

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 4th day of December-2024

O.S No.126/2023

Plaintiff: Tahera Begaum W/o Nawabsab

[By Shri R.D.S, Advocate]

-V/s -

Defendants : Mahiboob Bee W/o Late Shaikh Hyder
and 11 others.

[D-2 to 11 By Shri.S.K.P, 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 defendants from alienating the suit properties pending disposal of the suit.

2. The applicant/plaintiff has contended that, the plaintiff and defendant No.1 to 11 are the legal heirs of Madarsab. The Madarsab is the father of the plaintiff. The suit properties are belonging to the father of the plaintiff. The father of the plaintiff has died on 27-05-2020. The mother of the plaintiff by name Saheb Bee was died in the year-2013-14. The defendants illegally mutated their names to the suit properties. On 10-08-2023 the defendant No.7 illegally sold one suit property to the defendant No.12. The defendants have denied the rights of the plaintiff in the suit properties. The defendants are trying to alienate the suit properties. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendant No.2 to 11 have filed their written statement by denying the case of the plaintiff. The defendant No.2 to 11 have contended that, the plaintiff has not shown the proper identification of the suit properties. The Madarsab during his life time has effected oral partition between his sons. The plaintiff and defendant No.1 being the daughters of Madarsab were married about 40 years back and residing in their husband's house. The Madarsab being the owner of the suit properties has given the suit properties by effecting an oral partition to his sons by name Rehamansab, Lal Ahamad, Mohinoddin and Fakirsab in the year-1988. On the said material grounds the defendant No.2 to 11 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 her 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, there is no any dispute between the parties about the relationship of the parties and nature of the suit properties. The parties have admitted that, the suit properties are belonging to the Madarsab. The parties have admitted that, the plaintiff is the daughter of the Madarsab and defendant No.1 to 12 are also the legal heirs of the Madarsab. The defendant No.2 to 11 have come up with a case of acquisition of suit properties by them under an oral partition in the year-1983. The plaintiff has produced the documents in the form

of revenue records showing that, the suit properties were earlier standing in the name of Madarsab and now in the name of defendants. Hence considering the materials on record at this stage I am of the opinion that, plaintiff has made out a case for trial. Hence, I am of the opinion that, the plaintiff has made out a prima-facie case in her favour. Hence, I answered point No.1 in the affirmative.

8. The plaintiff is claiming her rights over the suit properties. The defendants are denying the rights of the plaintiff on the basis of an oral partition. 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 defendants will affect the rights of the plaintiff. Hence I am of the opinion that the plaintiff has made out a case in her 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 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 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 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 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.