

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF SEPTEMBER 2007

BEFORE

THE HON'BLE MR. JUSTICE A S BOPANNA

MISCELLANEOUS FIRST APPEAL NO.6696/2006 (CPC)

BETWEEN :

**M MANJUNATH
S/O LATE SRI M MUNIRUDRAPPA
AGED ABOUT 55 YRS
R/O CHANNAKESHAVA TEMPLE STREET
VIJAYAPURA TOWN, DEVANAHALLI
BANGALORE RURAL**

... APPELLANT

**(By SRI SUBRAMANYA JOIS, SR. COUNSEL FOR
M/S TRS LAW CHAMBERS
SRI J.R. THIPPARAJU, ADVs)**

AND :

- 1 AYODHYA NAGARA SHIVACHARYA
VYSYA NAGARTHA MAHANTHI
MUTT, RELIGIOUS AND CHARITABLE
TRUST, GANDHI CIRCLE
VIJAYAPURA TOWN 562135, DEVANAHALLI
BANGALORE RURAL, REP BY ITS PRESIDENT
SRI J C NANJUNDAPPA**
- 2 J C NANJUNDAPPA, MAJOR,
S/O LATE SRI CHANNAVEERAPPA**

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R/O KOTE BEEDI, VIJAYAPURA
TOWN 562 135, DEVANAHALLI
BANGALORE RURAL DISTRICT

- 3 C BASAPPA, MAJOR,
S/O LATE SRI CHIKKANNAPPA
R/O J C EXTENSION
DEVANAHALLI ROAD, VIJAYAPURA
562135, DEVANAHALLI
BANGALORE RURAL
- 4 B PRABHUDEV, MAJOR,
S/O LATE SRI S V BASAPPA
R/O J C EXTENSION
DEVANAHALLI ROAD, VIJAYAPURA
TOWN 562135, BANGALORE RURAL
- 5 V JAGANNATH, MAJOR,
S/O SRI VEERABHADRAPPA
R/O SOMESHWARA TEMPLE STREET
VIJAYAPURA 562135, DEVANAHALLI
BANGALORE RURAL
- 6 M MALLIKARJUNAPPA
MAJOR, S/O LATE SRI MALIGAPPA
R/O SOMESHWARA TEMPLE STREET
VIJAYAPURA TOWN 562135, DEVANAHALLI
BANGALORE
- 7 C VIJAYA BABU
MAJOR, S/O LATE SRI CHANNAPPA
R/O ANR STREET
VIJAYAPURA 562135, DEVANAHALLI
BANGALORE RURAL
- 8 B SURESH
MAJOR, S/O LATE SRI M BHOOPANNA
R/O NEAR TOWN HALL
VIJAYAPURA TOWN 562135, DEVANAHALLI
BANGALORE RURAL

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9 K BASAVARAJ
S/O LATE SRI KALLANNA
MAJOR, R/O ANR STREET
VIJAYAPURA TOWN 562135, DEVANAHALLI
BANGALORE RURAL

... RESPONDENTS

(By SRI NAGABHUSHAN, ADV. FOR
SRI P V CHANDRASHEKAR FOR C/R2-9)

THIS APPEAL IS FILED U/O XLIII R 1 (r) CPC AGAINST
THE ORDER DATED:13.6.2006 PASSED ON I.A.NO.II IN
OS.NO.1629/2006 ON THE FILE OF THE CIVIL JUDGE (SR.DN.)
& JMFC, DEVANAHALLI, DISMISSING I.A.NO.II FILED U/O 39 R
1 & 2 CPC FOR T.I.

This Appeal coming on for Admission, this day, the Court
delivered the following :

JUDGMENT

The appellant is the plaintiff in O.S.No.1629/06. The
said suit has been filed by the plaintiff against the
defendants seeking for a judgment and decree to declare the
registered gift deed dated 29.3.1984 to stand
rescinded/cancelled. In addition to the said prayer, several
ancillary reliefs have already been prayed. The plaintiff in
the said suit had also filed I.A.II under Order 39 Rule 1 and
2 seeking for an order of temporary injunction to restrain the

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defendants 1 to 9 or any persons claiming under them from carrying out construction in the suit schedule property during the pendency of the suit. The court below by its order dated 13.6.2006 has dismissed the application in I.A.II and the ad-interim order of temporary injunction which was granted earlier has been vacated. It is against the said order, the plaintiff is before this Court in this appeal.

