



CNR: KAHC010453382025

NC: 2026:KHC:50357
MFA No. 5181 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 5181 OF 2025 (CPC)

BETWEEN:

1. SMT. SHEELA
W/O HANUMANTHARAYAPPA,
D/O LATE G THIMMAPPA,
AGED ABOUT 53 YEARS,
NO.1486, 1ST CROSS,
7TH MAIN ROAD, RPC LAYOUT,
BENGALURU - 560 010.

2. SMT. ANNAPOORNA T
W/O SACHIN
D/O LATE G THIMMAPPA
AGED ABOUT 36 YEARS

R/AT SANKANAVAR BUILDING
HUGAR GALLI, NEAR SHOBHA TALKIES
OLD CHILLY MARKET BYADGI
HAVERI DISTRICT - 581 106

...APPELLANTS

(BY SRI. SUNIL KUMAR H.,ADVOCATE)

AND:

1. SRI YASHODHARA
S/O B CHANDRA SHEKAR,
AGED ABOUT 33 YEARS,
R/AT MUSAKALOTI VILLAGE


Digitally
signed by
VINUTHA M
Location:
HIGH
COURT OF
KARNATAKA



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HULIKUNTE HOBLI, SIRA TALUK
TUMKUR DISTRICT - 572 137

2. SMT. MEENAKSHI
D/O B CHANDRA SHEKAR
W/O RANGADHAMAPPA
AGED ABOUT 39 YEARS
R/AT MUSAKALOTI VILLAGE
HULIKUNTE HOBLI, SIRA TALUK
TUMKURU DISTRICT - 572 137
3. SRI THEERTHESHA
S/O B CHANDRA SHEKAR
AGED ABOUT 36 YEARS
R/AT MUSAKALOTI VILLAGE, SIRA TALUK
HULIKUNTE HOBLI,
TUMKURU DISTRICT - 572 137
4. MR. THANUJA
D/O B CHANDRA SHEKAR
AGED ABOUT 30 YEARS
R/AT MUSAKALOTI VILLAGE, SIRA TALUK
HULIKUNTE HOBLI,
TUMKURU DISTRICT - 572 137
5. SRI B CHANDRA SHEKAR
S/O LATE BYRAPPA
AGED ABOUT 69 YEARS
R/AT MUSAKALOTI VILLAGE,
SIRA TALUK, HULIKUNTE HOBLI,
TUMAKURU DISTRICT - 572 137
6. SMT. GOWRAMMA
D/O LATE BYRAPPA
W/O THIMMAPPA



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AGED ABOUT 71 YEARS
R/AT NO. 1486, 7 MAIN,
RPC LAYOUT,
BENGALURU - 560 040

7. SRI RAJANNA
S/O LATE GOVINDAPPA
AGED ABOUT 45 YEARS
R/AT MUSAKALOTI VILLAGE, SIRA TALUK
HULIKUNTE HOBLI,
TUMKURU DISTRICT - 572 137
8. SRI MANJUNATHA
S/O LATE GOVINDAPPA
AGED ABOUT 38 YEARS
R/AT MUSAKALOTI VILLAGE, SIRA TALUK
HULIKUNTE HOBLI,
TUMKURU DISTRICT - 572 137
9. SRI CHANDRAPPA
S/O LATE GOVINDAPPA
AGED ABOUT 38 YEARS
R/AT MUSAKALOTI VILLAGE SIRA TALUK
HULIKUNTE HOBLI,
TUMKUR DISTRICT - 572 137
10. SMT. PUTTAMMA
D/O LATE BYRAPPA
W/O YARAGUNTAPPA
AGED ABOUT 55 YEARS
R/AT MUSAKALOTI VILLAGE,
SIRA TALUK
HULIKUNTE HOBLI,
TUMKURU DISTRICT - 572 137



