

IN THE COURT OF THE CIVIL JUDGE & JMFC
AT AFZALPUR

Present :-

Sri. Ashoka .T

B.A., LL.B.,

Civil Judge & J.M.F.C., Afzalpur

O.S.No.108/2018

Date: On this the 21st day of December 2019

Plaintiffs:

Smt. Chandrabhaga W/o
Veerabhadrapa Kalashetty (Telli)
and others

V/S.

Defendants:

Shankrappa S/o Ningappa Hallimani,
and another

I.A.No. I

Smt. Chandrabhaga W/o
Veerabhadrapa Kalashetty (Telli)
Age:80 years, Occ: Household
R/o Mannur village, Tq:Afzalpur,
Dist:Kalaburagi and others

.... Applicant/Plaintiff No.1

(By Sri. S.N.P., Advocate)

V/S

Shankrappa S/o Ningappa Hallimani,
Age:70 years, Occ:Agriculture,

R/o Shivabala Nagar, Mannur village,
Tq:Afzalpur, Dist: Kalaburgi and another

...Opponent/ Defendants

(By Sri. S.S.Patil, Advocate)

ORDER ON IA No. I FILED U/O-XXXIX
RULE-1 & 2 R/w 151 OF C.P.C.,

1. Plaintiff N No.1 filed I.A.No.1 under Order 39 Rule 1 and 2 R/w 151 of C.P.C. to restrain the defendants from alienating the transfer, mutate, sell or damage suit land bearing No.562/೨. The said I.A.No.I is supported by affidavit of plaintiff No.1.
2. It is case of the deponent is the plaintiff No.1 in the above case. The plaintiffs are under apprehension that the defendants may supposed to alienate, sale, transfer or damage the suit land bearing No.562/೨. Measuring 02-acres 15-guntas situated at Mannur village, Tq:Afzalpur, Dist:Kalaburgi. Hence it would be expedient to pass the ex-parte T.I. against the defendants. If the ex-parte T.I. is granted infavour of the plaintiffs then no prejudice would cause to other side. The plaintiffs are having prima facie case, if

the T.I. is not granted in favour of them then heavy irreparable loss or injury would be caused the plaintiffs.

3. It is further averred that the contents narrated in the plaint are to be considered as also part of this affidavit. Hence it is prayed that the Hon'ble Court may kindly be ordered to Ex-parte T.I restraining the defendants from the act of mutation, alienating or sale or causing any injury to the plaintiffs in respect of suit property, till the disposal of this case. These among other ground plaintiff prays for dismissal of I.A.No.I.
4. Heard learned counsel for the plaintiffs as well as learned counsel for the defendants. Perused materials placed on record.
5. Upon hearing arguments and on perusal of material placed on record, the following points arise for my consideration.
 1. Whether plaintiffs prove that they have got prima facie case?

2. Whether plaintiffs prove that balance of convenience tilts in their favour?
 3. Whether plaintiffs prove that irreparable loss and hardship will be caused to them, if the injunction is not granted?
 4. What order or decree?
7. After hearing on application and consider the materials placed before me, I answered points No.1 to 3 as follows...
- Point No.1:-In the Negative
Point No.2:-In the Negative
Point No.3:-In the Negative
Point No.4:- As per final order for the following

REASONS

8. **Point No.1:** Now important question arises that, what is scope and ambit of granting temporary injunction U/O XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908. The order of granting temporary injunction is interlocutory nature, which is to be considered as an aid to main relief.

9. It is clear from both sides that the Kashimsab, who is father of plaintiffs No.1 to 4 and defendants No.5 to 8 is alive on the date of presentation of suit. The parties to the suit are governed by Sunni Mahomedan. The moot question before this court is whether the plaintiffs No.1 to 4 are having birth right during the lifetime of their father. In this regard Section 52 of Mahomedan Law is necessary to mention with illustration which reads as under...

52. Birth-right not recognised the right of an heir-apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor.

A, who has a son B makes a gift of his property to C.B, alleging that the gift was procured by undue influence, sues C in A' lifetime on the strength of his right to succeed to A's property on A's death. The suit must be dismissed for B has no cause of action against C.B. has no cause of action, for he is not entitled to any interest in A's property during A's

lifetime. But the gift would be liable to be set aside if the suit was brought after A's death, provided it was brought within the period of limitation.

- 10.** Looking to the present facts of the case, it is admitted fact that the father of the plaintiffs No.1 to 4 is alive on the date of suit. In this regard the very defendant No.1 and 3 who are none-other than sister and brother of Kashimsab are filed their affidavit about aliveness of father of plaintiffs No.1 to 4.
- 11.** It is settled principle that the plaintiffs No.1 to 5 and defendants No.5 to 8 are not having any right, tittle interest over Mathurka property unless their ancestor dies. Therefore plaintiffs have not made out prima-facie, balance of convenience in their favour. Once they failed to establish their case then the question of hardship does not arise. Therefore, I answer Point No.1 to 3 in the **'Negative'**.

12. Point No.4: For the foregoing reasons, I proceed to pass the following:.

ORDER

**Interim Application No.I filed under
Order XXXIX Rule 1 and 2 R/w 151 of CPC
by plaintiffs is dismissed.**

No order as to costs.

(Dictated to the stenographer, transcribed by him, corrected by me, then pronounced in the open court on this the 21st day of December 2019)

Sd/-
Civil Judge & JMFC, Afzalpur