

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 9th Day of June -2025

O.S No-59/2023

Plaintiff: Mahesh S/o Sangameshwar Patil

[By Smt.ATD, Advocate]

-V/s -

Defendants : Ramesh S/o Sangameshwar Patil
and 2 others.

[D-1 and 2 by Shri.S.K.P, Advocate]

[D-3 ex-parte]

ORDER ON IA NO-6 FILED UNDER ORDER XXXIX

RULE 4 READ WITH SECTION 151 OF CPC.

The defendant No-1 and 2 have filed the present application praying for vacating the temporary injunction order granted in favour of the plaintiff.

2. The applicants/defendant No-1 and 2 have contended that, the plaintiff has filed the present suit for the relief of partition and separate possession. The plaintiff has got an order of temporary injunction against the defendants from alienating the suit properties. The plaintiff is intentionally delaying the matter by violating the conditions imposed by the court. The plaint shows the earlier partition between the parties. The plaintiff is now again claiming the relief of partition. The plaintiff was not included all the properties in the suit. The plaintiff has not pleaded about the partial partition. The suit of the plaintiff is not maintainable. The plaintiff has shown only the properties standing in the name of defendants as the suit properties in order to cause loss to the defendants.

3. It is further case of the defendant No-1 and 2 that, they are in need of financial assistance from the bank for their agricultural purpose. Except the agricultural income from the suit land the defendants have no any source for their livelihood. The defendant No-1 and 2 are intended to take loan by mortgaging the suit land to the bank. The plaintiff only in order to cause loss to the defendants has filed the present suit. On the said material grounds the defendant No-1 and 2 have prayed for allowing the present application.

4. The plaintiff has filed his objections to the present application by denying the grounds of the application. The plaintiff has contended that, the defendant No-1 has executed consent letter in favour of the plaintiff on 26-10-2014 and the same is not acted upon till today. The said consent letter is binding on the defendant No-1 and 2. The defendant No-1 and 2 are trying to create charge over the suit property. The defendant No-1 and 2 have no any exclusive right over the suit property. The plaintiff has already filed his chief examination. The defendants are prolonging the matter. Till

the disposal of the suit the suit property are required to be kept intact. On the said material grounds the plaintiff has prayed for rejection of the present application.

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 applicants/defendant no-1 and 2 have made out grounds for vacating the temporary injunction order granted in favour of the plaintiff ?

2] 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: As per the final order for

the following

REASONS

7. Point No-1: On perusal of the materials on record it appears that, this court has granted an order in favour of the plaintiff by restraining the defendant no-1 from alienating the suit property bearing survey number 45/1 measuring 5 acre of land till disposal of the suit or till further orders whichever is earlier and on condition of plaintiff co-operating with the present matter for early disposal of the suit. The record shows that the plaintiff has took 16 adjournments for leading his evidence. The order sheet shows that several times the advocate for the defendant no-1 and 2 objected for the adjournment praying for vacation of the interim order.

8. It further appears that the plaintiff appears to be not paid cost of Rs.1,400/-which was imposed on 4 times. The

order sheet dated 19-12-2023 shows that on the objections of the advocate for the defendants for vacating the interim order the interim order was granted till next date of hearing and subject to leading of evidence by the plaintiff on the next date of hearing. The order sheet dated 06-01-2024 shows that the advocate for the plaintiff again prays time for leading evidence and non compliance of order was recorded in the order sheet. The order sheet dated 17-01-2024 shows that the temporary injunction order was again extended till next date of hearing subject to plaintiff leading evidence on the next date of hearing with a condition that the interim order will be vacated automatically on failure to lead evidence by the plaintiff on the next date of hearing. Again on the next date of hearing the advocate for the plaintiff prays time and not lead evidence. Hence considering the conduct of the plaintiff and not extending of the interim order in favour of the plaintiff and nonpayment of cost by the plaintiff the interim order granted in favour of the plaintiff is required to be vacated.

9. The plaintiff has filed the suit for the relief of partition against the defendants. The record shows that the plaintiff has not included the house property in the present suit. The plaintiff has filed suit with respect to only 5 acre of land out of total 27 acre 35 gutna of land in survey number 45. The plaintiff has not included the purchaser of the property in the suit. The plaintiff prayed for allotting the land sold by the defendant no-1 to the share of the defendant no-1. The plaintiff in all claimed $\frac{1}{2}$ share in survey number 45 measuring 27 acre 35 gunta of land and filed suit only with respect to 5 acre of land in the said land. The plaintiff claimed that he is in possession of 8 acre 20 gutna of land in survey number 45. The plaintiff has also contended that the defendant no-1 has executed a consent letter in favour of the plaintiff for giving 1 acre 32 gutna in survey number 45/3.

10. On considering the case of the plaintiff in order to provide an opportunity to the plaintiff to put forth his case this court has granted an interim order to the plaintiff on conditions. The plaintiff appears to be not complied the

conditions of this court. The plaintiff appears to be not complied the orders of this court. The materials on record show that the interim order granted in favour of the plaintiff is not extended by this court. The plaintiff has not taken the opportunities provided to him by this court. Hence considering the case of the parties and conduct of the plaintiff and records of the case I am of the opinion that the interim order granted in favour of the plaintiff is required to be vacated. Hence I am of the opinion that the defendant no-1 and 2 have made out grounds for allowing the present application subject to taking of risk of the outcome of the suit on merits. The defendant no-1 and 2 shall indemnify the plaintiff to the loss if any caused to the plaintiff at the end of the suit. Hence, I answered point No-1 in the affirmative.

11. Point No-2 : In view of my findings on the above point No- 1 and also considering the materials on record I proceed to pass the following:

ORDER

I.A. No-6 filed by the defendant no-1 and 2 under order 39 Rule 4 of CPC is hereby allowed subject to defendant no-1 and 2 indemnifying the plaintiff in case of any loss caused to the plaintiff at the end of the suit.

Senior Civil Judge & JMFC.,
Afzalpur

[Order pronounced in the open court vide separate sheets]

ORDER

I.A. No-6 filed by the defendant no-1 and 2 under order 39 Rule 4 of CPC is hereby allowed subject to defendant no-1 and 2 indemnifying the plaintiff in case of any loss caused to the plaintiff at the end of the suit.

Senior Civil Judge & JMFC.,
Afzalpur.