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11. SRI SHAMSHUDDIN A
S/O LATE VENKATARAMANAPPA
AGED ABOUT 50 YEARS
R/AT NO.600, 8TH MAIN,
4TH B CROSS, RPC LAYOUT,
VIJAYANAGAR
BENGALURU - 560 040

12. SRI V RAVIKUMAR
S/O LATE VENTARAMANAPPA
AGED ABOUT 50 YEARS
R/AT NO.600, 8TH MAIN,
4TH B CROSS,
RPC LAYOUT, VIJAYANAGAR
BENGALURU - 560 040

13. THE COMMISSIONER
BENGALURU DEVELOPMENT AUTHORITY
T. CHOWDAIAH ROAD, KUMARA PARK WEST
BENGALURU - 560 020

...RESPONDENTS

(BY SRI. NATARAJA B.S., ADVOCATE FOR R1 TO R4
NOTICE TO R5 TO R13 IS D/W
VIDE ORDER DATED 20.08.2026)

THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST
THE ORDER DATED 01.04.2025 PASSED ON I.A.NOs. 9 AND 10
IN OS.NO. 5674/2020 ON THE FILE OF THE XL ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY
(CCH-41), ALLOWING THE I.A.NOs.9 AND 10 FILED UNDER
ORDER 39 RULE 1 AND 2 READ WITH SECTION 151 OF CPC.



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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellants, who are defendant Nos.10 and 11, before the trial Court challenging the order dated 01.04.2025 passed on IA.Nos.9 and 10 in OS.No.5674/2020 by the XL Additional City Civil and Sessions Judge, Bengaluru City (CCH-41).

2. Respondent Nos.1 to 4 are the plaintiffs and respondent Nos.5 to 13 are the co-defendants.

3. For the sake of brevity, the parties to the proceedings shall be referred to as plaintiffs and defendants.

4. Plaintiffs filed a suit against the defendants for the relief of partition and separate possession of their respective 1/3rd share and for a declaration to declare



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that gift dated 08.08.2012 executed by defendant No.1 in favour of defendant No.2 with respect to 'B' schedule property to be not binding on the rights and share of the plaintiffs and for other consequential reliefs sought for therein.

5. IA Nos.9 and 10 came to be filed by the plaintiffs under Order XXXIX Rule 1 and 2 read with Section 151 of CPC seeking to restrain the defendant Nos. 10 and 11 from alienating or creating any third party interest and from changing the nature of the suit 'B' schedule property till disposal of the suit.

6. Initially, defendant Nos.10 and 11 were not made parties; subsequently, they were impleaded, and the present applications - IA.Nos.9 and 10 were filed against defendant Nos.10 and 11. Upon contest, these applications came to allowed restraining the defendant Nos.10 and 11 from alienating or creating encumbrance and changing the nature of the suit schedule property pending disposal of



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the suit by way of temporary injunction. It is this order that is challenged by defendant Nos.10 and 11 in this appeal.

7. Learned counsel for the appellants/defendant Nos.10 and 11 vehemently contends that the impugned order passed by the learned trial judge is perverse, arbitrary, and erroneous and the same is not sustainable in law. It is further contended by learned counsel for the appellants/defendant Nos.10 and 11 that respondent No.5/defendant No.1, Sri.B.Chandrashekar, has applied for allotment of the site from the BDA, and accordingly the BDA allotted a site in his favour and the same was registered on 03.08.2009. Subsequently thereto, the first defendant, out of his own free will and consent, executed a registered gift deed in favour of Smt.Gowramma, who is the second defendant in the year 2012, i.e., to be precise on 08.08.2012, by way of registered gift deed. The said Smt.Gowramma is the mother of the appellants herein, who are defendant Nos.10 and 11.



