

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 29th day of November -2024

O.S No.96/2023

Plaintiff : Rama D/o Prahaladrao Kulkarni
W/o Raghavendra Puranik,
and another.

[By Shri R.K/P.R.P Advocates]

-V/s -

Defendants : Govindraj Kulkarni
S/o Prahaladrao Kulkarni
and another.

[By Shri. K.V/M.S.P Advocates]

ORDER ON IA NO-1 FILED UNDER ORDER XXXIX

RULE 1 AND 2 OF CPC.

The plaintiffs have 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 applicants/plaintiffs have contended that, the plaintiffs are the daughters of the Prahaladrao Kulkarni. The defendant No.1 is the brother of the plaintiffs. The defendant No.2 is the wife of the defendant No.1. The suit properties are the ancestral and joint family properties of the plaintiffs and defendants. The plaintiffs have got 1/3rd share each in the suit properties. The defendant No.1 has denied the rights of the plaintiffs in the suit properties. The defendants are trying to alienate the suit properties. On the said material grounds the plaintiffs have prayed for allowing the present application.

3. The defendants have filed their written statement by denying the case of the plaintiffs. The defendants have contended that, the suit of the plaintiffs is bad for non-joinder

of necessary parties. The defendant No.1 is the absolute owner of properties. On the said material grounds the defendants 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 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 ?

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 plaintiffs are claiming that the suit properties are the

ancestral and joint family properties of the plaintiffs and defendant No.1. The plaintiffs at this stage have produced the revenue records standing in the name of their father. Considering the relationship claimed by the plaintiffs and considering the nature of the property claimed by the plaintiffs and considering the materials on record it appears that, the plaintiffs at this stage have produced the materials in support of their case.

8. The defendants at this stage have not produced any materials in support of their case. Hence, considering the materials on record in order to consider the case of the plaintiffs on merits and in order to keep the suit properties as it is till the decision about the rights of the parties an order in favour of the plaintiffs is necessary. Hence I am of the opinion that the plaintiffs have made out a triable case in their favour. The plaintiffs at this stage have produced materials in support of their case. Hence, on considering the materials on record I am of the opinion that, the plaintiffs have made out a

prima-facie case in their favour. Hence I answered point no-1 in the affirmative.

9. The plaintiffs are claiming their rights over the suit properties. The defendants are denying the rights of the plaintiffs. The plaintiffs at this stage have produced materials in support of their case. Hence, considering the case of the parties and materials on record if an injunction as prayed by the plaintiffs 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 plaintiffs it may not affect the rights of the defendants and it will avoid multiplicity of proceedings. If an injunction is refused to the plaintiffs it will lead to multiplicity of proceedings and may affect the rights of the plaintiffs in the suit properties. 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.

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 plaintiffs 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 plaintiffs are hereby directed to co-operate for the early disposal of the present case, failing which the injunction order granted in favour of the plaintiffs will be vacated automatically.

Senior Civil Judge & JMFC.,
Afzalpur.

[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 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 plaintiffs are hereby directed to co-operate for the early disposal of the present case, failing which the injunction order granted in favour of the plaintiffs will be vacated automatically.

Senior Civil Judge & JMFC.,
Afzalpur.

COMMON ORDER ON I.A.NO.7 TO 9 FILED UNDER

SECTION 151 OF CPC.

ORDER 18 RULE 17 OF CPC.

ORDER 7 RULE 14 OF CPC.

The plaintiffs have filed the present applications for re-opining the stage of evidence of the plaintiffs, re-call of PW-1 and for production of documents in support of their case.

2. The applicants/plaintiffs have contended that, the plaintiffs have produced the revenue records of the suit properties. The said documents not filed by the plaintiffs earlier. The said documents are the material documents to decide the dispute between the parties. On the said material grounds the plaintiffs have prayed for allowing the present applications.

3. The defendants have filed their objections by denying the grounds of the applications. The defendants have contended that, the matter is posted for arguments at this

stage the present applications are not maintainable. The plaintiffs in order to fill up the lacuna in their case have filed the present applications. The plaintiffs in order to delay the matter have filed the present applications. The plaintiffs have not made out any grounds for allowing the present applications. The defendants have relied upon a decision of Hon'ble High Court of AP in CRP No.1853/2023 which relied the Hon'ble Apex Court decision in the case of Vadiraj Nagappa vernakar V/s Sharadchandra Prabhakar Gogate. On the said material grounds the defendants have prayed for rejection of the present applications.

4. Heard both the side.

5. On perusal of the records it appears that, the plaintiffs have filed the present suit for the relief of partition and separate possession against the defendants. The defendants have denied the case of the plaintiffs. The plaintiffs have produced the revenue records in support of their case at the stage of arguments. The decision relied upon by the

defendants is not much help full to the defendants in the present case. Considering the nature of the documents produced and nature of the suit in order to give an opportunity to the plaintiffs to put forth their case I am of the opinion that the present applications are required to be allowed on cost and conditions.

Hence, I.A.No.7 to 9 filed by the plaintiffs are hereby allowed on cost of Rs.500/- and subject to co-operation of the plaintiffs for the early disposal of the present matter.

For further chief of PW-1 by:

Senior Civil Judge and JMFC,
Afzalpur.