

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 05th day of June - 2025

O.S No-10/2025

Plaintiff: Hussainsab
S/o Khaseemsab Averl @ Mudanalli.

[By Shri S.J.G. Advocate]

-V/s -

Defendant : Fatima Bee W/o Abdul Raheman.

[By Shri S.G.H 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 from alienating the suit property pending disposal of the suit.

2. The applicant/plaintiff has contended that, the plaintiff is the owner and in possession of the suit property. The grandfather of the plaintiff by name Ahmed S/o Hussain Madanalli was the owner of the suit property. The suit property was fallen to the share of paternal uncle of the plaintiff by name Hassan S/o Imam Averi @ Madanalli. The said Hassan was died issue less.

3. It is further case of the plaintiff that, the defendant without any right in the suit property has mutated his name to the suit property. The plaintiff was out of state for his livelihood. The plaintiff after return from the Mumbai has came to know about the revenue records standing in the name of the defendant. The revenue authorities have given endorsement to the plaintiff stating that, the mutation record which mutated the name of the defendant to the suit property

is not available in their office. The defendant may alienate the suit property by taking undue advantage of records in his name. The suit property is alienated then the plaintiff will suffer a loss. On the said material grounds the plaintiff has prayed for allowing the present application.

4. The defendant has filed his written statement by denying the case of the plaintiff. The defendant has contended that, the Hasansab S/o Immanna Aaveri was the owner of the suit property. The said Hasansab was issue less and has gifted the suit property to the defendant. The defendant is the daughter of younger brother of the said Hasansab. The Hasansab and the father of the defendant i.e., Allauddin are the brothers. On the basis of the gift deed the name of the defendant was mutated to the suit property on 17-11-1983. The plaintiff is not related to the deceased Hasansab. The plaintiff has admitted the ownership of the defendant to the suit property in OS No-94/2019 suit. On the said material grounds the defendant has 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 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 is claiming his rights to the suit property under the Hasansab by way of inheritance. The defendant is claiming her rights under the Hasansab by way of gift. The plaintiff at this stage has produced the documents in the form of revenue records of the suit property. From the said record it appears

that the name of the defendant is appearing for the suit property from the year 1998 to 2025. The plaintiff has produced the revenue records standing in the name of the Hasansab from the year 1968 to 1973. The plaintiff has produced the endorsement of the revenue authorities reporting non-availability of the mutation record of the year 1989. The plaintiff has also produced the family tree and sale deed documents of the father of the Hasansab. The defendant at this stage has not produced any documents in support of her case. Hence, considering the materials on record at this stage I am of the opinion that, both the parties are required to be given an opportunity to put forth their case on merits. On considering the materials on record it appears that, the plaintiff and defendant both are claiming their rights to the suit property. Hence, considering the materials on record I am of the opinion that, the plaintiff has made out a case for trial. Hence, 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 property. 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.

10. From the available materials if an injunction is granted as claimed by the plaintiff it may not affect the rights of the defendant and it will avoid multiplicity of proceedings. If an injunction is refused to the plaintiff it will lead to multiplicity of proceedings and may affect the rights of the plaintiff in the suit property. The alienation of the suit property by the defendant will affect the rights of the plaintiff. 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. 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 defendant is hereby restrained by way of temporary injunction from alienating the suit property 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 defendant is hereby restrained by way of temporary injunction from alienating the suit property 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.