

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.66/2021

Plaintiff: Vijaylaxmi D/o Malleshappa Kambar

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

-V/s -

Defendants : Bheembai D/o Malleshappa Kambar
and 6 others.

[D-4 & 6 by Shri. G.S.B ., Advocate]

[D-5 by Shri M.B.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 defendants 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 defendants have illegally mutated their names to the suit properties behind the back of the plaintiff. The defendants 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-4 to 6 by filing their written statement have denied the case of the plaintiff. They have not come up with any specific case. They by denying the case of the plaintiff 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 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 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 relationship of the plaintiff is not denied by the defendants. The case of both the parties can be considered only in a trial. 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 properties. The defendant no 4 to 6 have denied the rights of the plaintiff. 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 her 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 defendants 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.