

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
SEDAM

PRESENT:

Sri SAGAR GURUGOUDA PATIL
B.A., LL.B(Spl.)
Senior Civil Judge & JMFC, Sedam

Dated: 15-10-2024.

OS No.50/2024

Plaintiff/s :
Smt.Champabai & another
(Smt/Sri H.S.C, Advocate)

VS

Defendant/s :
Pandu and others
(D.1 to 4, Smt/Sri S.B.H., Advocate)
(D.5 & 8 by learned ADGP.
(D6 & 7 Exparte)

RANK IN IA 1

Smt.Champabai and another : Applicant/s/Plifts

VS

Pandu & others : Opponent/s/Defts

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for partition and separate possession
iii	The date on which the application is	26-04-2024

	filed	
iv	Number of application	One
v	The date on which the objections are filed by different opponents	26-09-2024
vi	The date on which the orders were passed on the said application	15-10-2024

ORDERS ON IA 1
Under Order 39 rule 1 & 2 of CPC

The plaintiffs/applicants have filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendants by way of temporary injunction from alienating the suit property till disposal of the suit.

2) The plaintiff No.1 has sworn to an affidavit in support of IA and stated that the plaintiffs, defendants 1, 3 and 4 and deceased Kishan Rathod are the children of one Bikku Singh Rathod and Laximbai. The defendant No.2 is wife of late Kishan Rathod. The suit property is ancestral property of the plaintiffs and defendants 1 to 4. During the lifetime of late Bikku Singh Rathod the defendants 5, 6 and 8 acquired some portion of the land for defendant No.7 Company and released compensation amount in favour of the said Bikku Singh Rathod. After acquisition of some portion of the land in Sy.No.651 land to an extent of 1 acre 11 guntas was remained and the same is the ancestral and joint family property of the plaintiffs and defendants 1 to 4.

The plaintiffs did not receive any amount either from their father or from defendants 1 to 4 in respect of acquisition of portion on of the land.

3) It is submitted that after the death of Bikku Singh Rathod the defendants 1 to 4 managed defendant No.8 and got mutated the remaining land measuring 1 acre 11 guntas in Sy.No.651. The said land was remained after acquisition of land measuring 17 acres 08 guntas during the year 1982-83 by the orders of the Spl. Deputy Commissioner Kalaburagi dated 02.03.1983. Accordingly, the compensation amount was received by the deceased Bikku Singh Rathod and gave their share in the said amount to defendants 1 to 4. But no amount was given to the plaintiffs. But during his lifetime the said Bikku Singh Rathod said that remaining land measuring 1 acre 11 guntas is kept for the shares of the daughters.

4) It is submitted that after the death of Bikku Singh Rathod was mutated remaining land in their names behind the back of the plaintiffs. Now the names of defendants 1 o 4 are appearing in the ROR of the suit land. The plaintiffs are having 1/6th share in the suit property. But the defendants are trying to alienate the suit property. Hence, prays to allow the IA.

5) After service of suit summons, the defendants 1 to 4 have appeared through their counsel and defendant No.5 and 8 have appeared through the learned ADGP and defendants 6 and 7 have remained absent. The defendants 1 to 4 together have filed their written statement. In the written statement they have admitted the G-Tree and relationship of the plaintiffs and defendants 1 to 4. They have denied that the suit property is the ancestral property of plaintiffs and defendants 4 to 8. They have admitted that during the lifetime of Bikku Singh Rathod some portion of the land was acquired by defendants No.5, 6 and 8 for defendant No.7 Company and compensation amount was released in favour of Bikku Singh Rathod. But they have denied that after acquisition of portion of the land, the land to the extent of 1 acre 11 guntas was remained in Sy.No.651. They have contended that entire land was mutated in the name of defendant No.7 Company. They have denied remaining plaintiff averments. They have contended that the suit is not maintainable. The suit is barred by the law of limitation. Hence, prays to dismiss the suit.

6) On the basis of the above facts the following points arise for my consideration:

- 1) Whether the plaintiffs have made out prima facie case?
- 2) Whether the balance of convenience lies in

favour of the plaintiffs?

3) What order?

7) Perused the records. Heard arguments.