2. I have heard Sri Subramanya Jois, learned Senior counsel appearing on behalf of M/s TRS Law Chambers for the appellant and Sri Nagabhushan, learned counsel for Sri P.V. Chandrashekhar, learned counsel for the respondents.

3. On hearing the respective learned counsel and perusal of the order passed by the court below would indicate the fact that the plaintiff had executed a gift deed dated 29.3.1984 is not in dispute. Further, the grievance of the plaintiff at present is that the gift for the purpose which

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it was made has not been complied with by the respondents and it is in that context, the plaintiff is seeking for rescinding or cancelling of the gift deed made in favour of the defendants. The defendants on appearance have resisted the claim of the plaintiff. As already noticed, the issue with regard to the gift having been made earlier and the same being sought to be revoked by a judgment and decree of the Court is manifest on the papers. The question as to whether the defendants have not complied with the conditions of gift deed and as to whether the plaintiff is entitled to seek for revocation of the said gift deed or as to whether the respondents are entitled to retain the property are all issues which would have to be ultimately decided by the Court below on the evidence that would be tendered before the Court below.

4. In this context, the issue which arises for consideration at this juncture is with regard to the prayer made in I.A.II to restrain the respondents from carrying out

any work of putting up construction. In this regard, it is not in dispute that the construction sought to be put up by the defendants on the property in question is a Kalyana Mantapa and the plaintiff is in fact objecting to putting up of Kalyana Mantapa. Therefore, insofar as the nature of construction, which is being sought to be put up i.e., Kalyana Mantapa is the type of construction which was required to be made by the defendants even as per the conditions imposed in the gift deed. Therefore, with regard to the type of construction proposed to be put up by the defendants on the suit schedule property, the plaintiff cannot have any grievance. The only question therefore is, when the suit is pending whether the defendants should be permitted to put up construction on the site. In that regard, the fact that the gift deed is of the year 1984 is manifest from the records and the suit has been filed in the year 2006 seeking for a judgment and decree to revoke/cancel the said gift deed. This on the face of it would indicate that the plaintiff had kept the gift alive for nearly two decades. The

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respondents are proposing to put up construction on the suit schedule property, keeping in view the object of the gift deed. Considering that the defendants are putting up construction in the capacity as Trustees, the same would have to be put up after arranging funds, which would take time to accumulate. Any funds which have been arranged cannot lie with the Trust without being utilized for the purpose the funds have been collected i.e., for the purpose of construction. Therefore the injunction against putting up any construction would neither be beneficial to the plaintiff nor to the respondents. In this regard, if the balance of convenience is considered, while gifting the property the plaintiff himself was of the opinion that Kalyana Mantapa should be put up on this property, hence no prejudice would be caused to the plaintiff at this stage since the object with which the property was gifted to the respondents would be achieved. If after constructing, the defendants fail in the suit and if they are not entitled to continue thereafter, the plaintiff would be entitled to use the Kalyana Mantapa as he

deems fit since any event his intention was to have a Kalyana Mantapa on the property. Further, during the pendency of this appeal, one Sri Nanjadappa i.e., 2nd respondent in this appeal has filed an affidavit stating that the construction that is proposed to be put up would be put at the risk of the respondents and they would not claim equities if they ultimately fail in the suit. In addition to the undertaking given by Sri Nanjadappa, it is also made clear by this Court that considering the fact that the respondents are putting up construction during the pendency of the suit, if they ultimately fail in the suit, they would not plead any equity in respect of the construction which would be put up on the suit schedule property and the plaintiff would be entitled to enjoy the same without interference by the respondents, if they fail in the suit.

5. In this background, a perusal of the order passed by the court below would indicate that insofar as the rival contentions advanced before the Court below, the Court

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below has referred to each of the aspects and after considering the balance of convenience has come to the conclusion that the application in I.A.II requires to be dismissed which is similar to the view taken by me. Therefore, I do not find that the said order is either perverse or capricious so as to call for interference in limited jurisdiction under order 43 Rule 1 of CPC. However any of the observations made by the court below either while disposing of I.A.II or by this court while disposing of this appeal shall not prejudice the court below while ultimately considering the suit on its merits.

In that view of the matter, the appeal is disposed of with the above observations. No order as to costs.

Sd/-
Judge

hrp/bms