

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 3rd day of October 2023

O.S No. 59/2023

Plaintiff: Mahesh S/o Sangameshwar Patil

[By Shri A.J.D., Advocate]

-V/s -

Defendants: Ramesh S/o Sangameshwar Patil
and 2 others

[D-1 and 2 by Shri S.K.P., Advocate]

[D-3 ex-parte]

* * * * *

ORDER ON IA NO.1 FILED UNDER ORDER XXXIX

RULE 1 AND 2 OF CPC.

Present application is filed by the plaintiff praying for a temporary injunction order restraining the defendant no-1 from alienating the suit schedule property bearing survey number 45/1 land pending disposal of the suit.

2. The applicant/plaintiff has contended that the plaintiff and defendant No.1 are the brothers. The defendant No.2 is the wife of defendant No.1. The defendant No.3 is the wife of the plaintiff. The plaintiff and defendant No.1 are the Hindu joint family members. No partition has taken place between the plaintiff and defendant No.1. The suit properties are the joint family properties of the plaintiff and defendant No.1. The defendant No.1 has sold some portions of the suit survey number properties. The plaintiff has got a half share in the joint family properties.

3. It is further case of the plaintiff that in another joint family property bearing survey number 24 totally measuring 11 acre 10 gunta of land an area of 5 acre was sold for family necessities and remaining 6 acre 10 gunta of land was given to the share of sister of the plaintiff by name Laxmi. The

plaintiff has got half share in the land bearing Sy No.45 totally measuring 27 acre 35 gunta and half share in the land bearing Sy No.25 totally measuring 8 acre 30 gunta. The plaintiff is in possession of 8 acre 20 gunta in the land bearing Sy No.45 and 5 acre 39 gunta in the land bearing Sy No.25. The plaintiff has requested the defendant No.1 for allotting his remaining 4 acre of land in Sy No.45. The defendant No.1 has executed consent letter in favour of the plaintiff on 26-10-2014 for giving an area of 1 acre 32 gunta of land in Sy No.45/3. The plaintiff has got a right in 4 acre of land in Sy No.45/1 measuring 5 acre of land. The defendant No.1 is now trying to alienate the said land. On the said material grounds the plaintiff has prayed for allowing the present application.

4. The defendant No.1 has filed his objections to the present application. He has contended that the description of the suit properties is not proper. The plaintiff has not included the house properties. The plaintiff has not included the sister of the plaintiff by name Laxmi in the present suit. During the lifetime of the father of the plaintiff the partition

has taken place. The plaintiff has sold some portion of land fallen to his share. On the said material grounds the defendant No.1 has prayed for rejection of the present application.

5. Considering the case of both the side and on perusal of the records following points arise for my consideration for proper adjudication of the present application:

1. Whether the applicant/plaintiff has made out a prima-facie case in his favor?
2. Whether the balance of convenience leans in favour of the applicant/plaintiff?
3. Whether the applicant/plaintiff suffers 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 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

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.1 has come up with a case of prior partition. The defendant No.1 has not denied the relationship of the parties. The nature of the suit properties also appears to be not in dispute between the parties. Mere sale of some portion

of property and mere entry in the RTC are not enough to believe the case of the defendant No.1 at this stage. In order to decide the dispute between the parties the trial is necessary. The plaintiff has made out a case for trial. The defence of the defendant No.1 is required to be considered in the trial. The plaintiff has filed the present suit claiming his share in the suit property bearing Sy No.45/1. Hence on considering the allegations of the plaintiff in order to avoid multiplicity of proceedings the present application is required to be allowed. Hence 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.

9. In view of my answer to the point no-1 I am of the opinion that the plaintiff has made out the point of balance of convenience and irreparable loss in his favour. The claim of the plaintiff is required to be tried. The plaintiff has made out a triable case. The trial will take some time. During the trial if the suit property bearing Sy No.45/1 land is alienated by the defendant No.1 then it leads to multiplicity of proceedings. During the pendency of the present suit if the defendant No.1

has alienates the said property then the plaintiff will suffer much loss. 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. If an injunction is refused to the plaintiff at this stage the plaintiff will suffer more than the defendant No.1. On the other hand I do not find any loss is going to cause to the defendant no-1 by granting of an injunction. 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 and considering the case of both the parties 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 on condition that the plaintiff shall cooperate with the present matter for the early disposal.

The defendant No.1 or anybody claiming or acting under him are hereby temporarily restrained from alienating the suit property bearing Sy No.45/1 land measuring 5 acre till disposal of the suit or till further orders whichever is earlier.

Senior Civil Judge & JMFC.,
Afzalpur

OS No.59/2023

[Order pronounced in the open court vide separate sheet]

ORDER

I.A. No.1 filed by the Plaintiff under order 39 Rule 1 and 2 of CPC is hereby allowed on condition that the plaintiff shall cooperate with the present matter for the early disposal.

The defendant No.1 or anybody claiming or acting under him are hereby temporarily restrained from alienating the suit property bearing Sy No.45/1 land measuring 5 acre till disposal of the suit or till further orders whichever is earlier.

Senior Civil Judge & JMFC.,
Afzalpur

Issues framed.

For list of witnesses if any
and plaintiff's evidence

By 09-10-2023.

Senior Civil Judge & JMFC.,
Afzalpur