

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 13th Day of March - 2026

O.S No-149/2025.

Plaintiffs : Nirav S/o Prakash Banasode
& another.
Since minors through their next
friend/mother.

[By Shri S.J.G. Advocate]

-V/s -

Defendants : Gurubai W/o Late Tukaram Banasode
and 2 others.

[By Shri N.R. Advocate]

ORDER ON IA NO-2 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 defendant No-2 and 3 from alienating the suit properties pending disposal of the suit.

2. The plaintiffs have contended that, the plaintiffs are the children of the defendant No-3. The defendant No-1 is the mother of the defendant No-3. The defendant No-2 is the brother of the defendant No-3. The plaintiffs and the defendants are the Hindu joint family members. The suit properties are the ancestral and joint family properties of the plaintiffs and the defendants. The plaintiffs along with their mother are now residing separately from the defendant No-3. The defendants by colluding each other are trying to alienate the suit properties. The plaintiffs have got share in the suit

properties. On the said material grounds the plaintiffs have prayed for allowing the present application.

3. The defendant No-1 to 3 have filed their written statement by denying the case of the plaintiffs. They have contended that, the plaintiffs have not included all the family properties in the present suit. The plaintiffs have not included all the family members in the present suit. The suit of the plaintiffs is not maintainable for non inclusion of all the properties and non joinder of all the necessary parties. On 26-03-2016 the partition has already taken place between the defendant No-1 to 3. The defendant No-1 and 2 are not the necessary parties in the present suit. The plaintiffs can claim share in the properties of the defendant No-3 only. On the said material grounds the defendant No-1 to 3 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 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 ?
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 defendants have not denied the relationship of the plaintiffs with them. The plaintiffs have produced the revenue records standing in the name of the defendant No-2 and 3 for the suit properties. The defendants at this stage have not produced any materials to show the partition between the parties.

8. On considering the case of the parties and relationship of the parties and materials on record it appears that, the

plaintiffs have made out a case for trial. The case of the defendants can be considered only in the 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.

9. The plaintiffs are claiming their rights over the suit properties. 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 defendant No-2 and 3.

10. From the available materials if an injunction is granted as claimed by the plaintiffs it may not affect the rights of the defendant No-2 and 3 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 defendant No-2 and 3 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.

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-2 filed by the plaintiffs under order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendant No-2 and 3 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.