

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: 29.01.2026.

OS No.112/2024

Plaintiff/s :
Salma Begum and Others.
(Smt/Sri S.S.A. Advocate)

VS

Defendant/s :
Firojali Baig and Others.
(D.1 & 2 by Smt/Sri P.K. Advocate)
(D.3 & 4 by Smt/Sri S.P. Advocate)

RANK IN IA 1

Salma Begum and Others. : Applicant/s/Plfts.

VS

Firojali Baig and 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, separate possession and injunction
iii	The date on which the application is filed	31-08-2024

iv	Number of application	One
v	The date on which the objections are filed by different opponents	06-01-2025
vi	The date on which the orders were passed on the said application	29-01-2026

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 defendant No.1 by way of temporary injunction from alienating the suit properties till disposal of the suit.

2) The plaintiff No.2 has sworn to an affidavit in support of IA and stated that the plaintiffs and defendants are sisters and brothers. The father of plaintiffs and defendants by name Miraza Sardar Ali Baig @ Sardar Ali was the owner and possessor of the suit properties. He died on 22.03.2024 leaving behind the plaintiffs and the defendants as his successors. The suit properties are Matruk properties of the plaintiffs and defendants. Mother of plaintiffs by name Nasima Begum is no more.

3) The suit properties stands in the name of father of the plaintiffs and defendants. The suit land came to father of the plaintiffs from his father side. He purchased house

property from one Babu Miyan under registered sale deed dated: 21.05.1985. The defendant No.1 is trying to get transfer all the suit properties in his name and trying to alienate the same. The plaintiffs are having share in the suit properties. Hence, prays to allow the I.A.

4) After service of suit summons, the defendants appeared through their counsels and defendant No.1 and 2 together filed written statement and defendant No.1 filed memo adopting written statement as objections to I.A.No.1. The defendant No.1 and 2 in their written statement have submitted that suit item No.1 and 2 are ancestral properties. But suit house was purchased by defendant No.1 in the name of his father as he was living abroad for earning his livelihood. He arranged the amount and gave it to his father and out of that amount the suit house was purchased. Therefore, the defendant No.1 is sole owner and possessor of the suit house. He has admitted the relationship of the parties and denied rest of the plaint averments. Hence, prays to dismiss the I.A.

5) 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?
- 6) Perused the records. Heard arguments.
- 7) 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

8) **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.

9) It is not in dispute that plaintiffs and defendants are sisters and brothers. It is not in dispute that father of the plaintiffs and defendants was the owner and possessor of suit item No.1 and 2 properties. It is the case of the plaintiffs that their father purchased suit house under registered sale deed dtd. 21.05.1985. On the other hand it is the case of the defendant No.1 that he purchased suit house out of his own income in the name of his father. Therefore, he is the exclusive owner of the suit house property.

10) Plaintiffs in order to establish their case have produced RTC extracts of the suit properties and the same

show that the suit land is still standing in the name of father of the plaintiffs and defendants late Sardar Ali. The copy of registered sale deed dtd. 21.05.1985 shows that the said Miraza Sardar Ali Baig purchased suit item No.2 property from one Babu Miyan. The same prima facie show that Miraza Sardar Ali Baig himself purchased suit house in his name. Therefore, it has to be treated as property of the said Miraza Sardar Ali Baig. As far as case of defendant No.1 is concerned that whether suit house was purchased by father of plaintiffs and defendants out of income of the suit land or his own income or the defendant No.1 gave amount to his father to purchase the suit property and out of it he purchased the same has to be decided only after the trial. At this stage prima facie it appears that the suit item No.1 and 2 are Matruk properties and suit house was purchased by father of the plaintiffs and defendants.

11) The death certificate shows that the father of the plaintiffs and defendants Miraza Sardar Ali died on 22.03.2024. The G-tee shows that he died leaving behind him the plaintiffs and defendants. Therefore, prima facie it appears that after the death of Miraza Sardar Ali Baig the plaintiffs and defendants succeeded the suit properties and now they are in possession of the suit properties as tenants in common and they are having definite share in the suit properties. Such being the facts if the defendant No.1 is not

restrained from alienating the suit properties and if he alienates the suit properties it will cause inconvenience to the plaintiffs. On the other hand if interim order is passed till disposal of the suit no loss would be caused to the defendant No.1. Therefore, at this stage the plaintiffs have made out prima facie case and balance of convenience lies in their favour. Hence, I answer point No.1 and 2 in the Affirmative.

12) **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 defendant No.1 is hereby restrained by way of temporary injunction from alienating suit schedule properties 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 **29th day of January 2026**)

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