



**IN THE COURT OF CIVIL JUDGE & JMFC., AT:
AFZALPUR.**

PRESENT

Sri. ANIL AMATE, B.A. LLB(Hon's) ,
Civil Judge & JMFC.,
AFZALPUR.

Dated this the 22nd day of October -2024

O. S. No.96/2023

Plaintiffs: Smt.Mallamma W/o Annaraya Pradhani
and another

(By Sri. S.S.Patil Advocate)

V/s

Defendants: Smt. Laxmibai W/o Ramashetty Jiddagi
and others.

***(D-1 to 5 By Sri.S.K.P Advocate
D-6 By Sri. S.G.A. Advocate.)***

PARTIES IN I.A.NO.I

Applicants: Smt.Mallamma W/o Annaraya Pradhani and
another.

V/s

Opponents: Smt. Laxmibai W/o Ramashetty Jiddagi
and others.



:ORDER ON I.A.NO.I:

The plaintiffs have filed suit for partition and separate possession against the defendants and filed the above said application seeking to grant ad-interim temporary injunction order in favour of them and as against the defendant No.2 by restraining them from alienating, mortgaging or creating any kind of charge over suit property bearing Sy.No.378/1 measuring 03 acres-38 guntas situated at Karajagi village Afzalpur taluka.

2. In support of above said application the plaintiff No.1 filed affidavit stated that, the plaintiffs are the sisters of the defendants No.2 to 6 and daughter of the defendant No.1, the suit property is the ancestral and joint family property and he has 1/7th their legitimate share in the suit property. The suit property was standing in the name of the plaintiffs father by name Ramashetty, after the demise of the father, the all family members have orally partitioned the entire suit land and in the said oral partition 04 acre extent is kept for their and defendants jointly, but same is mutated in the name



of defendant No.2 with a hope that the said extent will be partitioned amongst all the sisters after demise of defendant No.1. Since the oral partition the plaintiffs and defendants are in joint possession of the suit property to the extent of 04 acres and they are taking their share by way of yield and money every year. further plaintiffs submitted that defendant No.2 taking undue advantage of entry of her name in the ROR is trying to alienate the suit property to third persons, therefore present application is filed and seeking temporary injunction. further submitted that, if the the defendant No. 2 illegally alienate the suit property it will cause loss and harm to the plaintiffs, hence, the plaintiffs filed this present IA No.I and submitted he has got prima-facie case balance of convenience and if the injunction is granted no harm or loss cause to the defendant No.2 if not granted it will cause more loss and hardship to the plaintiffs, hence, prayed for the allow the application.

3. On the other side the defendants filed written statement along with memo stating that written statement to be treated as objection to IA No.I and admitted the relationship between the plaintiffs and defendants but plaintiffs not shown the complete family



members in the plaint, the deceased Ramashetty has six daughter and four sons, except one son by name Basavaraj all are alive. After the death of father all the family members have orally partitioned entire suit land, denied the in oral partition 04 acres of land kept jointly for the plaintiffs and defendants. Further submitted that, the defendant No.1 mother of defendant No.2 looking the worst condition of this defendant executed the letter of partition on 20.06.2005. on said date of execution the plaintiffs not objected the same, since she is in possession of the said in suit land Sy.No.378/1 04 acres of land. denied other averments in the plaint, further contended that, the plaintiff No.2 filed suit against the plaintiff No.1 and defendants for partition in O.S. No.15/2020 same is dismissed for non prosecution on 10.02.2023. further plaintiffs not included all the properties of joint family and also brothers of plaintiffs not made party to the suit hence suit is bad for non joinder necessary party, hence, the IA No.I is not maintainable, hence prays for reject the IA No.I.

4. The defendant No.6 in her written statement denied all averments of plaint, submitted that suit property totally measuring 16 acres 22 guntas, other properties of



deceased Ramasetty not included in the suit, family members orally partitioned and now standing in the name of his issues. The defendant No.1 was made a Vatni Patra on 28.04.2005 in the presence of her children with their consent. As per the said deed the defendant no.2 got his share in suit property, accordingly the name of defendant No. 2 entered into revenue records, thereafter the defendant No.2 offered the suit property for sale to defendant No.6 ,same accepted by her and obtained oral consent of family members of defendant No.2 and purchased the suit property through registered sale deed bearing Doc.No.4047/2023-24 on 12.10.2023 and she is in possession of the suit property, hence prayed for reject the application.

