

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 2nd Day of April -2025

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-4 FILED UNDER ORDER XXXIX

RULE 4 READ WITH SECTION 151 OF CPC.

The defendant No-14 has filed the present application praying for vacating the temporary injunction order granted in favour of the plaintiff.

2. The applicant/defendant No-14 has contended that, the plaintiff has filed a suit for the relief of partition and separate possession against the defendants. The plaintiff has got an order of temporary injunction against the defendant No-14 from alienating the suit property. The plaintiff has misled the court by producing the documents and he has not produced the relevant documents.

3. The defendant No-14 further contended that, the defendant No-14 after due enquiry has purchased the suit land. The mother of the defendant No-5 to 8 i.e., Channabasamma has executed a will deed in favour of the defendant No-5 to 8. The defendant No-5 to 8 have become owners of the land under a will deed. The defendant No-5 to 8 have sold their land to the defendant No-14. The plaintiff in order to harass the defendant No-14 has filed the present suit

against the defendant No-14. On the said material grounds the defendant No-14 has prayed for allowing the present application.

4. The advocate for the plaintiffs orally objected the present application by submitting that, he will adopt the plaint averments and earlier application averments filed by the plaintiff as objections to the present application.

5. The 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.

6. 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.

7. 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/defendant no-14 has made out grounds for vacating the temporary injunction order granted in favour of the plaintiff ?
- 2] 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 negative.

Point No-2: As per the final order for

the following

REASONS

9. Point No-1 : 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.

10. The plaintiff has produced the RTC of survey number 98/2, 98/4, 98/5/, 98/6 all are measuring around 2 acre each 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.

11. 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.

12. 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.

13. 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 this stage, the defendant 14 has not produced any clear documents showing the partition between the parties. The parties are required to be

given an opportunity to prove their case. On considering the materials on record this court has passed order on I.A.No-1 by restraining the defendant no-14 from alienating the suit property. On considering the materials on record it appears that, this court after considering the case of the defendant no-14 has granted an order in favour of the plaintiff earlier. The defendant no-14 has not made out grounds for vacating the order granted in favour of the plaintiff. Hence, I answered point No-1 in the negative.

14. Point No-2 : In view of my findings on the above point No- 1 and also considering the materials on record I proceed to pass the following:

ORDER

I.A. No-4 filed by the defendant no-14
under order 39 Rule 4 of CPC is hereby rejected.

Senior Civil Judge & JMFC.,
Afzalpur

[Order pronounced in the open court vide separate sheets]

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under order 39 Rule 4 of CPC is hereby rejected.

Senior Civil Judge & JMFC.,
Afzalpur.