

KARN310010292024



**IN THE COURT OF THE SENIOR CIVIL JUDGE &  
J.M.F.C., KANAKAPURA**

**PRESENT : Sri. K.A.Nagesha, B.A.L, LL.B,  
Senior Civil Judge & JMFC, Kanakapura.**

**Dated : This 21<sup>st</sup> day of February, 2025  
O.S. No. 698/2024**

**PLAINTIFF**

Sri. Shivalingaiah,  
S/o Late Manchegowda,  
Aged about 64 years,  
R/o Belaguli village, Kottagalu Post,  
Harohalli Hobli & Taluk,  
Ramanagara District.

**(Sri. S. R. Shashikumar, Adv.)  
Vs.**

**DEFENDANTS**

1. Sri. Busigowda,  
S/o Late Dollegowda @ Kalegowda,  
Aged about 81 years.

2. Sri. Punithraj B.N,  
S/o Nagaraju. D,  
Aged about 25 years.

Both are R/o Belaguli village,  
Kottagalu Post, Harohalli Hobli,  
Harohalli Taluk, Ramanagara District.

Now both are R/o No.10, 1<sup>st</sup> Cross,  
1<sup>st</sup> Main Road, 2<sup>nd</sup> 'A' Cross,  
Vinayaka Layout, Nayandahalli,  
Bengaluru-560 039.

**(D-1 by Sri. Vinod. K, Adv)  
(D-2 by Sri.T. K. Ravi, Adv)**



i.	Provision under which the applications are filed	U/o XXXIX Rules 1 & 2 R/w Section 151 CPC
ii.	Reliefs sought for	Temporary Injunction
iii.	The date on which the applications are filed	23/09/2024
iv.	Number of the applications	IA No's.I & II
v.	The date on which the objections are filed by different opponents	D1- 25/11/2024 D2 - 28/01/2025
vi.	The date on which the orders were passed on the said applications	21/02/2025

### **ORDER ON IA No's.I & II**

Plaintiff has filed IA No.I U/o XXXIX Rules 1 & 2 R/w Section 151 of CPC praying to pass an order of temporary injunction restraining the defendants from interfering with his possession and enjoyment over the suit schedule property till the disposal of the suit.

2. Plaintiff has filed IA No.II U/o XXXIX Rules 1 & 2 R/w Section 151 of CPC praying to pass an order of temporary injunction restraining the defendants from alienating the suit schedule property till the disposal of the suit. Suit schedule property is described as Sy. No. 13/5 (Old Sy. No. 13/1) measuring 25 guntas situated at Belaguli village, Harohalli Hobli & Taluk.



3. In the affidavits accompanying these applications, plaintiff has stated that he is the absolute owner and in possession of the suit schedule property. Suit schedule property is his ancestral property and originally owned by his grandfather Marimanchegowda and Khatha was standing in his name. After the death of Marimanchegowda, in the family partition suit schedule property was allotted to the share of the father of the plaintiff Manchegowda. Thereafter, Khatha was effected in the name of the father of the plaintiff as per MR No. 1/1983-84. Father of the plaintiff was in possession and enjoyment of this property and cultivating the same. Defendants have no manner of right, title, interest or possession over the suit schedule property and they are strangers.

4. Based on the alleged family partition, defendant No.1 has got entered his name with respect to the suit schedule property as per the MR No. 16/1998-99, which is illegal. Father of the plaintiff was illiterate and innocent person and was having no worldly knowledge. Taking advantage of the same, defendant No.1 got his name entered in the property records though father of the plaintiff was in possession



and enjoyment of the property. In the family partition effected as per the Panchayath Parikath dated 08/07/1996 between the plaintiff and his brothers, suit schedule property was allotted to the share of the plaintiff. After Panchayath Parikath, plaintiff obtained the RTC of the suit schedule property and found that name of the defendant No.1 is entered. Immediately, he requested the defendant No.1, his wife and son to get it rectified. Accordingly, they gave consent statement before the revenue authorities and Khatha was changed in the name of the plaintiff as per MR No. 18/2001-02. Now, defendant No.1 with an intention to grab the suit schedule property has executed a Gift Deed with respect to this property in favour of the defendant No.2 on 17/09/2024, which is illegal void ab-initio and not binding on the plaintiff. Based on the alleged Gift Deed, defendants are trying to interfere with the possession of the plaintiff over the suit schedule property and also trying to alienate the same. Hence, prayed to allow the applications as prayed for.

5. Defendants No.1 & 2 have filed separate written statement and also memos to treat the same as objection to IA No's. I & II. Defendant No.2 has



contended that the suit schedule property and other properties are the ancestral joint family properties of the defendants, earlier belonged to the father of the defendant No.1 Dollegowda @ Kalegowda. After his death, defendant No.1 and his brothers have divided the properties as per the Panchayth Parikath dated 10/04/1994. In the said partition, suit schedule property was allotted to the share of the defendant No.1 and Khatha was made out in his name as per MR No. 16/1998-99. He was in possession and enjoyment of this property cultivating the same. On 17/09/2024, he executed a Gift Deed in favour of the defendant No.2. Now, application submitted by the defendant No.2 for change of Khatha is pending. Plaintiff has no manner of right, title, interest or possession over the suit schedule property and has filed false suit to grab the same, hence prayed to reject the application.