8. Learned counsel for the appellants further contends that since from the year 2012 for more than 14 years the appellants/defendant Nos.10 and 11, along with their mother, have been in peaceful possession and enjoyment of the 'B' schedule property, enjoying the property by way of absolute ownership as per the gift deed executed by Sri.B.Chandra Shekhar in favour of their mother. It is further contended by learned counsel for the appellants that the said Smt.Gowramma, who is none other than the mother of the appellants/defendant Nos.10 and 11 has executed a registered gift deed on 04.05.2019 in their favour by bequeathing the suit schedule 'B' property by way of registered gift deed. It is further contended by learned counsel for the appellants/defendant Nos.10 and 11 that IA No.9 has been filed by the plaintiffs, contending that the appellants are trying to alienate the 'B' schedule property. No documents or any materials are produced to show that the defendant Nos.10 and 11 are alienating the 'B' schedule property. Without there being



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placed any material or cogent reason, the impugned order is passed restraining the defendant Nos.10 and 11 from not alienating the suit schedule property.

9. It is also contended by the learned counsel for the appellants that IA.No.10 is filed by the plaintiffs restraining the defendant Nos.10 and 11 from changing the nature of the suit 'B' schedule property. In fact, the plaintiffs have rushed to the BESCO Office and filed a complaint to not provide electricity connection to the appellants/defendant Nos.10 and 11 with regard to the 'B' schedule property or put up any construction in the 'B' schedule property. Learned counsel further contends that for more than 13 years the appellants have been in peaceful possession and enjoyment of the suit 'B' schedule property, and respondent No.5/defendant No.1 - Sri. B.Chandrasekhar has voluntarily executed a gift deed in favour of his sister i.e., Smt. Gowramma, and he has not bothered to challenge the said gift deed till now in any Court of law by himself apart from the present suit, which



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is filed by the children of Sri.B.Chandrasekhar. Even in this case the said gift deed has not been sought to be set at not except for asking for relief of not binding on the plaintiffs.

10. Learned counsel for the appellants/defendant Nos.10 and 11 further contends that when there is a registered gift deed in favour of the mother of the appellants/ defendant Nos.10 and 11, having been executed by said Sri.B.Chandrasekhar who is the defendant No.1 in favour of defendant No.2, way back in the year 2012, and defendant No.1 having kept quiet without even making any attempt to seek for cancellation or challenging the said gift deed, the plaintiffs, who are the children of Sri.B.Chandrasekhar/defendant No.1 have been set up by the defendant No.1 to file a suit for partition without even asking for the cancellation of the said gift deed.



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11. It is also contended that the subsequent gift deed executed by Smt.Gowramma/ defendant No.2 in favour of defendant Nos.10 and 11 has also not been challenged in any court of law. The trial Court has failed to take note of all these contentions and crucial aspects and, without adverting to all these aspects, has come to the erroneous conclusion of the plaintiffs having made out a prima facie case and has also erroneously come to a conclusion that the plaintiffs have made out the balance of convenience to tilt in their favour and hardship would be caused more to the plaintiffs rather than the defendant Nos.10 and 11 and the suit being one for partition has come to the conclusion that it would affect the interest of the plaintiffs if there is any alienation and changing the nature of the property accordingly by the impugned order has allowed the application by an order of restraintment against the defendant Nos.10 and 11, which is illegal, perverse and arbitrary. The same has caused the miscarriage of justice.



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12. It is further contended by learned counsel for the appellants that all the municipal records in pursuance to the registered gift deed are standing in the name of the mother of the appellants, Smt.Gowramma and subsequent to the gift deed in favour of the appellants, the properties are standing in the name of the appellants. The appellants have demolished the earlier existing structure and are now putting up construction in the said 'B' schedule property. Therefore, he seeks to allow the appeal and consequently set aside the impugned order passed by the learned trial judge.

