

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 13<sup>th</sup> Day of February - 2026

O.S No-147/2024.

Plaintiffs : Maheboobsab S/o Meerasab Jamadar,  
and 3 others.

[By Shri S.G.A Advocate]

-V/s -

Defendants : Husensab S/o Meerasab Jamadar.  
and 19 others.

[D-1 By Shri. S.G.H Advocate]

[D-3 to 5, 8 to 10, 13 to 17 By Shri. M.S.N Advocate]

[D-2, 6, 7, 19 and 20 By Shri. K.G.P. Advocate]

[D-11 and 12 Ex-Parte]

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 plaintiffs have contended that, one Shabuddin Jamadar is the common ancestor of the plaintiffs and the defendants. The said Shabudin has got 3 sons by name Sheksab, Meerasab and Dastagirsab. The plaintiffs and the defendants are the legal heirs of the 3 sons of Shabudin. The Shabudin and his 3 sons are no more. The plaintiffs have got  $1/5^{\text{th}}$  share each in the  $1/3^{\text{rd}}$  share of the father of the plaintiffs in suit item No- 'A' to 'J' properties. The suit item No- "K" to "M" properties are purchased and constructed with the joint labour of the plaintiffs and the defendant No-1 to 5. The plaintiffs have got  $1/9^{\text{th}}$  share each in the suit item No-K

to M properties. The defendants are now trying to alienate the suit properties. On the said material grounds the plaintiffs have prayed for allowing the present application.

3. The defendant No-1 has filed his written statement by denying the case of the plaintiffs. The defendant No-1 has contended that, after the death of Shahabuddin the suit properties were divided between his sons. The defendant No-1 has filed suit bearing OS No-49/2023. The suit item No-A to J properties were divided long back. The suit item No-K to M properties are not the joint family properties of the parties. The suit properties are mutated in the name of the parties as per the partition of the year 1968-1969. The legal heirs name was also mutated as per the partition of the year 1988-1989. On the said material grounds the defendant No-1 has prayed for rejection of the present application.

4. The defendant No-2, 6, 7, 19 and 20 have filed their written statement by denying the case of the plaintiffs. They have contended that, in the year 1968-1969 the partition has

taken place in the 3 sons of Sahabudin by name Sheksab, Meerasab and Dastagirsab. In the year 1988-1989 the grand children's have partitioned the properties fallen to their share. On the said material grounds the said defendants have prayed for rejection of the present application.

5. The defendant No-3 to 5 and 8 to 10 and 13 to 17 have filed their written statement by denying the case of the plaintiffs. They have contended that, already partition has taken place between the parties and the parties are enjoying their respective shares. The plaintiffs and defendant No-1, 11 and 12 are in possession and enjoyment of the 33 acre 7 gunta of land which was fallen to their share. The partition has taken place during the life time of the fathers of the parties. The father of the plaintiffs i.e., Meerasab has received 33 acre 7 gunta of land for his share. The Shaiksab has received 33 acre 22 gunta of land for his share. The Dastagirsab has received 36 acre 28 gunta of land for his share. The said Meerasab, Shaiksab and Dastagirsab are the father of the parties to the suit. On the said material grounds

the said defendants have prayed for rejection of the present application.

6. 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 plaintiffs have made out a prima-facie case in their favour?
- 2] Whether the balance of convenience leans in favour of the plaintiffs ?
- 3] Whether the plaintiffs suffer 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, I take up these points for consideration together to avoid repetition.

9. On perusal of the materials on record it appears that, there is no any dispute between the parties about the inheritance of the properties by the 3 sons of the Sahabudin

by name Sheksab, Meerasab and Dastagirsab. The defendants have come up with a case of partition of the year 1968 between the 3 sons of Shahabudin. The defendants have also come up with the case of prior partition in the year 1988 between the legal heirs of the Sheksab, Meerasab and Dastagirsab. The defendants at this stage have not produced any clear materials in support of their case. The plaintiffs have produced the revenue records standing in the name of the parties to the suit. Considering the case of the plaintiff and considering the defence of the defendants it appears that, the plaintiffs have made out a case for trial.

10. On perusal of the materials on record and considering the case of the parties and relationship of the parties at this stage it appears that, the plaintiffs have produced the materials in support of their case. The case of the defendants can be considered only in the trial. 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. Hence, on considering the materials on record I am of the

opinion that, the plaintiffs have made out a case for trial. Hence, 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.

11. The plaintiffs are claiming their rights over the suit properties. The plaintiffs have produced the records in support of their case. The defendants at this stage have not produced any materials to disbelieve the case of the plaintiffs. 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.

12. 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. The alienation of the suit properties by the defendants will affect the rights of the plaintiffs. 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.

13. 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.

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