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 12th day of March -2024

O.S No-70/2022

Plaintiffs: Laxman S/o Sharanappa Garoor,
and 2 others.

[By Shri A.S.K., Advocate]

-V/s –

Defendants: Sahadevappa S/o Khasiraya Garoor,
and 2 others

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

[D-2 and 3 Ex-parte]

ORDER ON IA NO-1 FILED UNDER ORDER XXXIX

RULE 1 AND 2 OF CPC.

The plaintiffs have filed present application praying for a temporary injunction order restraining the defendants from alienating, mortgaging and creating charge over the suit property pending disposal of the suit.

2. The applicants/plaintiffs have contended that, the property bearing survey number 77 and 78 are the ancestral properties. The five sons of Peerappa have taken the shares in the survey number 77 and 78 lands by way of partition. The father of the plaintiff No.1 and 2 and grandfather of the plaintiff No.3 by name Sharanappa S/o Peerappa was allotted 11 acres 27 gunta of land in a partition. The defendant No.1 in collusion with the revenue authorities has reduced the land of the plaintiffs from 11 acres 27 gunta to 8 acre 28 gunta in the revenue records. The land of the Sahadevappa was increased by an extent of 1 acre 17 gunta. The land of the Sahadevappa was 4 acre 27 gunta and the same was increased to 6 acre 34 gunta.

3. It is further case of the plaintiffs that, the defendant No.1 is the grandson of the Sahadevappa S/o Peerappa. The defendant No.2 and 3 are the purchasers of the portion of suit

property. The plaintiffs are the owners and in possession of the suit property measuring 2 acre 39 gunta of land in survey number 78 totally measuring 11 acre 27 gunta of land.

4. It is further case of the plaintiffs that, the suit property is in danger of being alienated to third parties. On the said material grounds the plaintiffs have prayed for allowing the present application.

5. The defendant No.1 has filed his written statement by denying the grounds of the application. The defendant No.1 has adopted the written statement as his objections to the present application.

6. The defendant No.1 has contended that, the description of the suit property measuring 2 acre 39 gunta of land is not proper and correct. He has contended that in the survey number 78 land 1 acre is reduced by the Government for the road and 27 gunta of land is reduced for the road. The defendant No.2 and 3 have alienated the properties purchased by them. The said purchasers are also necessary parties to the present suit. The Land measuring 6 acre 4

gunta was fallen to the share of grandfather of the defendant No.1 in survey number 78/1 land. The defendant No.1's name is appearing for the said land from the last 35 years. The suit of the plaintiffs is barred by law of limitation. The plaintiffs have got partitioned their land in the year 1987 which was totally measuring 8 acre 28 gunta fallen to share of Sharanappa. On the said material grounds the defendant No.1 has prayed for rejection of the present application.

7. Considering the case of both the side and on perusal of the records, following points arise for my consideration for proper adjudication of the present application:

POINTS

1] Whether the applicants/plaintiffs have made out a prima-facie case in their favour?

2] Whether the balance of convenience leans in favour of the applicants/plaintiffs?

3] Whether the applicants/plaintiffs suffer irreparable loss and damage, if the temporary injunction as sought for is not granted?

4] What order?

8. 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

R E A S O N S

9. Point No.1 to 3: Since these points are interlinked together, I take up these points for consideration together to avoid repetition.

10. On perusal of the materials on record it appears that the plaintiffs have claimed that, survey number 78 was totally measuring 21 acre 25 gunta of land. In a partition 11 acre 27 gunta of land was fallen to the Sharanappa S/o Peerappa. The land measuring 4 acre 27 gunta of land was fallen to the share of the Sahadevappa S/o Peerappa.

11. The defendant No.1 has claimed that, the land measuring 6 acre 04 gunta of land was fallen to the share of the Sahadevappa S/o Peerappa and 8 acre 28 gunta of land was fallen to the share of Sharanappa S/o Peerappa. In the survey number 78 land 1 acre 27 gunta of land was reduced for the road. The survey number 78 land was only measuring 19 acre 38 gunta.

12. On perusal of the RTC of the survey number 78 of the year 2021-2022 it appears that, 6 acre 4 gunta of land is standing in the name of defendant No.1. The land measuring 2 acre 34 gunta is standing in the name of one Basavaraj S/o Sidramappa. The land measuring 19 gunta is standing in the name of the plaintiff No.1. The land measuring 19 gunta is

standing in the name of plaintiff No.2. The land measuring 1 acre 38 gunta is standing in the name of plaintiff No.3.

