

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 September - 2025

O.S No-153/2024.

Plaintiff : Shivaputra S/o Vithoba Sultanapur.

[By Shri M.S.P. Advocate]

-V/s -

Defendants : Laxmibai W/o Vithoba Sultanapur,
and 11 others.

[D-1, 5, 9 (a) By Shri S.G.H. Advocate]

[D-2 and 12 By Shri S.S.P. Advocate]

[D-3, 4, 6, 7, 8 11(a) to (c) Ex-parte]

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-12 from alienating or creating charge of the suit item No-3 property pending disposal of the suit.

2. The applicant/plaintiff has contended that, the defendant No-1 is the mother of the plaintiff. The defendant No-2 to 6 are the brother and sisters of the plaintiff. The Vithoba is the father of the plaintiff. The grandfather of the plaintiff by name Yashwant has got 3 sons by name Sham, Bhimsha and Vithoba. The defendant No-7 to 11 are the legal heirs of the Sham. The plaintiff and defendant No-1 to 6 are the legal heirs of the Vithoba. The Bhimsha and his wife Yamanawwa have died without any issues.

3. It is further case of the plaintiff that, the survey number 97 land was totally measuring 14 acre 38 gunta. The survey

number 97 land was orally partitioned between the 2 sons by name Sham and Vithoba to an extent of 5 acres each. The 4 acre 38 gunta of remaining land was kept in the name of 3rd son of the Yashwant i.e., Bhimsha. The suit item No-3 property bearing survey number 97/1 measuring 4 acre 38 gunta of land is standing in the name of the Bhimsha. After death of the Vithoba his 5 acre of land was got divided between the plaintiff and defendant No-2 to 6 being the legal heirs of the Vithoba. The other 5 acre of land is got divided between the legal heirs of the Sham i.e., the defendant No-7 to 11. The defendant No-12 without any right has got mutated his name to the suit item No-3 property. The defendant No-12 is now trying to alienate the suit item No-3 property. The sale deed executed by the Yamanawwa W/o Bhimsha in favour of the defendant No-12 on 16-09-1980 is not binding on the plaintiff. On the said material grounds the plaintiff has prayed for allowing the present application.

4. The defendant No-12 has only filed his written statement by denying the case of the plaintiff. The defendant

No-12 has contended that, the suit item No-3 property was allotted to the Bhimsha. After death of the Bhimsha the said property was mutated in the name of his wife Yamanawwa. The Yamanawwa has sold the suit item No-3 property to the defendant No-12 by way of a registered sale deed dated 16-09-1980. The father of the plaintiff is also a witness to the said sale deed. The defendant No-12 has purchased the suit item No-3 property in the year 1980 and he is in possession of the said property from the date of purchase. The suit of the plaintiff is barred by law of limitation. The suit of the plaintiff is not maintainable in view of admitting the oral partition between the sons of the Yashwant. On the said material grounds the defendant No-12 has prayed for rejection of the present application.

5. 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 ?

6. 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: In the negative.

Point No-3: In the negative.

Point No-4: As per the final order for
the following

REASONS

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

8. On perusal of the materials on record it appears that, the defendant No-12 in support of his case has produced the copy of RTC, mutation extract and sale deed documents. From the said documents it appears that, in the year 1981 the suit item No-3 property was standing in the name of Yamanawwa W/o Bhimsha and the same was mutated in the name of the defendant No-12. It further appears that, the defendant No-12 has purchased the suit item No-3 property through a registered sale deed dated 16-09-1980. The name of the defendant No-12 was mutated in the RTC of the year 1981 as

per the sale deed. It further appears that, the father of the plaintiff was also a witness to the said document.

9. The documents produced by the plaintiff from the year 1983 also shows that, the name of the defendant No-12 is appearing to the suit item No-3 property from the year 1983. Hence, considering the materials on record it appears that, the plaintiff has not produced any materials in support of his case. The plaintiff in his plaint has admitted that, the oral partition was taken place between the 3 sons of the Yashwant and 5 acre of land each fallen to the share of Sham and Vithoba. The plaintiff has also admitted that, the suit item No-3 property was standing in the name of the Bhimsha. The plaintiff has also contended that, the sale deed executed by the Yamanawwa W/o Bhimsha on 16-09-1980 is null and void and not binding on the plaintiff. Hence on considering the materials on record it appears that, the plaintiff has not produced any materials in support of his case. The defendant No-12 at this stage has produced the materials in support of his case. Hence, considering the materials on record I am of

the opinion that, the plaintiff has not made out a prima-facie case in his favour. Hence, I answered point No-1 in the negative.

10. The plaintiff is claiming his rights over the suit property. The plaintiff has not produced the records in support of his case. The defendant at this stage has produced the materials in support of his case. The plaintiff is claiming his rights against the revenue records of the year 1981 to till date and against the registered sale deed of the year 1980. Hence, considering the case of the parties and materials on record if an injunction as prayed by the plaintiff is granted then harm will be going to cause to the defendant No-12.

11. From the available materials if an injunction is granted as claimed by the plaintiff it may affect the rights of the defendant No-12 and it will lead to multiplicity of proceedings. If an injunction is refused to the plaintiff it will not affect the rights of the plaintiff in the suit properties. The plaintiff on proving his case finally entitled for the reliefs claimed by him.

Hence I am of the opinion that the plaintiff has not 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 negative.

12. 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 rejected.

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 rejected.

Senior Civil Judge & JMFC.,
Afzalpur.