

26.4.2024

**Exparte T.I. Order on IA No.I & II.**

The plaintiffs have filed IA No.I U/O 39 Rule 1 and 2 of CPC and sought to restrain the defendant by way of exparte temporary injunction from alienating the suit properties till disposal of the suit.

The plaintiffs have filed IA No.II U/O 39 Rule 1 and 2 of CPC and sought to restrain the defendant by way of exparte temporary injunction from interfering with plaintiffs' peaceful possession and enjoyment over the suit properties till disposal of the suit.

The plaintiff No.1 has sworn to an affidavit in support of IA and stated that the plaintiffs and defendant are brothers. Their father purchased the suit properties and non suited properties in the name of defendant when he was aged about 14 years through registered sale deed in the year 1976-77. Accordingly the mutation was made out in his name. The father of the plaintiffs divided the suit properties and non suited properties among his sons through oral partition and in the said partition suit properties fell to the share of the plaintiffs.

Since then the plaintiffs are in joint possession of the suit properties as its absolute owners. But recently the defendant got mutated his name in the revenue records of the suit properties and trying to alienate the suit properties and also trying to dispossess the plaintiffs from the suit properties. Hence, prays to allow both the I.As.

Perused the records. Heard arguments.

The certified copy of the registered sale deed dated 04-06-1976 shows that the suit properties were purchased in the name of the defendant and in the sale deed his age is shown as 14 years. The same goes to show that as on the purchase of the suit properties the defendant was minor and it appears that his father purchased the properties in his name. The RTC extracts show that the suit properties are standing in the name of the defendant. Whether there was a partition between the plaintiffs and defendant and suit properties were fallen to the share of the plaintiffs or not and whether the defendant alone is having right in the suit properties has to be decided only after the trial. Therefore, at this stage the plaintiffs have made out prima facie case.

The suit properties are in the name of defendant. Therefore if IA is not allowed and the defendant alienates the suit properties irreparable loss and untold hardship will be caused to the plaintiffs. On the other hand if the defendant is restrained from alienating the suit properties for a short period no loss would be caused to the defendant. Therefore balance of convenience lies in favour of the plaintiffs. Hence, this court find it proper to pass exparte TI order on IA No.I. But as far as IA No.II is concerned this court find it just and proper to give notice to defendant. Hence the following,

### **ORDER**

The defendant is hereby restrained by way of exparte temporary injunction from alienating the suit properties till next date of hearing.

The plaintiffs shall comply Order 39 Rule 3 of

CPC.

Office to issue notice of IA No.I and II, TI notice on IA No.I and suit summons to defendant through RPAD and also through court.

The plaintiffs shall pay deficit process fee if any and furnish postal cover within three days from today, failing which this order stands vacated automatically.

Returnable by 30-05-2024.

Senior Civil Judge & JMFC, Sedam.