

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 01<sup>st</sup> day of July - 2025

O.S No-156/2024.

Plaintiff : Basamma W/o Basavaraj Padashetty.

[By Shri S.S.P. Advocate]

-V/s -

Defendants : Mallamma  
W/o Mallinath @ Mallikarjun Biradar,  
and 4 others.

[By Sri S.G.H 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 defendant No-1 to 5 are the wife and children of the brother of the plaintiff. The suit properties are the ancestral and joint family properties of the plaintiff and defendants. The brother of the plaintiff i.e., Mallinath without any right has executed a gift deed in favour of the defendant No-1 to 3 with respect to the suit properties. The plaintiff has got half share in the suit properties. The gift deeds executed by the brother of the plaintiff are not binding on the plaintiff. The defendants are 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 partition has taken place between the defendant No-1 and 3 to 5 in the year 2017. The plaintiff has taken her share before 2015 and executed a no objection document on 25-08-2015. The plaintiff has not challenged the gift deeds executed in the year 2017-2018. The plaintiff has taken her share in survey number 28/1 measuring 4 acre of land and sold the said land to one Jaganath through her brother for 12 lacks. The plaintiff has not included the said Jaganath as party in the present suit. The suit of the plaintiff is barred by law of limitation and bad for non joinder of necessary party. 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 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, the plaintiff is the sister of the deceased Mallinath and the defendants are the wife and children of the deceased Mallianath. The plaintiff has produced the materials in the form of revenue record in support of her case. The defendants have not produced any documents 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 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 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 defendants 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 defendants are hereby restrained by way of temporary injunction order from alienating the suit properties 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.

The defendants are hereby restrained by way of temporary injunction order from alienating the suit properties 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.