

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 01st day of July - 2025

O.S No-86/2022

Plaintiff : Shivanand S/o Hanamant Phulari

[By Shri S.S.P. Advocate]

-V/s -

Defendants : Siddaram S/o Hanamant Phulari
and 2 others.

[By Sri S.J.G Advocate]

ORDER ON IA NO-1 FILED UNDER ORDER XXXIX

RULE 1 AND 2 OF CPC.

The plaintiff has filed the present application praying for a temporary injunction order restraining the defendant No-1 from alienating the suit properties pending disposal of the suit.

2. The applicant/plaintiff has contended that, the defendant No-1 and 2 are the brothers of the plaintiff. The defendant No-3 is the mother of the plaintiff. The plaintiff and defendants are the Hindu joint family members. The suit properties are the ancestral and joint family properties of the plaintiff and the defendants. The plaintiff has got share in the suit properties. The father of the plaintiff has died on 15-10-2022. The defendant No-1 has illegally got a gift deed in his favour on 29-09-2022. The said gift deed is null and void and not binding on the plaintiff. The defendant No-1 is now trying to alienate the suit properties. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendants have filed their written statement by denying the case of the plaintiff. The defendants have contended that, the plaintiff after his marriage has went away from the family for doing job in Mumbai and Pune. The plaintiff has not looked after his father and mother. The defendant No-1 has looked after the father and mother the defendant No-1 and provided the medical treatment to the father and mother and incurred 10 to 12 lakh rupees amount. The father of the defendant No-1 has by looking to the situation and circumstances of the defendant No-1, has executed a gift deed in favour of the defendant No-1 on 29-09-2022. The plaintiff has no right in the suit 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 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 ?

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 plaintiff and defendants are the mother and sons. The plaintiff has produced the documents in the form of RTC showing that, the suit properties were standing in the name of grandfather of the plaintiff by name Chandrasha S/o Ramanna. The plaintiff has also produced the RTC standing in the name of father of the plaintiff i.e., Hanamant S/o Chandrasha. The plaintiff has also produced the copy of gift deed executed by the father of the plaintiff in favour of defendant No-1 with respect to the entire suit properties. The plaintiff has produced the materials in support of his case at

this stage. The defendants have not produced any materials in support of their case. Hence, considering the materials on record 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.

8. The plaintiff is claiming his rights over the suit properties. The defendants are denying the rights of the plaintiff over the suit properties. 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 defendants.

9. From the available materials if an injunction is granted as claimed by the plaintiff it may not affect the rights of the defendants 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 properties. The alienation of the suit properties by the defendant No-1 will affect the rights of the plaintiff. 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.

10. 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 plaintiff under order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendant No-1 is hereby restrained by way of temporary injunction order from alienating the suit property till further orders or till disposal of the present suit whichever is earlier.

The plaintiff is hereby directed to co-operate 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.

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-V/s -

Defendants : Siddaram S/o Hanamant Phulari
and 2 others.

ISSUES

- 1] Whether the plaintiff proves that, the plaintiff and the defendants are the Hindu joint family members ?
- 2] Whether the plaintiff proves that, the suit properties are the ancestral and joint family properties of the plaintiff and the defendants ?
- 3] Whether the plaintiff proves that, the gift deed dated 29-09-2022 executed by the father of the plaintiff in

favour of the defendant No-1 is not binding upon the plaintiff ?

- 4] Whether the plaintiff is entitled for the share in the suit properties ? If so to what extent ?
- 5] Whether the plaintiff is entitled for the reliefs claimed by him ?
- 6] What order or decree ?

Date: 01-07-2025

Senior Civil Judge & JMFC,
Afzalpur