

O.S. 41/2023

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-41/2023

Plaintiff: Laxmibai D/o Channamallappa
W/o Chandrakant.

[By Shri P.R.P., Advocate]

-V/s -

Defendants: Mallamma W/o Khandappa
and 6 others

[D-1, 3 to 6 By Shri S.G.A., Advocate]

[D-7 By Shri S.G.H Advocate]

[D-2 Ex-parte]

ORDER ON IA NO-3 FILED UNDER ORDER XXXIX

RULE 1 AND 2 OF CPC.

The plaintiff has filed present application praying for a temporary injunction order restraining the defendant No.5 from making any construction in the suit land bearing survey number 375/11 measuring 1 acre 14 gunta of land pending disposal of the suit.

2. The applicant/plaintiff has contended that, the suit properties are the ancestral and joint family properties of the plaintiff and the defendant No.1 to 6. The plaintiff has got a share in the suit properties. The defendant No.1 to 6 are the children of the brother of the plaintiff. The defendant No.7 is the purchaser of one of the suit property. The defendants have denied the share of the plaintiff in the suit properties. The defendant No.5 without any right is making construction in the suit land bearing survey number 375/11 measuring 1 acre 14 gunta of land. The defendant No.5 has not taken any permission for the construction. The defendant No.5 if put up the construction than it will lead to multiplicity of the proceedings. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendant No.5 has filed his objections to the present application by denying the grounds of the present application and prayed to reject the present application.

4. The defendant No.1 and 3 to 6 in their written statement have contended that, in the year 1986 oral partition has taken place between the plaintiff and the husband of the defendant No.1. The suit item No.1 property bearing survey number 377/1 measuring 6 acre 18 gunta of land was fallen to the share of the plaintiff. The plaintiff has sold the said property in the year 1986 to one Sharanappa S/o Shivappa.

5. It is further case of the said defendants that, survey number 375 land was fallen to the share of the husband of the defendant no-1 in the oral partition of the year 1986. On the said material grounds the said defendants have prayed for the 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 applicant/plaintiff has made out a prima-facie case in her favour?
- 2] Whether the balance of convenience leans in favour of the applicant/plaintiff?
- 3] Whether the applicant/plaintiff suffers 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 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

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 plaintiff at this stage has produced the documents of suit item no 1 to 3 property standing in the name of her father. The defendants have come up with a case of oral partition in the year 1986. The defendant no-5 is a Hindu joint family member of the plaintiff's family as per the case of the plaintiff. Hence one co-owner cannot claim an injunction against the other co-owner from enjoying the suit property. The defendant no-5 appears to be constructing a building over the portion of suit property bearing survey number 375/11 measuring 1 acre 14 gunta of land. The plaintiff has claimed only half

share in the said property. There are 6 other suit properties are also there in the present case. Hence restraining the defendant no-5 from putting up a construction over a portion of property will amount to a great hardship for the defendant no-5. Hence considering the nature of the relief claimed in the present application and considering the defence of the defendants I am of the opinion that the plaintiff has not made out a prima facie case in her favour. Hence I answered point no-1 in the negative.

10. From the available materials on record if the defendant no-5 is restrained from putting up of a construction it will cause much hardship to the defendant no-5. On the other hand the plaintiff if establish her case then the plaintiff can claim her share in other remaining property also and she can also claim her share by showing more hardship on her and less hardship on the defendants in the present property also.

11. From the available materials if an injunction is not granted as claimed by the plaintiff it may not affect the rights of the plaintiff in the suit properties. On the other hand if the application is allowed than in case of the defendants

establishes their case than they will be put to more hardship. 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 plaintiff has not made out the point of balance of convenience and irreparable loss in her favour. Hence I answered point no-2 and 3 in the negative.

12. 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-3 filed by the Plaintiff 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 Plaintiff under order
39 Rule 1 and 2 of CPC is hereby rejected.

Senior Civil Judge & JMFC.,
Afzalpur

ORDER ON I.A. NO.4 FILED UNDER ORDER 8 RULE 1(A)
R/W SECTION 151 OF CPC.

The defendant No.1 has filed the present application for production of documents.

2. The defendant No.1 has contended that, the documents produced by the defendants are very essential to decide the dispute between the parties.

3. The advocate for the plaintiff has submitted his no objections to the present application.

4. Hence, considering the nature of the suit and nature of the documents produced by the defendants and considering the grounds of the application I am of the opinion that in order to provide an opportunity to the defendants to put forth their case on merits the present application is required to be allowed.

Hence, I.A.No.IV filed by the defendant No.1 is hereby allowed.

Senior Civil Judge & JMFC.,
Afzalpur