6. Defendant No.2, in his written statement has reiterated the written statement of the defendant No.1 and claimed that the suit schedule property was gifted in his favour on 17/09/2024 and he is in possession and enjoyment of the same and prayed to reject the application.



7. Heard the learned counsel appearing for the parties. Perused the IA No's. I & II, affidavits, written statement and the records.

8. Under the circumstances, following points arises for consideration;

**POINTS**

- 1) *Whether the plaintiff has made out prima-facie case with respect to I.A's I & II?*
- 2) *Whether the balance of convenience is in favour of the plaintiff with respect to the I.A's I & II?*
- 3) *Whether the plaintiff would suffer irreparable injury if the prayer for interim injunction as prayed for in I.A's I & II is disallowed?*
- 4) *What order?*

9. Under the circumstances, the points framed for consideration are answered as under;

- Point No.1 : In the Affirmative  
Point No.2 : In the Affirmative  
Point No.3 : In the Affirmative  
Point No.4 : As per final order,  
for the following;

**REASONS**



10. **POINT No.1:-** Plaintiff has filed this suit for the relief of declaration of title that he is the owner and in possession of the suit schedule property, for declaration that the Gift Deed dated 17/09/2024 executed by the defendant No.1 in favour of the defendant No.2 with respect to the suit schedule property is not binding on him and for permanent injunction restraining the defendants from interfering with his possession and enjoyment over the suit schedule property.

11. The plaintiff, in order to prima-facie establish that he is the son of Manchegowda and grandson of Marimanchegowda has produced the family genealogy. Further, in order to substantiate that old Sy. No. 13/1 property belonged to his grandfather and thereafter fallen to the share of his father Manchegowda, has produced the record of rights documents and RTC's of this property. In the record of rights and the RTC's, earlier name of Marimanchegowda was appearing with respect to Sy. No. 13/1 and thereafter name of the father of the plaintiff started appearing.

12. It appears that, name of the father of the plaintiff Marigowda was entered in the RTC's as per MR



No. 1/1983-84 based on the partition effected in the family. Inspite of the same, name of the defendant No.1 came to be entered in the revenue records of this property as per MR No. 16/1998-99.

13. The plaintiff, in order to further substantiate his case that the suit schedule property was fallen to his share in the partition, has produced the copy of the partition deed dated 08/07/1996. Thereafter, name of the plaintiff was entered in the revenue records as per MR No. 18/2001-02. This being the case, again name of the defendant No.1 is started appearing and based on the same he has executed the Gift Deed in favour of the defendant No.2 on 17/09/2024.

14. The defendants, in order to substantiate their contention that the suit schedule property originally belonged to Dollegowda @ Kalegowda and that in the partition same was fallen to the share of the defendant No.1, have not placed any materials on record. Further, they have not produced the MR No. 16/1998-99, to substantiate that there was a valid mutation to enter the name of the defendant No.1 with respect to the suit schedule property.





15. Hence, at this stage this Court is of the opinion that plaintiff has prima-facie substantiated his assertion that he is the owner of the suit schedule property and in enjoyment of the same being the son of Manchegowda and grandson of Marimanchegowda. On the other hand defendant No.1, in order to show that he got this property in a partition with his brothers, has not placed any materials on record. The RTC entries showing the name of the defendant No.1 for some years is not sufficient at this stage to come to the conclusion that prima-facie he is the owner and in possession of the suit schedule property. Hence, it is held that plaintiff has made out prima-facie case for trial. Accordingly, point No.1 is answered in the Affirmative.

16. **POINTS No.2 & 3:-** Plaintiff has alleged that the defendant No.1 has executed Gift Deed in favour of the defendant No.2 and based on the same they are trying to interfere with the possession and enjoyment of the plaintiff over the suit schedule property and also trying to alienate the same. Admittedly, there is Gift Deed dated 17/09/2024 in the name of the defendant No.2. In these circumstances, apprehension of the plaintiff that the defendants are interfering with his



possession and enjoyment over the suit schedule property and also trying to alienate the same, cannot be ignored. In these circumstances, this Court is of the opinion that possession and enjoyment of the plaintiff is to be protected and further, creation of third party interest with respect to the suit schedule property is to be prevented. Hence, it is held that balance of convenience lies in favour of the plaintiff and he will be put to irreparable loss and injury in the event of rejecting the applications. Accordingly, points No.2 & 3 are answered in the Affirmative.

17. **POINT No.4:-** In view of answering the Points No.1 to 3 in the Affirmative, IA No's. I and II filed by the plaintiff are to be allowed. Hence, I proceed to pass the following;

### **ORDER**

IA No's.I & II filed by the plaintiff under Order XXXIX Rules 1 & 2 R/w Section 151 of CPC are hereby allowed.

Defendants are hereby temporarily restrained from interfering with the possession and enjoyment of the plaintiff over the suit schedule property till the disposal of the suit.



Defendants are hereby temporarily restrained from alienating the suit schedule property in any manner till the disposal of the suit.

Parties are directed to bear their own costs.

*(Dictated to the Stenographer, typed by her, corrected print out taken and then pronounced by me in the open Court, on this the 21<sup>st</sup> day of February, 2025.)*

**(K.A.Nagesha)**  
**Sr. Civil Judge & JMFC,**  
**Kanakapura.**