

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 10th day of September -2024

O.S No.109/2023

Plaintiff: Appaji S/o Chidanand Hiremath.

[By Shri K.G.P, Advocate]

-V/s -

Defendants : Chidanand S/o Murugayya Hiremath
and 13 others.

[D-5 to 8 by Shri. A.T.D, Advocate]

[D-14 by shri. M.K.P, Advocate]

ORDER ON IA NO-1 FILED UNDER ORDER XXXIX

RULE 1 AND 2 READ WITH SECTION 151 OF CPC.

The plaintiff has filed the present application praying for a temporary injunction order restraining the defendant No.5 to 8 and 14 from alienating the suit property pending disposal of the suit.

2. The applicant/plaintiff has contended that, the defendant No.1 is the father of the plaintiff. The defendant No.5 to 8 and deceased Shivanand and Sadanand are the sisters and brothers of the defendant No.1. The defendant No.9 to 13 are the wife and children of deceased Sadanand. The deceased Shivanand has died without any issues. The defendant No.14 is the purchaser of the suit property.

3. It is further case of the plaintiff that, the suit property bearing survey No.98/2, 4, 5 and 6 totally measuring 8 acre 12 gunta of land is the ancestral and joint family property of the plaintiff and defendant No.1 to 13. The defendant No.5 to 8 have illegally sold the suit property to the defendant No.14 in the year-2023. The suit property was the property of the grandfather of the plaintiff by name Murugayya. The plaintiff has got share in the suit property. The defendant

No.5 to 8 and 14 may likely to sell the suit property. If the suit property is sold out then the plaintiff will be put to very hardship. On the said material grounds the plaintiff has prayed for allowing the present application.

4. The defendant No.5 to 8 and defendant No.14 have filed a memo adopting their written statement as objections to the present application.

5. The defendant No.5 to 8 have contended that, the father of the plaintiff i.e., the defendant No.1 was allotted survey number 54 and 55 lands in a earlier partition. The suit property was allotted to the share of the defendant No.5 to 8. The plaintiff has got no any share in the suit property. Around 33 acre of land was allotted to the share of the defendant No.1. Around 13 acre of land was allotted to the share of Sadanand i.e., another brother of the defendant No.5 to 8.

6. The defendant No.5 to 8 further contended that, the defendant No.1 has earlier filed a suit bearing

O.S.No.126/2018 and the same was not prosecuted by him and the said suit was dismissed on 01-10-2021. The defendant No.5 to 8 have acquired the suit property under registered will deed from their mother. On the said material grounds the defendant No.5 to 8 have prayed for rejection of the present application.

7. The defendant No.14 has contended that, the defendant No.5 to 8 were the absolute owner of the suit property. They have sold the suit property to the defendant No.14 for their family necessities. The defendant No.14 is a bonafide purchaser of the suit property. On the said material grounds the defendant No.14 has prayed for rejection of the present application.

8. 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 ?

9. 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

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

11. On perusal of the materials on record it appears that, the plaintiff is claiming that, the suit property is the ancestral and joint family property. The defendant No.5 to 8 and 14 have contended that, the defendant No.5 to 8 are the absolute owners of the suit property.

12. The plaintiff has produced the RTC of survey number 98/2, 98/4, 98/5/, 98/6 all are measuring around 2 acre of land standing in the name of the defendant No.5 to 8 reporting partition on 31-01-2017. The name of the defendant No.5 to 8 appears to be appearing to the suit land from the year 2017 as per partition. The suit land was appears to be standing in the name of grandfather of the plaintiff by name

Muragayya S/o Shivalingayya in the year 1963. The name of the mother of the defendant No.5 to 8 is appearing to the suit land in the year 1998. The sale deeds produced by the plaintiff and defendant No.14 shows that, on 03-10-2023 the defendant No.5 to 8 have sold the suit land under a separate sale deeds executed by the defendant No.5 to 8 in favour of the defendant No.14. The present suit is filed on 07-11-2023.

13. The defendant No.14 has also produced a copy of registered will deed dated 08-09-2016 executed by the mother of the defendant No.5 to 8 in favour of the defendant No.5 to 8. The defendant No.14 has also produced the certified copies of order sheet, plaint and written statement filed in O.S.No.126/2018. On perusal of the said documents it appears that, the suit filed by the defendant No.1 claiming partition against the defendant No.5 to 8 and their mother appears to be dismissed for non-prosecution in the year 2021.

14. The plaintiff has contended that, the suit property is the ancestral and joint family undivided property of the plaintiff and defendant No.1 to 13. The defendant No.5 to 8 and 14

have contended that, the suit property was fallen to the share of the defendant No.5 to 8 and they have sold the same in favour of the defendant No.14.

15. On perusal of the materials on record it appears that, the relationship between the parties is not in dispute. The plaintiff is the son of both of the defendant No.5 to 8. The plaintiff claims that, the suit property is the ancestral and joint family property. The defendant No.5 to 8 and 14 have claimed the earlier partition. The plaintiff has produced the revenue records of the suit property which are standing in the name of the defendant No.5 to 8. At the stage, the defendant No.5 to 8 and 14 have not produced any clear documents showing the partition between the parties. The parties are required to be given an opportunity to prove their case. Hence, considering the materials on record it appears that, the plaintiff has made out a triable case in his favour. 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.

16. The plaintiff has contended that, the suit property is the ancestral and joint family property. The defendant No.5 to 8 have come up with a case prior partition and absolute ownership. 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 defendant No.5 to 8 and 14.

17. From the available materials if an injunction is granted as claimed by the plaintiff it may not affect the rights of the defendant No.5 to 8 and 14 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 property. 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.

18. 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 it appears that, the

defendant No.5 to 8 have already sold the suit property to the defendant No.14. Hence, restraining the defendant No.5 to 8 from alienating the suit property is not necessary. The defendant No.14 has already purchased the suit property. Hence, restraining of the the defendant No.14 from further alienating the suit property is necessary in the present case. Hence, 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.14 is hereby restrained by way of temporary injunction from alienating the suit property till further orders or till disposal of the present suit whichever is earlier.

The plaintiff is hereby directed to cooperate 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

[Order pronounced in the open court vide separate sheets]

ORDER

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

The defendant No.14 is hereby restrained by way of temporary injunction from alienating the suit property till further orders or till disposal of the present suit whichever is earlier.

The plaintiff is hereby directed to cooperate 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.