

14.8.2024

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 by way of exparte temporary injunction from alienating the suit properties till disposal of the suit.

The plaintiff has sworn to an affidavit in support of IA and stated that one Chandappa was the head of the family. After his death the defendant No.1 got entered his name in the revenue records of old Sy.No.821/Aa measuring 8 acres 6 guntas. After bifurcation new Sy.No.92/1 was given to the said land. The defendant No.1 married first wife by name Kashamma and the plaintiff is daughter of defendant No.1 through his first wife Kashamma. The defendant No.2 is second wife of defendant No.1. The suit property is standing in the name of defendant No.1. The suit properties are joint family properties of plaintiffs and defendants. There is no partition in the joint family. The plaintiff is having share in the suit properties. Such being the facts the defendants 1 and 2 got entered into registered partition deed dated 5.2.2020 behind the back of the plaintiff. Hence, the said partition deed is not binding on the share of the plaintiff. Now the defendants are trying to alienate the suit properties. Hence, prays to allow the IA.

Perused the records. Heard arguments.

The suit is one for the relief of partition and separate possession. The RTC extract from the year 1978 to 1982-83 shows that earlier land measuring 8 acres 6 guntas in Sy.No.821/Aa(old) and New Sy.No.92/1 was standing in the name of grand father of the plaintiff Chandappa. The same prima facie shows that suit land originally belonged to grand father of plaintiff-Chandappa. The certified copy of registered partition deed dated 5.2.2020 shows that the defendants 1 and 2 entered into partition and in the said partition some of the suit properties were allotted to the share of defendant No.2. The plaintiff is not party to the said partition deed. Admittedly, the defendant No.2 is not copacener of the joint family. Therefore, the validity of the partition deed and whether it is binding on the plaintiff or not has to be decided during the trial. Hence, at this stage the plaintiff has made out prima facie case. If at this stage the defendants 1 and 2 are not restrained from alienating the suit properties and if they alienate the suit properties during pendency of the suit it will cause much inconvenience to the plaintiff. Therefore, at this stage the plaintiff has made out prima facie case and balance of convenience lies in his favour. Hence the following:

ORDER

The defendants 1 and 2 are hereby restrained by way of exparte temporary injunction from alienating the suit properties till next date of hearing.

The plaintiff shall comply Order 39 Rule 3 of CPC.

Office to issue IA notice, TI notice and suit summons to defendants.

The plaintiff shall pay deficit process fee if any

within three days from today, failing which this order stands vacated automatically.

Returnable by 18.9.2024.

Senior Civil Judge & JMFC, Sedam.