

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 6th day of January-2025

O.S No.86/2024

Plaintiff: Gangamma W/o Veerayya Hiremath

[By D.K and SKP, Advocates]

-V/s -

Defendants : Sugaladevi W/o Late Shantayya
& 3 others.

[D-2 to 4 By Shri. K.G.P., 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.2 from alienating the suit property pending disposal of the suit.

2. The applicant/plaintiff has contended that, the defendant no-1 is the mother of the plaintiff. The deceased Danayya is the brother of the plaintiff. The defendant no-2 to 4 are the wife and children of the brother of the plaintiff. On death of the father of the plaintiff by name Shantayya the brother of the plaintiff by name Danayya has nominally mutated his name to the suit property in the year 2011. On death of the brother of the plaintiff by name Danayya the defendant no-2 has illegally mutated her name to the suit property in the year 2020. The defendant no-2 in now by denying the rights of the plaintiff in the suit property is trying to alienate the suit property. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendant No.2 has filed her written statement by denying the case of the plaintiff. The defendant no-2 has

contended that the plaintiff has not included survey number 32/1 and 32/2 lands in the present suit. The grandfather of the plaintiff by name Shivalangyya has got children by name deceased Mallayya, deceased Shantayya, Iratayya, Shivanand, Mahananda and deceased Shashikant. The plaintiff has not included all the legal representatives of the deceased Shivalingayya in the present suit. No any partition has taken place between the children of Shivalingayya. The suit property bearing survey number 32/3 measuring 9 acre 10 gunta of land is nominally standing in the name of the defendant no-2. The survey number 32/1 measuring 9 acre 18 gunta of land is nominally standing in the name of the Shivanand. The survey number 32/2 measuring 9 acre 10 gunta of land is nominally standing in the name of the Iratayya. The suit of the plaintiff is bad for non joinder of necessary parties and non inclusion of other two properties. On the said material grounds the defendant no-2 has 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 her 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 property is the ancestral and joint family property of the plaintiff and defendants. The suit property was allotted to the father of the plaintiff. The plaintiff at this stage has produced the revenue records standing in the name of her father, brother and defendant no-2. The defendant no-2 has contended that still

no any partition has taken place between the father of the plaintiff and uncle and aunt of the plaintiff. The suit of the plaintiff is bad for non joinder of necessary parties and non inclusion of other properties. The case of both the parties can be considered only in a trial. Till the disposal of the suit the suit property is required to be kept as it is and the same cannot be permitted to be alienated 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 her favour. Hence I answered point no-1 in the affirmative.

8. The plaintiff is claiming her rights over the suit property. The defendant no-2 has not denied the rights of the plaintiff in the suit property. 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-2. The alienation of the suit

property by the defendant no-2 will more affect on the rights of 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 defendant no-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 property. 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.2 is hereby restrained by way of temporary injunction from alienating the suit property 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.