

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 3rd Day of January - 2026

O.S No-78/2024.

Plaintiff : Saipansab S/o Chandsab Tamba
Since dead by his Lrs

[By Shri P.B.P. Advocate]

-V/s -

Defendants : Hussainbee W/o Babu Sab @ Baban Sab.
and 7 others.

[D-1 to 4 By Shri P.S.K. Advocate]

[D-5 to 7 Ex-parte]

[D-8 [a] to [d] By Shri W.A.J. 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 to 3, 5 and 8 from alienating the suit properties pending disposal of the suit.

2. The plaintiff has contended that, the Chandsab is the father of the plaintiff. The Chandsab has got 3 sons. The deceased Babasab and deceased Sayeedsab are the brothers of the plaintiff. The defendant No-1 to 4 are legal representatives of the Babasab. The defendant No-5 to 7 are the legal representatives of the Sayeedsab. The father of the plaintiff Chandsab has died. The suit properties are the Matraka [joint] properties of the plaintiff and defendant No-1 to 7. The defendant No-8 is not related to the family of the plaintiff and defendant No-1 to 7. The defendant No-8 name is appearing wrongly to the survey number 43/3 measuring 1

acre 22 gunta of land. The plaintiff has got 1/3rd share in the suit properties. The defendant No-1 to 3, 5 and 8 are trying to alienate the suit properties. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendant No-2 has filed his written statement by denying the case of the plaintiff. The defendant No-2 has contended that, the partition has already taken place between the plaintiff and his 2 brothers by name Babasab and Saipansab. The plaintiff for his legal and family necessities has alienated 4 acre of land in survey number 255/A to the defendant No-2 on 13-09-2006. The plaintiff has also sold survey number 43/1 measuring 2 acre 23 gunta of land to the father of the defendant No-1 to 4 on 23-01-2006. On the said material grounds the defendant No-2 has prayed for rejection of the present application.

4. The defendant No-8 [a] to [d] have filed their written statement by denying the case of the plaintiff. They have contended that, the defendant No-8 Abdul has purchased 1

acre 22 gunta of land bearing survey number 43/3 from the father of the plaintiff by name Chandsab on 02-07-2002. The suit of the plaintiff is barred by law of limitation. The plaintiff has not challenged the sale deed of the defendant No-8. The parties are governed by Mohammedan Law. Hence, the legal representatives of the Chandsab have no any rights in the property sold by the Chandsab. On the said material grounds the defendant No-8 [a] to [d] have 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 plaintiff has made out a prima-facie case in his 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-1 to 7 have come with a case of prior partition between the parties. The plaintiff has produced the revenue records to show that, the suit properties were standing in the name of his father by name Chandsab. The defendants at this stage have not produced any documents in support of their case. The case of the defendants can be considered only in 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 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.

10. The plaintiff is claiming his rights over the suit properties. The defendants at this stage have not produced any materials in support their case. The plaintiff has produced the records showing that the suit properties were standing in the name of his father. 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 to 3, 5 and 8 [a] to [d].

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 to 3, 5 and 8 [a] to [d] 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 to 3, 5 and 8 [a] to [d] will affect the rights of the plaintiff. 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.

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 to 3, 5 and 8 [a] to [d] 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.

[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 to 3, 5 and 8 [a] to [d] 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.