

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 18<sup>th</sup> Day of March - 2026

O.S No-17/2022.

Plaintiff : Sharada W/o Marulappa.S.  
D/o Vishwanath Kavalagi.

[By Shri V.Y. Advocate]

-V/s -

Defendants : Shashikanth S/o Vishwanath Kavalagi.  
and 4 others.

[D-1 By Shri S.J. Advocate]

[D-2, 3 and 5 By Shri G.V.K. Advocate]

[D-4 Ex-Parte]

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 No-1 and 2 from alienating the suit properties and also restraining them from receiving the compensation amount pending disposal of the suit.

2. The plaintiff has contended that, the defendant No-3 is the father of the plaintiff. The defendant No-1 is the brother of the plaintiff. The defendant No-2 is the wife of the deceased brother of the plaintiff by name Chandrashekhar. The defendant No-5 is the son of the defendant No-2. The plaintiff and the defendant No-1, 2, 3 and 5 are the Hindu joint family members. The suit properties are the ancestral and joint family properties of the plaintiff and the defendant No-1, 2, 3 and 5. The defendant No-4 has acquired the property for national highway. The plaintiff has got 1/3<sup>rd</sup> share in the suit

properties. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendant No-1 has filed his written statement by denying the case of the plaintiff. The defendant No-1 has contended that, the plaintiff has not included all the properties in the present suit. The defendant No-3 is the absolute owner of the suit properties. The defendant No-1 has effected partition between the defendant No-1 and husband of the defendant No-2. The suit item No-2 property was fallen to the share of the defendant No-1. The suit item No-1 property was fallen to the share of the husband of the defendant No-2. The plot No-73 was allotted to the plaintiff by executing a sale deed by the defendant No-3 in favour of the husband of the plaintiff. In the year 2007 the defendant No-3 has effected the partition between the parties. The husband of the plaintiff has sold the property allotted to the plaintiff. The purchaser of the said plot and the plot are not included by the plaintiff in the

present suit. On the said material grounds the defendant No-1 has prayed for rejection of the present application.

4. The defendant No-2, 3 and 5 have filed their written statement by admitting the case of the plaintiff. They by way of counter claim have claimed their share in the suit properties.

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 plaintiff has made out a prima-facie case in her favour?
- 2] Whether the balance of convenience leans in favour of the plaintiff ?

3] Whether the 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 defendant No-2, 3 and 5 have admitted the case of the plaintiff. The plaintiff has produced the records of the suit properties in support of her case. The case of the defendant No-1 as to prior partition and allotment of plot to the plaintiff can be considered only after the trial.

9. On considering the case of the parties and relationship of the parties and materials on record it appears that, the plaintiff has made out a case for trial. The case of the defendant No-1 can be considered only in the trial. Hence, I am of the opinion that, the plaintiff has made out a prima-facie case in her favour. Hence, I answered point No-1 in the affirmative.

10. The plaintiff is claiming her rights over the suit properties. The plaintiff at this stage has produced materials in support of her case. 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 No-1 and 2.

11. From the available materials if an injunction is granted as claimed by the plaintiff it may not affect the rights of the defendant No-1 and 2 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 properties. The alienation of the suit properties by the defendant No-1 and 2 will affect the rights of the plaintiff. Hence I am of the opinion that the plaintiff has made out a case in her favour with regard to point of balance of convenience and irreparable loss. Hence I answered point No-2 and 3 in the affirmative.

12. 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 No-1 and 2 are hereby restrained by way of temporary injunction from alienating the suit properties and also from receiving the compensation amount from the defendant no-4 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 No-1 and 2 are hereby restrained by way of temporary injunction from alienating the suit properties and also from receiving the compensation amount from the defendant no-4 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.