

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 09th day of August -2024

O.S No.07/2023

Plaintiffs: Syed Nazma W/o Syed Abdul Khaliq
and 7 others.

[By Shri SKP, Advocate]

-V/s -

Defendant

No. 1 to 4: Mahaboob S/o Abdul Majeed Qureshi
and 6 others.

[By Shri MAJ., Advocate]

ORDER ON IA NO-1 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 to 4 from alienating, mortgaging and creating charge over the suit properties pending disposal of the suit.

2. The applicants/plaintiffs have contended that, the plaintiffs have filed the suit for the relief of declaration of ownership. The plaintiffs are in possession of the suit properties. The suit properties are inherited by the plaintiffs from Syed Abdul Khaliq. The defendant No.1 was working as a driver in the office of the husband of the plaintiff no-1 i.e. Syed Abdul Khaliq. The husband of the plaintiff no-1 was doing real estate business. The husband of the plaintiff no-1 has purchased the suit properties.

3. It is further case of the plaintiffs that, due to busy schedule of the husband of the plaintiff no-1 the defendant No.1 has completed the sale transactions of the suit properties. The plaintiffs are in possession of the suit properties before execution of the sale deeds. The Asma Syed

is another wife of Syed Abdul Khaliq. The defendant No.1 illegally has executed the sale deeds in favour the defendant No.2 to 4 without possession of the suit properties. The defendants are trying to dispossess the plaintiffs from the suit properties and also trying to alienate the suit properties. On the said material grounds the plaintiffs have prayed for allowing the present application.

4. The defendant No.1 to 4 have filed their written statement by denying the case of the plaintiffs.

5. The defendant No.1 to 4 have contended that, the plaintiff no-1 is not the wife of the deceased Abdul Khaliq. The deceased Abdul Khaliq has got 9 wives. The suit is not maintainable without impleading all the legal heirs of deceased Syed Abdul Khaliq. The suit filed by the wife of Syed Adbul Khaliq by name Syed Asma is already dismissed by the court. The defendants have purchased the suit properties by paying valuable consideration amount. On the said material

grounds the defendant No.1 to 4 have prayed for rejection of the present application.

6. 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?

7. 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

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

9. On perusal of the materials on record it appears that, the plaintiffs have produced the certified copy of sale deed dated 21-04-1994. From the said document it appears that, the suit item No.2 properties bearing survey number 35/2 measuring

3 acre 36 gunta of land and survey number 35/4 measuring 32 gunta of land were purchased by the defendant No.1 in the year 1994.

10. The plaintiffs have also produced certified copy of sale deed dated 21-04-1994. From the said document it appears that the defendant No.1 has purchased the suit item no-1 property bearing survey number 336/2 measuring 17 acre 17 gunta of land in the year 1994.

11. It is case of the plaintiffs that, the suit properties are purchased by the husband of the plaintiff no-1. The plaintiffs in order to show the purchase of suit properties by the husband of the plaintiff no-1 have not produced any materials before this court at this stage.

12. The plaintiffs have also produced the copy of sale deed dated 12-12-2013. From the said document it appears that, the suit item no-1 property bearing survey number 336/2 land measuring 17 acre 17 gunta was sold by the defendant No.1 in favour of the defendant No.2 in the year 2013.

13. The plaintiffs have also produced the copy of sale deed dated 07-12-2022. From the said document it appears that the defendant No.1 has sold survey number 35/4 land measuring 32 gunta in favour of the defendant No.3.

14. The plaintiffs have produced the copy of sale deed dated 07-12-2022. From the said document it appears that the defendant No.1 has sold survey number 35/2 land measuring 3 acre 36 gunta in favour of the defendant No.4.

15. The RTC of the suit properties shows that, the name of the defendant No.1 was mentioned as Syed Maheboob S/o Syed Abdul Khaliq. The defendant No.1 appears to be reported that his name was wrongly mentioned in the RTC and got changed his name in the RTC as per the sale deeds by giving application in the year 2006.

16. The defendant No.1 to 4 have produced the certified copies of judgment and decree passed in OS No.22/2014. From said documents it appears that the present defendant No.5 and 6 have filed a suit for the relief of declaration and

injunction with respect to the present suit properties against the present defendant No.1 and 2. The said suit appears to be dismissed on 27-09-2018. The present defendant No.5 and 6 appears to be claimed their rights under Abdul Khaliq. The present defendant No.5 and 6 claimed that they are the wife and son of the Abdul Khaliq in the said suit.

17. On perusal of the the materials on record it appears that, the plaintiffs are claiming that, the defendant No.1 was the driver of the husband of the plaintiff no-1. The husband of the plaintiff no-1 has purchased the suit properties in the name of the defendant No.1. The defendant No.1 to 4 appears to be denied the case of the plaintiffs and contended that they have purchased the suit properties. The materials on record show that, the sale deeds of the suit properties are standing in the name of the defendant No.1 from the year 1994. The defendant No.1 appears to be sold the suit properties in the year 2013 and 2022. Hence, considering the materials on record I am of the opinion that the plaintiffs' case is required to be tried. If during the trial further alienations are made

then it will lead to multiplicity of proceedings and may affect the rights of the plaintiffs if any in the suit properties. Hence considering the materials on record I am of the opinion that the plaintiffs have made out a prima facie case on I.A.No.-1. Hence, I answered point No.1 in the affirmative.

18. From the available materials if an injunction is granted as claimed by the plaintiffs it may not affect the rights of the defendant no-1 to 4 and it will avoid multiplicity of proceedings. If an injunction is refused to the plaintiffs it will lead to multiplicity of proceedings and may affect the rights of the plaintiffs if any in the suit properties. Hence I am of the opinion that the plaintiffs have made out a case in their favour on I.A.No-1 with regard to point of balance of convenience and irreparable loss. Hence I answered point no-2 and 3 in the affirmative.

19. Point No. 4: In view of my findings on the above point No. 1 to 3 and also considering the materials on record and

considering the case of both the parties at this stage, I proceed to pass the following:

ORDER

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

The defendant no-1 to 4 are hereby restrained by way of temporary injunction from alienating the suit properties till further orders or till disposal of the present suit whichever is earlier.

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

Senior Civil Judge & JMFC.,
Afzalpur

[Order pronounced in the open court vide separate sheets]

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