

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-68/2024.

Plaintiffs : Chandrakant S/o Dattatraya Kulkarni,
and 2 others.

[By Shri S.G.H. Advocate]

-V/s -

Defendants : Ramakant S/o Dattatraya Kulkarni,
and 3 others.

[D-1 By Shri S.K.P Advocate]

[D-2 Ex-Parte]

[D-3 and 4 By Shri M.K.P. Advocate]

ORDER ON IA NO-3 FILED UNDER ORDER XXXIX

RULE 1 AND 2 OF CPC.

The plaintiffs have filed the present application praying for a temporary injunction order restraining the defendant No-1 from “not to construct for the purpose of digging water tank, constructed by the defendant No-1 and place of suit property cleaning for the purpose of given the rent to other person doing newly business” pending disposal of the suit.

2. The applicants/plaintiffs have contended that, they have filed the present suit for the relief of partition and separate possession against the defendants. The suit property is the ancestral and joint family property of the plaintiffs and the defendants. The defendant No-1 is trying to construct for the purpose of digging water tank, constructed by the defendant No-1 and place of suit property cleaning for the purpose of given the rent to the other person doing newly business. On the said material grounds the plaintiffs have prayed for allowing the present application.

3. The defendant No-1 has filed his objections to the present application by denying the grounds of the application. The defendant No-1 has contended that, the contents of the application are vague and not clear. The plaintiffs have filed the suit for the relief of partition. The injunction cannot be granted against a co-owner. The prior partition on 01-02-2022 has already taken place between the parties. On the said material grounds the defendant No-1 has prayed for rejection of the present application.

4. 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 applicants/plaintiffs have made out a prima-facie case in their favour?
- 2] Whether the balance of convenience leans in favour of the applicants/plaintiffs?

3] Whether the applicants/plaintiffs suffer irreparable loss and damage, if the temporary injunction as sought for is not granted ?

4] What order ?

5. 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

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

7. On perusal of the materials on record it appears that, the plaintiffs have filed the suit for the relief of partition and separate possession against the defendants. The defendant No-1 has come up with a case of prior partition on 01-02-2022 between the parties. The plaintiffs by filing a suit for the relief of partition seeking an injunction against the defendants, restraining them from construction over the suit property and letting the suit property. The application of the plaintiffs is not clear as to the relief sought for. The plaintiffs have not produced any materials in support of the application. Hence, considering the materials on record I am of the opinion that, the plaintiffs have not made out a prima-facie case in their favour. Hence, I answered point No-1 in the negative.

8. The plaintiffs are claiming their rights over the suit property. The defendant No-1 is denying the rights of the plaintiffs over the suit property. The plaintiffs have not produced any materials at this stage in support of their application. Hence, considering the case of the parties and materials on record if an injunction as prayed by the plaintiffs is granted then it will more affect on the defendant No-1.

9. From the available materials if an injunction is granted as claimed by the plaintiffs it may affect the rights of the defendant No-1 and it will lead to multiplicity of proceedings. If an injunction is refused to the plaintiffs it will not lead to multiplicity of proceedings and may not affect the rights of the plaintiffs in the suit property. Hence I am of the opinion that the plaintiffs have not made out a case in their favour with regard to point of balance of convenience and irreparable loss. Hence I answered point No-2 and 3 in the negative.

10. 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 plaintiffs under order 39 Rule 1 and 2 of CPC is hereby rejected.

Senior Civil Judge & JMFC.,
Afzalpur.

[Order pronounced in the open court vide separate sheets]

ORDER

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

Senior Civil Judge & JMFC.,
Afzalpur.