

IN THE COURT OF THE SENIOR CIVIL JUDGE AND J M F C.
AFZALPUR.

Present : Shri Vinayak Mayannavar,
B.A.,LL.B
Senior Civil Judge & JMFC, Afzalpur.

Dated: This, the 07th Day of July - 2025

O.S No-02/2025

Plaintiff : Devendrappa S/o Sharanappa Police Patil.

[By Shri K.G.P. Advocate]

-V/s -

Defendants : Laleetabai W/o Ambaraya Police Patil
and 22 others.

[D-1 to 3 By Sri A.S.K Advocate]

[D-4, 6, 8 to 12, 15 to 18, 20 to 23 By Shri R.B.Y. Advocate]

ORDER ON IA NO-1 FILED UNDER ORDER XXXIX

RULE 1 AND 2 OF CPC.

The plaintiff has filed the present application praying for a temporary injunction order restraining the defendant No-1 to 3 from alienating the suit properties pending disposal of the suit.

2. The applicant/plaintiff has contended that, the plaintiff is the son of Sharanappa. The Siddappa, Basavantarao, Hanumatarao, Ramachandrappa and Rajeshekhar are the brothers of the plaintiff. The defendants are the Lrs of the deceased brothers of the plaintiff. The suit properties are the ancestral and joint family properties of the plaintiff and defendants. The defendant No-1 to 3 are now trying to alienate the suit properties. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendant No-4, 5, 8 to 15, 16 to 18, 19 to 23 have filed their written statement by admitting the case of the plaintiff. The defendant No-1 to 3 have not filed their written statement.

4. The defendant no-1 to 3 have filed their objections to the present application by denying the case of the plaintiff. The defendant no-1 to 3 have contended that the husband of the defendant no-1 got the suit property as per the partition of the year 1975. The plaintiff and other defendants kept quiet for more than 40 years and filed the present suit. The plaintiff and other defendants have not included the other properties in the present suit. The plaintiff was allotted 8 acre 32 gunta of land in survey number 117 and survey number 16/1 measuring 4 acre of land and survey number 16/2 measuring 1 acre 15 gunta of land in the year 1975. The plaintiff has sold the property fallen to his share.

5. On considering the case of both the side and on perusal of the records, the following points arise for my consideration for proper adjudication of the present application:

POINTS

- 1] Whether the applicant/plaintiff has made out a prima-facie case in his favour?
- 2] Whether the balance of convenience leans in favour of the applicant/plaintiff ?
- 3] Whether the applicant/plaintiff suffer irreparable loss and damage, if the temporary injunction as sought for is not granted ?
- 4] What order ?

6. Having heard the arguments on the above application and also after considering the pleadings and materials available on record, my answer to the above points are as below:

Point No-1: In the affirmative.

Point No-2: In the affirmative.

Point No-3: In the affirmative.

Point No-4: As per the final order for
the following

REASONS

7. Point No.1 to 3: Since these points are interlinked together, I take up these points for consideration together to avoid repetition.

8. On perusal of the materials on record it appears that, the plaintiff has filed the present suit for the relief of partition and separation possession claiming his share in the suit properties. The plaintiff has produced the RTC of the suit properties. From the said documents it appears that, the suit properties are standing in the name of the defendant No-1 to 3 from the year 2010 as per the partition. The suit properties earlier appears to be standing in the name of the Ambaraya i.e., son of brother of the plaintiff in the year 1983 to 1999. The name of the defendant No-1 and 2 were mutated to the suit properties in the year 1999 after death of Ambaraya. The

suit properties earlier in the year 1963 to 1976 were standing in name of the brother of the plaintiff i.e., Siddappa. The name of the Ambaraya was mutated in the year 1977. The plaintiff has filed the present suit against the wife and children of the son of his brother. The name of the brother of the plaintiff and his Lrs is appearing from the year 1963 to till 2024 to the suit properties. The plaintiff has produced the materials in support of his case at this stage. Hence, considering the materials on record I am of the opinion that, the plaintiff has made out a prima-facie case in his favour. Hence, I answered point No-1 in the affirmative.

9. The plaintiff is claiming his rights over the suit properties. The plaintiff has produced materials in support of his case at this stage. The defendant no-1 to 3 have denied the case of the plaintiff. Hence, considering the case of the parties and materials on record if an injunction as prayed by the plaintiff is granted then no any harm will be going to cause to the defendant No-1 to 3.

10. From the available materials if an injunction is granted as claimed by the plaintiff it may not affect the rights of the defendant No-1 to 3. If an injunction is refused to the plaintiff it will affect the rights of the plaintiff in the suit properties. Hence I am of the opinion that the plaintiff has made out a case in his favour with regard to point of balance of convenience and irreparable loss. Hence I answered point No-2 and 3 in the affirmative.

11. The plaintiff has filed similar IA bearing IA No-2 for the same relief. Hence the I.A.-2 is not maintainable. Hence the same is required to be rejected.

12. Point No. 4: In view of my findings on the above point No-1 to 3 and also considering the materials on record at this stage, I proceed to pass the following:

ORDER

I.A. No-1 filed by the plaintiff under order
39 Rule 1 and 2 of CPC is hereby allowed.

The I.A.No-2 filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby rejected.

The defendant no-1 to 3 are hereby restrained by way of temporary injunction order from alienating the suit properties till further orders or till disposal of the present suit whichever is earlier.

The plaintiff is hereby directed to co-operate for the early disposal of the present case, failing which the injunction order granted in favour of the plaintiff will be vacated automatically.

Senior Civil Judge & JMFC.,
Afzalpur.

[Order pronounced in the open court vide separate sheets]

ORDER

I.A. No-1 filed by the plaintiff under order 39 Rule 1 and 2 of CPC is hereby allowed.

The I.A.No-2 filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby rejected.

The defendant no-1 to 3 are hereby restrained by way of temporary injunction order from alienating the suit properties till further orders or till disposal of the present suit whichever is earlier.

The plaintiff is hereby directed to co-operate for the early disposal of the present

case, failing which the injunction order granted in favour of the plaintiff will be vacated automatically.

Senior Civil Judge & JMFC.,
Afzalpur.