

2.9.2023

Exparte T.I. Order on IA No.1.

The plaintiff has filed this application U/O 39 rule 1 and 2 of CPC and sought to restrain the defendants 1 and 6 by way of exparte temporary injunction from alienating the suit schedule property.

The plaintiff has sworn to an affidavit in support of IA and stated that the plaintiff and defendants w2 to 5 are daughters and sons of defendant No.1. The plaintiff and defendants 1 to 5 are coparceners of the joint family. The defendant No.1 is Karta of the joint family. The suit property is ancestral and joint family property of plaintiff and defendant No.1 to 5. They are in joint possession and enjoyment of the suit property. Recently the plaintiff came to know that the defendant No.6 is trying to get execute the sale deed from defendant No.1 based on bogus agreement of sale. Hence prays to allow the IA.

Perused the records. Heard arguments.

The Revenue records show that earlier the suit schedule property was standing in the name of father of defendant No.1. The suit year RTC extract shows that now the suit property is standing in the name of the defendant No.1. In view of the above documents prima facie it appears that the suit property is ancestral property of plaintiff and defendants 1 to 5 and the plaintiff and defendants 1 to 5 being coparceners are entitled for equal share in the suit property. No doubt it is true that the defendant No.1 being Karta of the joint family is competent to alienate the suit property for the legal necessity of the joint family. At the same time the plaintiff being the coparceners is also entitled to enforce his right to seek partition. Accordingly he exercised his right. Whether there is legal necessity to sell the suit property or not cannot be considered at this stage. The rights and shares of the plaintiff and defendants 1 to 5 has to be decided during the trial. Therefore at this stage the plaintiff has made out prima facie case.

The suit is one for the relief of partition and separate possession. The suit year RTC extract shows that the suit property is standing in the name of

defendant No.1 and 6. Therefore if taking undue advantage of the same the defendant No.1 alienates the suit property to defendant No.6 and in turn if he alienates the suit property to third party it will prejudice the plaintiff. Since the suit is one for partition and separate possession the rights and share of the plaintiff has to be decided only after the trial and until then the suit property needs to be protected. If the IA is not allowed it would cause hardship to the plaintiff. On the other hand if the defendant No.1 and 6 are restrained from alienating the suit property for some period no prejudice will be caused to the defendants No.1 and 6. Hence, I proceed to pass the following.

ORDER

The defendants 1 and 6 are hereby restrained by way of exparte temporary injunction from alienating the suit property till next date of hearing.

The plaintiff shall comply Order 39 Rule 3 of CPC.

Office to issue IA notice and TI notice to defendant No.1 and 6 and suit summons to other defendants.

The plaintiff shall pay deficit process fee if any within three days from today, failing which this order stands vacated automatically.

Returnable by 6.10.2023.

Senior Civil Judge & JMFC, Sedam.