

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 16th day of April -2024

O.S. No-19/2024

Plaintiff: Bibanabee @ Biban W/o Ibrahim Patel
and 2 others.

[By Shri S.G.H., Advocate]

-V/s -

Defendants: Dastagirsab S/o Raj Ahmad Patel
and 6 others

[By Shri C.S.H., 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 defendants from making divisions in the revenue records of the suit property (survey number 1/1/A measuring 2 acre 07 gunta of land out of 10 acre 03 gunta of land) till disposal of the suit.

2. The plaintiffs have contended that, the plaintiffs are the owners and in possession of the land bearing survey number 1/1/A measuring 10 acre 03 gunta of land. Out of the said land 2 acre 07 gunta of land is the subject matter of the suit. The defendants are trying to make divisions in the suit property without any right in the suit property.

3. The plaintiffs further contended that, the one **Ladle Sab** was the head of the family and he has got two sons by name **Dastagir Sab** and **Buran Sab**. The Dastagir Sab had two sons by name deceased Jafar Sab (died issue less) and Raj Ahmad. The defendant No.1 to 7 are the legal heirs of Raj Ahmad.

4. The plaintiff further contended that, the **Buran Sab** has got 3 sons by name Ibrahim and plaintiff No.2 and Abdul Karim. The plaintiff No.1 and 3 are the legal heirs of Ibrahim and Abdul Karim. The Dastagir Sab and Buran Sab during their life time have divided the survey number -1 property and 14 acre 3 gunta of land each was fallen to the share of Dastagir Sab and Buran Sab. The Jafar Sab S/o Dastagir Sab has sold 8 acre 25 gunta of land to one Shantappa. The Raj Ahmad has sold 4 acre of land to the said Shantappa and after sale of the said properties there remains only 1 acre 8 gunta of land to the defendants. The defendants without any right have mutated their name for 7 acre 38 gunta of land bearing survey number 1/1/2/2. An area of 2 acre 7 gunta of land is deducted from the land of the plaintiffs. The defendants are now trying to mutate their name to the suit property. On the said material grounds the plaintiffs have prayed for allowing the present application.

5. The defendants have filed their objections by denying the grounds of the application. The defendants have

contended that, they are the owners and in possession of survey number 1/1/2 measuring 7 acre 38 gunta of land. The surveyor has surveyed the entire survey number 1 land on 23-07-2021. The survey number 1/1/2 measuring 7 acre 38 gunta of land is shown to be in possession and ownership of the defendants. The defendants intended to divide their property and the surveyor has preferred 11-E Map on 01-01-2024. The plaintiffs have filed a false suit and obtained temporary injunction order on survey number 1/1/A measuring 2 acre 7 gunta of land out of 10 acre 03 gunta of land. The said order is entered in the RTC of the defendants bearing survey number 1/1/2. The land of the defendants is not concerned with the suit property. On the said material grounds the defendants have prayed for the rejection of the present application.

6. Considering the case of both the side and on perusal of the records, 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 under:

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 claimed their ownership and possession over the 10 acre 3 gunta of land in survey number 1/1/A. The plaintiffs have claimed that the suit property measuring 2 acre 7 gunta is part of 10 acre 3 gunta of land. The plaintiffs have produced the revenue records showing the name of Buran sab for 14 acre 3 gunta of land including 1 acre of karab land bearing survey number 1/b. The name of Dastagirsab for 14 acre 3 gunta of land including 1 acre of Karab land in survey number 1/a. The said revenue records

are of the year 1958 to 1964. In the year 1965 the Buran sab was shown to be sold 4 acre of land to one Malkappa. There after the name of Buran sab was shown for 10 acre 3 gunta of land. In the year 1975 the name of Buran sab was reduced to 7 acre 11 gunta of land. The name of Raj ahmad was shown for 8 acre 25 gunta of land in the year 1978. The 2023- 2024 RTC shows the name of the legal heirs of Buran sab only for 6 acre 30 gunta of land and 23 gunta of land. The RTC of the year 2023-2024 shows the name of the legal heirs of Dastagirsab for 8 acre 25 gunta of land.

10. The plaintiffs at this stage have produced materials to show that Buran sab was having 14 acre 3 gunta of land and Dastagir sab was having 14 acre 3 gunta of land. The material on record shows that the Buran sab has sold 4 acre of land out of his 14 acre 3 gunta of land. The materials on records shows that the legal heirs of Dastagirsab have sold 8 acre 25 gunta of land out of 14 acre 3 gunta of land in the year 1974 but still the legal heirs of the Dastagir sab name was shown for 8 acre 25 gunta of land.

11. The plaintiffs at this stage have produced materials to believe that their land was reduced. The plaintiffs have produced the materials to show that the land of the defendants was increased. The defendants have not produced any materials to show justification for the extent of their land. The defendants have come up with a case that their survey number is different and suit survey number property is different. Mere change of survey number or non mentioning of new number by the plaintiffs cannot be a ground to disbelieve the case of the plaintiffs at this stage. The defendants have to show justification for their extent of land. The plaintiffs must show their rights to the extent of their land. The old revenue records at this stage appear to be showing the rights of the plaintiffs to the extent claimed by them. Hence considering the materials on record at this stage I am of the opinion that the plaintiffs have made out a traible case and a prima facie case in their favour. Hence I answered point no-1 in the affirmative.

12. The plaintiffs in the present suit have made out a prima facie case in their favour. The plaintiffs have shown their rights to more extent of land. The defendants who are shown to be having more extent of land than that of old revenue records. The defendants at this stage have not produced any materials in support of their case. Hence if the suit property or property of the defendants is further divided then in the event of plaintiffs succeeds in the present suit then it will cause much loss to the plaintiffs. On the other hand the defendants will not be put to much hardship and they will also get an opportunity to prove their extent and can know the correct extent of their land. Hence, considering the case of both the side it appears that, if an injunction is not granted as claimed by the plaintiffs it may affect the rights of the plaintiffs. Hence considering the case of both the side and considering the records and in view of my answer to the point no-1, I am of the opinion that the plaintiffs have made out the point of balance of convenience and irreparable loss in their favour. Hence I answered point no-2 and 3 in the affirmative.

13. 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 defendants or anybody claiming or acting under them are hereby temporarily restrained from making any divisions in the revenue records of the suit property till disposal of the suit or till further orders whichever is earlier.

Senior Civil Judge & JMFC.,
Afzalpur

[Order pronounced in the open court vide separate sheets]

ORDER

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

The defendants or anybody claiming or acting under them are hereby temporarily restrained from making any divisions in the revenue records of the suit property till disposal of the suit or till further orders whichever is earlier.

Senior Civil Judge & JMFC.,
Afzalpur