5. Heard both sides arguments, peruse documents available on record.

6. In view of above the following points that would arise for consideration on I.A.No.I is as follows:-

1. Whether, at this stage the plaintiffs have made out a prima facie case lies in their favour?



2. Whether the plaintiffs prove the balance of convenience lies in their favour?

3. Whether the plaintiffs prove that in event of not allowing I.A.No.I, they will be put to irreparable loss and injury?

4. What Order?

7. Answers to the above points is as follows:-

Point No.1: In the **Affirmative.**

Point No.2: In the **Affirmative.**

Point No.3: In the **Affirmative.**

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

REASONS

8. **POINT NO.1 TO 3:-** Since these points are inter alia, hence they are taken together for common discussion.

9. The plaintiffs submitted that defendant No.6 taking undue advantage of entry of her name in the ROR is trying to alienate the suit property to third persons, therefore present application is filed and seeking temporary injunction. The defendant No.1 mother of



defendant No.2 looking the worst condition of this defendant executed the letter of partition on 20.06.2005. on said date of execution the plaintiffs not objected the same,since she is in possession of the said in suit land Sy.No.378/1 04 acres of land and The defendant No.1 was made a Vatni Patra on 28.04.2005 in the presence of her children with their consent. As per the said deed the defendant no.2 got his share in suit property, accordingly the name of defendant No.2 entered into revenue records, thereafter the defendant No.2 offered the suit property for sale to defendant No.6 ,same accepted by her and obtained oral consent of family members of defendant No.2 and purchased the suit property through registered sale deed bearing Doc. No. 4047/2023-24 on 12.10.2023 and she is in possession of the suit property.

10. It is well settled principles of law that, in order to decide the application filed under order XXXIX Rules 1 & 2 of CPC, the basic principles that are to be considered



are prima-facie case, balance of convenience and irreparable loss shall be taken into consideration.

11. So far as the balance of convenience and irreparable loss are concerned, the plaintiff has established the prima-facie case is that The plaintiffs filed the suit for partition and separate possession against the defendants No. 1 to 6 and present application filed against the defendant No.2 and if defendant No.2 is taking disadvantage of her name in the suit property record, she may try to alienate the same in favour of third party or may create any charge over the suit property. On the other hand the defendant No.6 contended that after the oral partition in family of plaintiffs, as per vatni patra which was executed by defendant No.1 in favor of defendant No.2, the suit property came to the defendant No.2. the defendant No.2 agreed to sell and sold to the defendant No.6 through registered sale deed, hence, the court is in the opinion that the suit is for partition and



separate possession, defendant No. 2 admitted the relationship between the plaintiffs with her, further defendant no. 1 executed the vatni patra there upon mutation entry is made in the name of defendant No.2, thereafter the defendant No.6 purchased the suit property with oral consent of defendant No.2 family members.

12. Under these circumstances, looking to the facts and circumstances of the case and the documents produced by the plaintiffs, the plaintiffs proves the prima facie case and the balance of convenience lies in favour of the plaintiffs as there is every chances of succeeding the case by the plaintiffs in case a full fledged trial is conducted. Under the circumstances, this court is of opinion that, the balance of convenience in favour of the plaintiff rather than the defendant.

13. So far as irreparable loss is concerned, it is the



specific case of the plaintiffs that, the suit schedule property is standing in the name of the defendant No.2. In case, injunction is not granted, the defendant No.2 would be alienate or create any charge over the suit property before disposal of the suit, hence it put to heavy loss, irrecoverable loss which cannot be compensated in terms of money. If in case an injunction is granted, it will not cause any harm or prejudice to the defendant. Hence, this court answer the points No.1 to 3 in the **Affirmative.**

14. **POINT NO.4:-** In view of the findings on points No.1 to 3, this court proceed to pass the following:-

: ORDER:

I.A.No.I filed by the plaintiff under Order XXXIX Rule-1 and 2 of C.P.C. is hereby allowed.

The defendant No.2 hereby restrained from alienating, mortgaging or creating any kind of over the suit property bearing Sy.No.378/1 measuring 03-acres



38-guntas situated at Karajagi village.

Until the further order.

No order as to cost.

(Dictated to the Stenographer, directly on computer, typed by him, corrected by me, signed and then pronounced in open court on this the 22nd Day of October-2024)

(Sri. Anil Amate)
Civil Judge & JMFC,
Afzalpur.

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