8) My answer to the above points are as under:

- 1) IN THE AFFIRMATIVE
- 2) IN THE AFFIRMATIVE
- 3) AS PER THE FINAL ORDER

for the following:

REASONS

9) **POINT No.1 and 2:** Since these two points are inter related they are taken up together for common discussion to avoid repetition of the facts.

10) The order passed by the Assistant Commissioner Sedam on 27.07.2023 shows that land measuring 1 ace 11 guntas out of 18 acres 09 guntas in Sy.No.651 was ordered to be mutated in the name of Bikku singh Rathod. The mutation register bearing M.R.NO..46/2023-24 shows that the land measuring 1 acre 11 guntas in Sy.No.651 was mutated in the name of defendant No.1 to 4 on the basis of the inheritance from the name of Bikku Singh Rathod. The RTC extract shows that land measuring 17 acrs 18 guntas is presently standing in the name of defendant NO.7 and

remaining land measuring 1 acre 11 guntas is standing in the name of defendant 1 to 4. The above documents go to show that earlier land measuring 18 acres 19 guntas in Sy.No.651 was standing in the name of Bikku Singh Rathod and during his lifetime land measuring 17 acres 08 guntas was acquired for defendant No.7 company and land measuring 1 acre 11 guntas was remained and the same was ordered to be mutated in the name of Bikku Singh Rathod and after his death the same was mutated in the name of defendants 1 to 4 on the basis of the inheritance. It is not in dispute that the plaintiffs are also the daughters of the said Bikku Singh Rathod. Therefore, after the death of said Bikku Singh Rathod along with defendants 1 to 4 the plaintiffs also being Class-I heirs inherited the suit property. Therefore, they are also having share in the suit property. Therefore, at this stage the plaintiffs have made out prima facie case.

11) At this stage it is useful to refer the decision of the Hon'ble High Court of Karnataka in the case of Chinnamma VS Nagaraj, reported in ILR 1995 KAR 1561 wherein the Hon'ble High Court held as under:

CIVIL PROCEDURE CODE, 1908 (Central Act No.5 of 1908)
- Order 39 Rules 1 & 2 - Disputes relating to agricultural lands & joint family property : grant of interim orders - Principles.

HELD:

Disputes relating to agricultural lands and disputes relating to joint family property are quite common in the Civil litigation of this Country. Courts have therefore been required to evolve certain broad principles which have now become almost well defined while dealing with disputes of this type which principally take into account the fact that the litigation takes some time and that if certain changes take place in the character of the property under dispute during the interim period, that it would only give rise to further litigation and sometimes renders the relief itself infructuous. For this purpose, more as a measure of safety, caution and legal expediency, the Courts have culled out certain well defined principles which ordinarily ought not to be departed from. One of this principles is that where there is a dispute in relation to immovable property which happens to be vacant, that if the property were to be encumbered, alienated, built upon or if third party rights are permitted to be created during the interim period that the situation might become and in fact does become totally irreversible by the time the Court passes final orders. It is a well defined principle of law that a Court is required to be equally fair to the defendant Nos.1 & 7s as also to the parties who have approached the Court and therefore, necessary safety precautions in relation to the plaintiffs' interest are also of some consequence. This is in fact essence of the principle behind the grant for interim orders.

12) The above principle of law is aptly applicable to the case at hand. In this case in order to avoid creating of third party rights over the suit schedule property till disposal of the suit it is just & necessary to restrain the defendants from alienating the suit schedule property. The plaintiffs have stated that now the defendant are trying to sell the suit properties.

Therefore, if they succeed in their attempt and alienate the suit property to third parties it will complicate the matter and lead to multiplicity of suits and also cause irreparable loss & untold hardship to the plaintiffs. On the other hand if the defendants are restrained from alienating the suit property for some period i.e. till disposal of the suit no prejudice would be caused to the defendants. Hence I answer Points 1 & 2 in the affirmative.

13) **POINT No.3**: For the foregoing reasons, the following:

ORDER

The application filed by the plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendants are hereby restrained by way of temporary injunction from alienating suit schedule property till disposal of the suit.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **15th day of October 2024.**)

(SAGAR GURUGOUDA PATIL)
Senior Civil Judge & JMFC, Sedam.