed dated 07.11.2013 is null and void and for possession of the suit property.

The plaintiff alleges that neither Maharaja of Mysore nor the husband of the plaintiff has formed sites or layout in the suit property and it is her specific allegation that the the Maharaja of Mysuru nor her husband has executed an unregistered gift deed, as well as confirmation deed in favour of the Siddamma. The allegations of the plaintiff is that the Confirmation Deed is registered on 07.12.2013. on the said date the husband of the plaintiff was suffering from serious health issues, and he was not in a position to move from Bangalore to Mysuru. It is alleged that the said

confirmation deed is a fabricated document with an intention to knock off the property which belongs to the Plaintiff.

21. On the other hand except the admitting fact that erstwhile the suit property belongs to the highness the Maharaja of Mysore the other allegations made by the plaintiff regarding the execution of unregistered gift deed as well as confirmation deed is denied. The defendant have denied the said allegation and it is their defence that is denial of Maharaja of Mysuru through Balaraju has executed the unregistered Gift Deed and execution of the same to the confirmation deed by the husband of the plaintiff by executing the confirmation Deed dated 07.11.2013.

22. This court has meticulously gone through the allegation, as well as the contention and also perused the documents furnished by the parties of the suit. In order to substantiate the averments made in the affidavit, the plaintiff also furnished the certificate issued by the

Dr.Anand K. In the said document it is stated that the husband of the plaintiff was under medical supervision from 25.11.2013 to 10.12.2013 and it is also stated that the dressing was done on day to day basis and he was advised not to travel. The plaintiff has also furnished death certificate of her husband on going through the same it is shows that her husband has taken his last breath on 10.12.2013. i.e., after 3 days from date of execution of he alleged confirmation deed. As discussed earlier there is assertion and denial with respect to the execution of the confirmation deed which is vital document in this case. On the other hand at this stage considering facts and circumstances of the case this court of the opinion that the interference of the court is required in order to adjudicate the controversy involved in this case between the parties of the suit. If the forgoing reasons this court of he opinion that there is a triable case. Hence, I answer point no.1 in the ***Affirmative.***

23. **Point No.2 & 3 :** Both these points are taken interconnected with each other and in order to avoid repetition of facts and discussion Both points are taken together for common discussion.

24. While answering these points the court has to be see who will be put to much inconvenience if the order or injunction is refused. Put it in other words while deciding the balance of convenience the court has to consider whether it could cause greater inconvenience to him if the injunction is not granted than the inconvenience which the other side would be put to if the injunction is granted as to that the governing principle is whether the party seeking the relief of injunction could be adequately compensated by awarding damages and the other party would be in a financial position to pay the same. The court should also see that whether the alleged damaged or irreparable loss or whether the same can be compensated in terms of money. As discussed in point no.1, the plaintiff alleges that her husband has not executed the confirmation deed. On the

other hand the defendants submits that the husband of the plaintiff has executed the same through which the defendants have acquired the title over the suit property.

25. As the controversy between the parties of the suit involved is regarding the ownership of the suit property till their rights are adjudicated. It is necessary to keep property intact, other wise by time when case is adjudicated on the merits of the case. If senerio of the nature of he property is changed or if the property is sold, then the purpose of filing the suit will be defeated. In this IA the plaintiff has sought to restrain the defendant no.1 to 5 from alienating the suit property of creating the 3rd party right in respect of the suit property till disposal of the case. As discussed supra. In this case the issue involved is title of suit property. It is the apprehension of the plaintiff that before the matter is finally adjudicated. If the defendants alienate the suit property to the 3rd person then the plaintiff will be put to much hardship, which will leads multiplicity of proceedings. The apprehension of the plaintiff appears to

be correct because before adjudication of the controversy involved in this case. If the defendants alienates or creates 3rd party right in the suit property than the plaintiff has challenge the said document also. “ *It may become necessary for the plaintiff to implead the 3rd person in whose favour right might be created*” or “the Plaintiff have to file the suit against the 3rd party whose favour interest is created . In that situation the the precious time of the court as well as the parties is wasted.” On the other hand by allowing the application defendants will not be put in hardship because the reasons that, If they succeed in establishing the their defence then they are liberty to deal with the property according to their whims and fancies. On the other hand if the defendants succeeds in alienating the property as per the apprehension of the plaintiff than much inconvenience will be caused to the plaintiff than that of the defendants.

26. As far as concerned to irreparable loss, definitely it will be for the plaintiff. The sole object of the interlocutory

injunction is to preserve the subject matter of the controversy in its then condition and without determining any question of right merely to prevent the further preparation of wrong, or the doing of an act where by the right in controversy may be materially injured or endangered. Under these circumstance It is necessary to keep the property intact till the controversy is adjudicated. Considering the facts and circumstances, I answer point No.2 and 3 in the **Affirmative.**

27. **Point No.4:** In view of the above discussion in point no.1, I proceed to pass the following:

ORDER

IA No.2 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

According to defendant no. 1 to 5 or their authorized agents are hereby restrained from alienating or creating 3rd party rights in respect of the suit

property till pending disposal of the
suit.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by her, revised, corrected
and then pronounced by me in open Court on this the 1st day of July 2024)

(C.N.Chandan)

VI Addl. Sr. Civil Judge & JMFC.,
Mysuru.