

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-3 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 interfering with the cultivation of the suit properties by the plaintiff 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 interfering with the cultivation of the suit properties by the plaintiff. 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. On the said material grounds the defendant no-1 to 3 have prayed for rejection of the present application.

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 negative.

Point No-2: In the negative.

Point No-3: In the negative.

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 not produced any materials to show his exclusive possessory rights over the suit properties at this stage. Hence, considering the materials on record it appears that, the plaintiff has not 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 not made out a prima-facie case in his favour on the present application. Hence, I answered point No-1 in the negative.

9. The plaintiff is claiming his exclusive rights over the suit properties in the present application. The plaintiff has not produced materials in support of his case at this stage. Hence, considering the case of the parties and materials on record if an injunction as prayed by the plaintiff is granted then 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 affect the rights of the defendant No-1 to 3. If an injunction is refused to the plaintiff it will not affect the rights of the plaintiff in the suit properties. The plaintiff on establishing his rights in the suit properties is entitled for the reliefs with respect to the suit properties. Hence I am of the opinion that the plaintiff has not made out a case in his favour with regard to point of balance of convenience and irreparable loss on the present application. Hence I answered point No-2 and 3 in the negative.

11. 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-3 filed by the plaintiff under order

39 Rule 1 and 2 of CPC are hereby rejected.

Senior Civil Judge & JMFC.,
Afzalpur.

[Order pronounced in the open court vide separate sheets]

ORDER

I.A. No-3 filed by the plaintiff under order
39 Rule 1 and 2 of CPC are hereby rejected.

Senior Civil Judge & JMFC.,
Afzalpur.