

KAKB320006032023



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

PRESENT

Sri. KESHAHA.K, B.A. L.L.B.,
C/c Civil Judge & JMFC.,
AFZALPUR.

Dated this the 30th day of June-2023

O. S. No.28/2023

Plaintiffs: Shivkantawwa W/o Late Gangappa and others

(By Sri.P.R. Pujari Advocate)

V/s

Defendant: Siddamma W/o Late Gangappa & another

(D-8 By Sri.P.B.P Advocate.,)

PARTIES IN I.A.NO.I

Applicant: Shivkantawwa W/o Gangappa and others

V/s

Opponents: Siddamma & another

ORDERS ON APPLICATION UNDER ORDER

XXXIX RULE 1 AND 2 OF C.P.C.

The plaintiffs have filed above said application seeking to grant ad-interim temporary injunction order against the defendants, their heirs, successors, agents and restrain them from alienating the suit schedule properties in any manner till disposal of this suit.

Description of the suit properties:

- a) The land bearing Sy.No.145/6 measuring 2 acres, 26 guntas situated at village Karajagi, Tq:Afzalpur, Dist: Kalaburagi bounded by:
- b) The house bearing No.4-97/1 measuring 15 X 30 feet situated at village Karajagi, Tq:Afzalpur, Dist:Kalaburagi

2. Briefly, the plaintiff's case is as follows:-

In the annexed affidavit it is stated that the plaintiffs have filed this suit against the defendants seeking for the relief of partition and separate possession in respect to suit schedule properties along with IA No.1 i.e., application under Order XXXIX Rule 1 & 2 of CPC. Further, it is stated that, since suit schedule properties are ancestral and joint family properties of plaintiffs and defendants, as such earlier which standing in the name of Hawanna i.e., father-in-law of plaintiff No.1 and grandfather of plaintiff No.2 & 3 and therefore, the plaintiff No.2 & 3 became coparceners of the joint Hindu undivided family, as such after the demise of said Hawanna the name of Gangappa was mutated into the revenue documents i.e., father of plaintiff No.2 & 3. The said Gangappa was also died on 24-12-2019, subsequently the plaintiff No.1 who is the first wife and the plaintiff No.2 & 3 are the sons of plaintiff No.1, the defendant No.1 is the second wife and defendant No.2 her son became co-owners, co-shares of joint possession of suit schedule properties and having 1/4th share over the suit schedule properties. Further, it is stated that, during the lifetime of said Gangappa once in a while the family arrangement was made between the plaintiffs and defendants in respect of suit schedule properties but it was not been implemented, after demise of Gangappa also the plaintiffs have approached to the defendants by demanding to allot their shares but no impact has been caused even on repeated requests and demands. Under such circumstances, in order to safeguard the rights and interest of the plaintiffs, they have come up with this suit before this court along with the above said application as a result of which this court may kindly be pleased to extend the discretionary relief of ad-interim order against the defendants, if not allowed the plaintiffs will be put to irreparable loss and injury. Hence, application filed by the plaintiff may kindly be pleased to allow.

3.Per contra, the defendants No.1 has filed written statement to the plaint and same is treated as objection even to the instant application,

in which the defendants have denied all the averments made in the annexed affidavit in toto. Further it is contended that, the plaintiffs are not at all concerned to the deceased Gangappa, as the said Gangappa having only one wife i.e., defendant No.1 and they have blessed only one son namely Basavaraj, except that no wife or any other male members in his family. Even if, the plaintiff has filed the false genealogy claiming themselves as first wife and sons of said deceased person. Further it is stated that, the suit schedule properties are earlier standing in the name of Hawanna i.e., father-in-law of plaintiff No.1 and grandfather of plaintiff No.2 & 3, as to which the plaintiffs became coparceners of the joint Hindu undivided family, these facts have been completely created for the purpose of mere getting share. After demise of Hawanna no mutation entries have been made in favour of anybody, however, question in relation to division of property between them does not arise, in fact the plaintiff No.1 is the wife of Danappa Koli who is resident of Mashal village, therefore, the plaintiffs are no way concerned to the family of these defendants. Since Gangappa not made any kind of family arrangements, thereby plaintiffs also not been in possession over the suit schedule property in any manner what so ever. Under these circumstances, suit itself is not maintainable consequently the application also does not arise for consideration and same is liable to be rejected.

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

1. Whether, at this stage the plaintiffs have made out a *prima facie* case 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?

5. My 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

6. **Points No.1 to 3**:-These three points are taken up together for common discussion in order to avoid repetition of facts.

7. In support of above said facts and circumstances the plaintiffs have relied upon various documents in support of their case, among them copy of RTC extract pertaining to land bearing Sy.No.143/1 for the year 1968-69 in total 3 numbers, copy of ROR pertains to land bearing Sy.No.145/1 for the year 1993-94, copy of death certificate of Gangappa, copy of adhar card, copy of voter card, copy of ration card, herein on perusal of these documents in which it is clearly discloses that, the said Gangappa is appears to be owner in relation to the above said properties since those properties standing in the name of Hawanna S/o Dyavappa, as per death certificate Gangappa was died on 24.12.2019, Adhar card of Gangappa and TC and other enclosures to the plaintiffs No.2 & 3. All these documents clearly establishes that, since suit schedule properties have been standing in the name of Hawanna subsequently, held mutation proceedings in which said Gangappa's name has been inserted. Based on these reasons the plaintiffs have claiming the relief of partition and legal heirs of said deceased person. But mere denial of relationship which does not give any amount of relevance unless producing and adducing evidence as to believe that those things have not been existing. Because the reason in order to disbelieve the case of plaintiffs at this stage even the defendants also not been produced any documents in support of their case except the averments of written statement.

8. In spite of above said facts and circumstances herein it is taken into note that, during the course of arguments also both counsels to the litigant parties made replica of the facts, as to which this court feels

that, nothing is remained except the above said facts. In case based on the pleadings of defendants herein application filed by the plaintiffs may going to reject in future, the defendants may make necessary entries in relation to the suit schedule properties concerned to the revenue documents. In that event of time there will be chances the defendants may create charge over the suit properties like borrowing loan and alienate in the form of sale deed, gift in any other mode in favour of anybody, in such circumstances very purpose of filing this suit may going to deprive the rights of plaintiffs. On the other hand if prohibitory orders passed against the defendants no hardship will be caused to them. Hence, considering the material aspects and arguments which rendered from both sides herein this court feels that, at this stage the plaintiffs have made out prima-facie case and balance of convenience also lies in their favour. Under the impact of the above said reasons, I answer the point No.1 to 3 in the **Affirmative**.

9. **Point No.4**:- In view of the findings on points No.1 to 3, I proceed to pass the following:-

ORDER

Application filed by the plaintiffs under Order XXXIX Rules 1 and 2 of C.P.C. is hereby allowed.

Consequently the defendants are hereby restrained from alienating the suit schedule properties until further order.

No order as to costs.

(Dictated to the Stenographer, transcribed revised, corrected by me, signed and then pronounced in open court on this the 30th Day of June-2023)

(KESHA.VA.K)
Civil Judge, AFZALPUR.