

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 30th day of January - 2024

O.S No.95/2023

Plaintiff: Malkappa S/o Sharanappa Shira

-V/s -

Defendants: Shivalingappa S/o Sharanappa
Since dead by his Lrs.
and others.

ORDER ON IA NO.II FILED UNDER ORDER XXXIX RULE
1 AND 2 OF CPC.

Present application is filed by the plaintiff praying for a temporary injunction order restraining the defendants from withdrawing the compensation amount deposited in the case bearing LAC No.23/2010 with respect survey No.116/3 measuring 12 acre 31 gunta of land situated at Dudhanagi

Village, from the Hon'ble Prl. Senior Civil Judge Court Kalaburagi pending disposal of the present suit.

2. The applicant/plaintiff has contended that, the deceased defendant No.1 is the brother of the plaintiff. The plaintiff and defendant No.1 are the owners and possessors of the land bearing survey No.116/2A measuring 1 acre 30 gunta of land and survey No.116/2Aa measuring 4 acre 1 gunta of land situated at Duddanagi Village. The plaintiff and defendant No.1 have purchased the said 4 acre 1 gunta of land in the name of defendant No.1 in the year 1990 out of the joint nucleus of the family. The land measuring 1 acre 30 gunta was purchased by the plaintiff and defendant No.1 in the name of the plaintiff in the year-1994 out of joint nucleus of the family. The defendant No.5 has acquired the land measuring 12 acre 31 gunta land belonging to the plaintiff and defendant No.1 and other defendants.

3. It is further case of the plaintiff that, in LAC No.23/2010 case the Hon'ble Prl. Senior Civil Judge Court has passed the award. The compensation amount is deposited

in the court. The deceased defendant No.1 during his life time has mutually agreed for taking $\frac{1}{2}$ share in the compensation by leaving half share to the plaintiff. The defendant No.1 has died on 01-10-2022. The defendant No.1 (a) to (c) have denied the half share of the plaintiff. On the said material grounds the plaintiff has prayed for allowing the present application.

4. The defendant No.4 (a) has filed his written statement objecting the present application. The defendant No.4 (b) and (c) have adopted the written statement of the defendant No.4 (a) as their written statement. The other defendants have not filed any objections to the present application.

5. The defendant No.4 (a) to (c) have contended that the description of the suit property is wrong. The 3 sons of the Basanna are not impleaded in the present suit. The defendant No.4 (a) to (c) and their brothers have filed a suit for partition bearing O.S No.89/2023 before the court. The said defendants by denying the other case of the plaintiff have prayed for dismissal of the suit as not maintainable.

6. 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:

- 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 suffers irreparable loss and damage, if the temporary injunction as sought for is not granted?
- 4] What order?

7. 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

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

9. On perusal of the materials on record it appears that, the plaintiff has produced the copy of sale deed dated 30-04-1990. From the said document it appears that the deceased defendant No.1 has purchased 4 acre 1 gunta of land in survey No.116/2A.

10. The plaintiff has also produced the sale deed dated 19-05-1994. From the said document it appears that the plaintiff has purchased the property measuring 1 acre 30 gunta in

survey No.116/2A out of 4 acre 1 gunta of land from deceased defendant No.4. The plaintiff has also produced copy of judgment and award passed in LAC No.23/2010. From the said documents it appears that the land bearing survey No.116/3 measuring 12 acre 31 gunta was acquired and compensation amount is awarded by the court.

11. The defendants have not objected the present application by filing any separate objections. The defendant No.4 (a) to (c) have only filed their written statement. Hence, considering the case of both the side at this stage it appears that, there is a serious dispute between the parties regarding the share in the compensation amount. Hence, in order to consider the case of both the side it will take some time for the trial. If during the said period if the defendants received the compensation amount then the plaintiff if finally established his case then he will be put to more hardship. Hence considering the claim of the parties and relationship of the parties at this stage I am of the opinion that, the plaintiff has made out a case for trial. Hence, on considering the allegations of the plaintiff in order to avoid multiplicity of

proceedings the present application is required to be allowed. 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.

12. In view of my answer to the point no-1 I am of the opinion that the plaintiff has made out the point of balance of convenience and irreparable loss in his favour. The claim of the plaintiff is required to be tried. The plaintiff has made out a triable case. The trial will take some time. During the trial if the disputed amount is withdrawn by the defendants then it leads to multiplicity of proceedings. During the pendency of the present suit if the defendants have withdrawn the said amount then the plaintiff will suffer much loss.

13. Hence, considering the case of both the side I am of the opinion that, if the present application is allowed no any harm is going to cause to the defendants. On the other hand if the defendants succeed in the suit then they will get amount free from any dispute. Hence considering the material on record 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. If an injunction is refused to the plaintiff at this stage the plaintiff will suffer more than the defendants. On the other hand I do not find any loss is going to cause to the defendants by granting of an injunction and expediting the trial of the suit. Hence I answered point no-2 and 3 in the Affirmative.

14. 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.2 filed by the Plaintiff under order 39 Rule 1 and 2 of CPC is hereby allowed on condition that the plaintiff shall co-operate with the present matter for the early disposal on day to day basis.

The defendant No.1 to 4 or anybody claiming or acting under them are hereby temporarily restrained from withdrawing the compensation amount in LAC No.23/2010 with respect survey No.116/3 land measuring 12 acre 31 gunta from the principal Senior Civil Judge Court Kalaburagi till disposal of the suit or till further orders whichever is earlier.

Senior Civil Judge & JMFC.,
Afzalpur

[Order pronounced in the open court vide separate sheets]

ORDER

I.A. No.2 filed by the Plaintiff under order 39 Rule 1 and 2 of CPC is hereby allowed on condition that the plaintiff shall co-operate with the present matter for the early disposal on day to day basis.

The defendant No.1 to 4 or anybody claiming or acting under them are hereby temporarily restrained from withdrawing the compensation amount in LAC No.23/2010 with respect survey No.116/3 land measuring 12 acre 31 gunta from the principal Senior Civil Judge Court Kalaburagi till disposal of the suit or till further orders whichever is earlier.

Senior Civil Judge & JMFC.,
Afzalpur
Issues framed.

Considering the nature of
the dispute between the parties
both the parties are directed to
co-operate with the present case
on day to day basis.

For list of witnesses if any
and plaintiff's evidence

By

Senior Civil Judge & JMFC.,
Afzalpur

IN THE COURT OF THE SENIOR CIVIL JUDGE AND J M F C.

AFZALPUR

O.S No. 95/2023

Plaintiff: Malakappa S/o Sharnappa Shira.

-V/s -

Defendants: Shivalingappa S/o Sharanappa

Since dead by his Lrs,

And others.

ISSUES

- 1] Whether the plaintiff proves that the plaintiff and deceased defendant no-1 have jointly purchased the suit properties out of their joint family nucleus and the suit properties are the joint family properties of the plaintiff and defendant no-1 [a] to [c]?
- 2] Whether the plaintiff proves that, he has got half share in the compensation amount awarded to the suit properties totally measuring 5 acre 31 gunta of land?

- 3] Whether the plaintiff is entitled for the reliefs claimed by him?
- 4] What order or decree?

Date: 30-01-2024

Senior Civil Judge & JMFC,

Afzalpur