13. Per contra, learned counsel appearing for the respondents/plaintiffs, vehemently contends that the plaintiffs have filed the suit for partition and separate possession and that apart from the 'B' schedule property, there are other several properties included in the suit schedule whereby the defendant No.1 was acting as a kartha of the joint family and all the properties are a joint family property. The suit schedule 'B' property is



purchased out of the nucleus of the joint family property and the defendant No.2, who is the sister of defendant No.1, knowing fully well that the suit 'B' schedule property is a joint family property got the property by way of gift deed at the instance of the husband of defendant No.2, which, according to the plaintiffs is a fraud and even while execution of the sale deed from the BDA, the same has been obtained through a general power of attorney and there also a fraud has been played by the husband of Smt. Gowramma - defendant No.2 which was not within the knowledge of the defendant No. 1.

14. It is further contended that there was no opportunity or knowledge of the plaintiffs with regard to the gift deed executed by defendant No.1 in favour of defendant No.2, as defendant No.1 was staying and residing separately from the plaintiffs. Soon after they came to know about the registered gift deed fraudulently executed in favour of defendant No.2, they filed the present suit for partition. Therefore, when the suit is filed



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for partition and the case of the plaintiffs is that the entire properties are joint family properties having purchased out of the nucleus of the joint family funds, there cannot be an alienation made in respect of any of the suit schedule properties, including the 'B' schedule property, as any alienation would cause further multiplicity of proceedings and irreparable injury and hardship to the plaintiffs who seek for a share in the joint family properties. Therefore, learned counsel further contends that the relationship between the parties is not in dispute and the trial Court has taken into consideration all these aspects and has rightly come to the conclusion that the defendant Nos.10 and 11 are making attempts to alienate the suit 'B' schedule property. The plaintiffs having made out a prima facie case and also the balance of convenience having tilted in their favour, there is no perversity or illegality committed by the trial Court in passing the impugned order.



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15. I have heard learned counsel for the appellants/defendant Nos.10 and 11 and learned counsel for the respondents/plaintiffs.

16. The point that arises for consideration is:

"Whether the impugned order passed by the learned trial judge calls for interference if so, what order?"

17. It is not in dispute with regard to the relationship between the plaintiffs and the defendants, so also the defendant No.1 being the father of the plaintiffs and the defendant No. 2 being the mother of defendant Nos.10 and 11, so also the fact that defendant No.1 is the brother and defendant No.2 is the sister and they are children of the late Byrappa. The suit is filed for partition and separate possession with regard to all the suit schedule properties. It is also not in dispute that the 'B' schedule property is a property that has been bequeathed by way of registered gift deed by defendant No.1 in favour



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of defendant No.2 on 08.08.2012. It is a registered gift deed. In pursuance to the registered gift deed, all the municipal records stand in the name of defendant No.2. By virtue of the registered gift deed, defendant No.2 - Smt.Gowramma has subsequently executed another registered gift deed in favour of her children i.e., defendant Nos.10 and 11. Pursuant thereto, all the records are now standing in the name of the defendant Nos.10 and 11, who are the appellants herein.

18. Apparently, the appellants/defendant Nos.10 and 11, on the basis of the registered gift deed, are now putting up construction in the 'B' schedule property after demolishing a shed construction that was in existence earlier. The present suit is filed in the year 2020 for partition and separate possession. It is not in dispute that at the time of filing of the suit, the defendant Nos.10 and 11 were not made as parties. Subsequently, they are impleaded as defendant Nos.10 and 11. There is no dispute to the fact that there is a registered gift deed



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executed by defendant No.1 in favour of defendant No. 2 and defendant No.2 in favour of defendant Nos.10 and 11 by two registered documents. Therefore, there are two registered documents in favour of Smt.Gowramma and in favour of defendant Nos.10 and 11. Therefore, when there is a registered instrument executed, there is a presumption in law that the property is vested with the person unless the same is set aside in the manner known to law.

19. When an application is filed under XXXIX Rule 1 and 2 read with Section 151 of CPC, the trial Court is required to see three essential requirements, namely, prima facie case, balance of convenience, and the irreparable injury or hardship that could be caused, and more to which of the parties. In the present case on hand, there is no dispute to the fact that there is a registered gift deed executed by defendant No.1 in favour of defendant No.2 by virtue of which she executes a registered gift deed in favour of her children i.e., defendant Nos.10 and 11.



