

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 07th day of November -2024

O.S No.31/2023

Plaintiff: Rajesh S/o Gurunath Ambure

[By Shri S.K.P., Advocate]

-V/s -

Defendants : Vilas S/o Gurunath Ambure
And others.

[D-1 & 2 By Shri. M.A.J., Advocate]

[D-3 to 5 By Shri. A.T.D., 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 no 1 and 2 from alienating the suit properties pending disposal of the suit.

2. The applicant/plaintiff has contended that, the plaintiff and defendants are the Hindu joint family members. The suit properties are the ancestral and joint family properties of the plaintiff and defendants. The defendant no 1 and 2 have illegally mutated their names to the suit properties behind the back of the plaintiff. The defendant no 1 and 2 are intended to alienate the suit properties. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendant no-1 and 2 filed their written statement by denying the case of the plaintiff. They have contended that partition has already taken place between the parties on 26-04-2017. The defendant no-3 to 5 have taken 3 tolas of gold and some other articles of their mother and relinquished their rights in the suit properties. They have also signed the

partition deed. The defendant no-3 to 5 have no any rights over the suit properties. On the said material grounds the defendant no-1 and 2 have 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 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 ?

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 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

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 plaintiff has come up with a case that the suit properties are ancestral and joint family properties of the plaintiff and defendants. The plaintiff at this stage has produced the revenue records standing in the name of family members of the plaintiff. The defendant no-1 and 2 have come up with a case of prior partition. The case of both the parties can be considered only in a trial. Till the disposal of the suit the suit properties are required to be kept as it is and the same cannot be permitted to alienate to other persons. Hence considering the case of the parties and materials on record at this stage 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.

8. The plaintiff is claiming his rights over the suit properties. The defendants no 1 and 2 are contending about prior partition. 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 defendants. The alienation of the suit properties by the defendants will more affect on the plaintiff.

9. From the available materials if an injunction is granted as claimed by the plaintiff it may not affect the rights of the defendants 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. 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.

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-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 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.