13. It further appears that, the name of the plaintiffs was mutated to the suit properties as per the partition dated 24-08-2011. It appears that, in the year 1955 to 1961 the name of Sharanappa S/o Peerappa was appearing for 11 acre 27 gunta of land in survey number 78. The name of the grandfather of the defendant No.1 was appearing for 4 acre 27 gunta of land in survey number 78 for the year 1955 to 1961. The name of the Bhimsha S/o Peerappa was appearing for 2 acre 23 gunta of land from the year 1955 to 1961.

14. In the year 1963 the extent of land of grandfather of the defendant No.1 was appears to be increased from 4 acre 27 gunta to 6 acre 4 gunta of land. In the year 1963 the land of the Sharanappa S/o Peerappa was appears to be reduced from 11 acre 27 gunta to 8 acre 28 gunta in survey number 78 land. In the year 1963 the land of the Bhimsha S/o Peerappa was appears to be increased from 2 acre 23 gunta to 2 acre 32 gunta of land.

15. The grandfather of the defendant No.1 appears to be filed a suit bearing O.S.No.11/1968 against the Sharanappa S/o Peerappa for 36 gunta of land in survey number 78/1 for the relief of possession of the said land. The grandfather of the defendant No.1 has claimed 6 acre 4 gunta of land in survey number 78. The Sharanappa S/o Peerappa claimed his rights to the 11 acre 27 gunta of land in survey number 78. The said suit appears to be dismissed. It further appears that the appeal preferred on the said judgment in RA.No.l96/1969 was also appears to be dismissed.

16. On perusal of the records it appears that, the name of the grandfather of the defendant No.1 appears to be corrected as 6 acre 4 gunta of land from 4 acre 27 gunta of land in the hand written RTC of the year 1963. In the year 1955 to 1961 only 4 acre 27 gunta of land was shown to the grandfather of the defendant No.1 in the RTC.

17. The grandfather of the defendant No.1 has claimed his rights for 6 acre 4 gunta of land by a filing a suit bearing O.S.No.11/1968. The said suit was dismissed.

18. On perusal of the records it appears that, the parties are litigating from the year 1968. The name of the defendant no-1 was mutated in the year 1961. The plaintiffs name is appearing separately for their respective land as per the partition between them. Hence, on considering the materials on record at this it appears that, there is serious dispute between the parties with regard to the identification of the suit property. The dispute appears to be existing between the parties from the year 1963. Hence considering the materials on record it appears that the plaintiffs have produced the materials in the form of Khasara pahani documents in support of their case. Hence in order to consider the case of the plaintiffs it will take some time. If during the said period if the suit property is alienated then it will leads to multiplicity of proceedings. Hence considering the materials on record I am of the opinion that the plaintiffs have made out prima-facie case in their favour. Hence I answered point no-1 in the affirmative.

19. From the available materials if an injunction is not granted as claimed by the plaintiffs it may affect the rights of

the plaintiffs in the suit survey number property and leads to multiplicity of proceedings. The alienation of the property will affects the rights of the plaintiffs in the suit property. On the other hand considering the case of the parties if an injunction as claimed by the plaintiffs is granted it will not cause much loss to the defendants. Hence considering the case of both the side, and considering the records and in view of my answer to the point no-1, I am of the opinion that the plaintiffs have made out the point of balance of convenience and irreparable loss in their favour. The case of the plaintiffs at this stage is backed by some supporting materials with regard to rights of the plaintiffs in the suit survey number property. Hence I am of the opinion that the plaintiffs have made out a case in their favour with regard to point of balance of convenience and irreparable loss. Hence I answered point no-2 and 3 in the affirmative.

20. Point No. 4: In view of my findings on the above point No. 1 to 3 and also considering the materials on record and considering the case of both the parties at this stage, I proceed to pass the following:

ORDER

I.A. No-1 filed by the Plaintiffs under order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendants or anybody claiming or acting under them are hereby temporarily restrained from alienating, mortgaging and creating charge over the suit property till disposal of the suit or till further orders whichever is earlier.

Senior Civil Judge & JMFC.,
Afzalpur

OS No.35/2023

[Order pronounced in the open court vide separate sheets]

ORDER

I.A. No-1 filed by the Plaintiffs under order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendants or anybody claiming or acting under them are hereby temporarily restrained from alienating, mortgaging and creating charge over the suit property till disposal of the suit or till further orders whichever is earlier.

Senior Civil Judge & JMFC.,
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