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The properties have changed hands from 2012 to 2019. The defendant No.1 - Sri.B.Chandrashekhar has kept quiet pursuant to execution of the registered gift deed on 08.08.2012. He has not come before the registration office to execute the gift deed. That is why Sri.B.Chandrasekhar himself was power of attorney. He has not raised his little finger till the filing of the suit by his children. In fact, he has gone ahead and filed an application before the Assistant Commissioner invoking the Senior Citizens Act by filing a petition where he has also claimed that he is the absolute owner by way of a registered sale deed executed by the BDA wherein he has claimed that he is the owner and he has not mentioned anything to do with the property being joint family property.

20. The present suit has been filed by the children of Sri.B.Chandrasekhar, where Sri.B.Chandrasekhar acting as defendant No.1 has filed his written statement. Now supporting the case of the plaintiffs by stating that the suit schedule 'B' property is a joint family property and the



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sources for securing the 'B' schedule property have arisen out of the joint family nucleus. Be that as it may, all these matters will have to be decided in the course of trial. The plaintiffs may succeed, or the defendants may succeed to prove that the 'B' schedule property is not a joint family property. Till then it cannot be left in the lurch for the defendant Nos.10 and 11 to not enjoy the property which they have obtained by virtue of a registered document. Under the circumstances a prima facie case is not made out by the plaintiffs in the present case, and to restrain the defendants from not putting up any construction over the suit schedule 'B' property. The trial Court has not looked into these crucial aspects, and even if the trial Court has come to a conclusion that there is a prima facie case made out by the plaintiffs to go in for trial, the trial Court is to see whether the other two essential requirements of balance of convenience and irreparable injury and hardship would weigh in whose favour.



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21. In the present case on hand, there being registered gift deed of 08.08.2012, which is not questioned by Sri.B.Chandrashekar who is the defendant No.1 to even as on date and the subsequent registered gift deed executed by Smt. Gowramma/defendant No.2 in favour of her children, defendant Nos.10 and 11, having not been questioned in this partition suit, it cannot be contended that the defendant Nos. 10 and 11 should not put up construction in the property owned and registered in their favour. Apparently in the present case, it is evident that the defendant Nos.10 and 11 will be incurring more hardship and inconvenience if they are restrained from putting up construction in the suit 'B' schedule property. Even in case the plaintiffs succeed over all the properties including the 'B' schedule property, the defendants can only be ordered to not claim equity over the 'B' schedule property. These aspects have not been considered by the learned trial judge while passing the impugned order.



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22. I am in partial agreement with learned counsel for the appellants/defendant Nos.10 and 11 that there is perversity in the impugned order in allowing the applications - IA Nos.9 and 10. I am in partial agreement with the learned counsel for the respondents/plaintiffs that the appellants/defendant Nos.10 and 11 could be restrained from alienating the suit schedule property till the disposal of the suit. Accordingly, I pass the following order.

ORDER

- 1) The appeal is ***allowed - in - part.***
- 2) The impugned order passed on IA.No.10 by the XL Additional City Civil and Sessions Judge, Bengaluru, in O.S.NO.5674/2020 dated 01.04.2025, so far as restraining the appellants/defendant Nos.10 and 11 from creating an encumbrance,



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changing the nature of the suit
schedule property is set aside.

- 3) The orders passed on IA No. 9 by the
XL Additional City Civil and Sessions
Judge, Bengaluru in O.S.NO.5674/2020
dated 01.04.2025 with regard to the
defendant Nos.10 and 11 not to
alienate the suit schedule property is
sustained and the same is not
disturbed.
- 4) It is made clear that this Court has not
expressed any opinion on the merits of
the matter.
- 5) All contentions of the parties are kept
open.
- 6) Ordered accordingly.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

RCK
List No.: 1 Sl No.: 26