

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 1st day of March - 2025

O.S No.118/2024

Plaintiff: Basavaraj S/o Siddappa Biradar.

[By Shri S.G.A. Advocate]

-V/s -

Defendants : Bhagamma W/o Siddappa Biradar
& 5 others.

[By Shri S.K.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-1 to 3 from alienating the suit properties pending disposal of the suit.

2. The applicant/plaintiff has contended that, the plaintiff is the son of Siddappa through his first wife. The defendants are the second wife and children of the second wife of Siddappa. The father of the plaintiff i.e., Siddappa has died on 13-04-2017. The mother of the plaintiff i.e., Parvatamma died on 13-02-2023. The plaintiff was born on 03-06-1973. During the subsistence of first marriage with the mother of the plaintiff the father of the plaintiff has married with the defendant No-1.

3. The plaintiff has further contended that, the suit properties are the ancestral properties of the plaintiff. The suit item number 2 property is purchased by the father of the plaintiff. The suit item number 3 property is purchased by the

father of the plaintiff in the name of defendant No-2 when he was minor. The suit item number 4 property was purchased by the father of the plaintiff in the name of defendant No-2. The suit item number 5 property was purchased by the father of the plaintiff in the name of defendant No-3. The suit item number 6 property is ancestral property standing in the name of the father of the plaintiff. The suit item No-1 and 6 properties are ancestral properties of the plaintiff. The suit item No-2 to 5 properties are the joint family properties of the plaintiff and defendant No-2 to 6 and the same are purchased by the father of the plaintiff. The defendants have denied the rights of the plaintiff in the suit properties. The defendants are trying to alienate the suit properties. On the said material grounds the plaintiff has prayed for allowing the present application.

4. The defendants have filed their written statement by denying the case of the plaintiff. The defendants have contended that, the description of the suit properties is not

proper. The defendants have not disputed the relationship of the parties. The defendants have contended that, the suit item No-1 property was allotted to the plaintiff by the father of the plaintiff in an earlier partition. The plaintiff has given an under taking letter reporting that, he will not claim any rights in the remaining properties. The plaintiff has no any rights with respect to suit item No-2 to 6 properties. On the said material grounds the defendants 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 applicant/plaintiff has made out a prima-facie case in his 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 ?

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 plaintiff is the son of first wife of the deceased Siddappa. The defendants are the second wife and her children. The plaintiff claimed that, the suit item No-1 and 6 properties are the ancestral properties and the suit item No-2 to 5 properties are purchased by the father of the plaintiff in the name of defendants. The defendants have come with a case of earlier partition and allotment of suit item No-1 property to the plaintiff and relinquishment of rights by the plaintiff with respect to other properties. The plaintiff has produced the revenue records of suit properties. Considering the case of both the side it appears that, both the parties are required to be given an opportunity to put forth their case on merits. On

considering the materials on record it appears that, the plaintiff has produced the materials in support of his case. The defendants at this stage have not produced any materials in support of their case. Hence, considering the materials on record 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 his favour. Hence, I answered point No-1 in the affirmative.

9. The plaintiff is claiming his rights over the suit properties after death of his father. The plaintiff is the son of first wife. The defendants are the second wife and her children. The defendants at this stage have not produced any materials about the prior partition and relinquishment of rights by 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.

10. 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. The alienation of the suit properties by the defendant No-1 to 3 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.

11. 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 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.