

IN THE COURT OF II ADDL. SR. CIVIL JUDGE & JMFC,

AT : RAICHUR

PRESENT: **Sri. MAHAJAN RAMESH APPASAB,**
 B.A., LL.B.,(SPL)
 II-Addl. Sr.Civil Judge, Raichur

OS.No.75/2020

DATED THIS THE 3rd DAY OF FEBRUARY 2023

PLAINTIFF:- Khursheed Azam Chowdry
 S/o Abdul Saleem Chowdry,
 Age: 46 years, Occ: Agriculture
 and Business, R/o H.No.4-4-663,
 Zaheerabad area, Raichur.

(By Sri.G.A.G., Advocate for Plaintiff)

// VERSUS //

DEFENDANTS:- Khursheed Azam Chowdhry
 & Others.

(By Sri R.T.S., Advocate for D1& D2)

PARTIES ON I.A.NO.I

APPLICANT/ : Khursheed Azam Chowdry
PLAINTIFF

// VERSUS //

OPPONENTS/ : Khursheed Azar Chowdry & Others
DEFENDANTS

ORDERS ON I.A.NO.I

Plaintiff filed this application under order XXXIX Rule 1 & 2 R/w Sec 151 of CPC and prayed for temporary injunction restraining the defendants No.1 to 7 from alienating the suit schedule 'A & C' properties or creating charge or mortgage over the same.

2. In the supporting affidavit of IA No.I, it is averred that the defendants are younger brothers of plaintiff and they have purchased the suit schedule properties jointly out of joint earnings in the name of defendants No.1 & 2. Defendants No.1 & 2 taking undue advantage appearance of their names in the revenue records have illegally got converted the same suit schedule lands into non agriculture without consent of plaintiff and have sold some of the suit schedule properties in favour of defendants No.3 to 7. It is averred that if the defendants succeeds in alienating or creating charge over the suit schedule 'A' properties plaintiff will be put to hardship and his right over the suit properties will be effected.

3. It is averred that in order to preserve the suit schedule properties and to avoid multiplicity of proceedings it is just and necessary to grant temporary injunction. It is averred that the plaintiff is in joint possession over the suit A & C properties. Accordingly, plaintiff asserts existence of prima-facie case and balance of convenience in his favour and prayed for allowing the application.

4. Defendants No.1 and 2 have filed written statement. Learned counsel for defendants No.1 & 2 submits that written statement may be considered as objections to IA No.I. Defendants No.1 & 2 have denied carrying of profession of agriculture and other business jointly with the plaintiff. They have denied acquisition of suit properties with joint income. It is contended that the defendants No.1 & 2 are the absolute owners of suit schedule properties. It is contended that defendants No.1 & 2 have purchased the suit property with their own earnings and accordingly documents of the suit schedule properties are with them. They have denied that they were working under

plaintiff and all of them were jointly earning the income. It is contended that defendants No.1 & 2 being absolute owners have sold the suit properties and the plaintiff has no right to question the same. Defendants No.1 & 2 have denied relinquishment of right in favour of plaintiff, accordingly, the defendants have categorically denied the right of the plaintiff over the suit schedule properties and prayed for dismissing the suit.

5. I have heard learned counsel for plaintiff & defendants.

6. The following points would arise for my consideration;

1. Whether plaintiff has made out prima-facie case to grant an order of temporary injunction?
2. Whether plaintiff proves that, balance of convenience lies in his favour?
3. Whether the plaintiff will be put to irreparable loss if an order of temporary injunction is not granted?
4. What order?

7. Based on the pleading, having heard the arguments on both sides, my answer to the above said points are as under:-

Point No.1 : In the **Negative**

Point No.2 : In the **Negative**

Point No.3 : In the **Negative**

Point No.4 : As per the final order, for the following:-

REASONS

8. Points No.1 to 3:- Since these points are interconnected, they are taken together for common discussion to avoid repetition of facts of the case.

The facts of the case are narrated supra. In nutshell it is the claim of the plaintiff that, suit A & C properties were purchased with joint earnings in the name of defendants No.1 & 2. Plaintiff asserts his share in the suit schedule properties. On the other hand, the defendants No.1 & 2 have denied the right of plaintiff over the suit schedule properties. It is contended that suit schedule 'A' and 'C' properties are their self earned and absolute right properties.

9. In this background in order to establish existence of prima-facie case, balance of convenience, both the parties have produced the documents. Plaintiff has placed on record series of sale deeds from the year 2010 to 2020. Admittedly, the sale deeds were standing in the name of defendants No.1 & 2. Parties are governed by Mohammedan Law. Accordingly, keeping in mind the principles of Mohammedan Law if the material placed on record and pleadings of the parties perused it appears that the defendants No.1 & 2 have purchased the suit properties. The plaintiff filed this suit after conversion of purchased properties by the defendants No.1 & 2 and when the said converted plots were put to sale. Prima – facie it appears from the material placed on record that, defendants No.1 & 2 by exercising their title over the suit properties, they have converted the said properties and put them for sale. Whether the plaintiff has right over the said property is a matter of trial. At this juncture, considering the registered documents placed on record I am of the view that, balance of convenience tilts in favour of defendants No.1 & 2 rather than the plaintiff as they have

incurred expenses for conversion of agricultural land into non agriculture use purpose. At this stage, if they are restrained from alienating the plots they would be put to hardship. Furthermore, the registered sale deeds would prima – facie disclose the purchase of suit properties by defendants No.1 & 2 independently. Furthermore the rights of the plaintiff if any over the suit properties will be well guarded by Section 52 of T.P. Act the purchaser of the plots during the pendency of the suit would run the risk as provided under Section 52 of T.P. Act. Consequently, I do not find any merits in the application. Means to say the plaintiff has failed to establish the existence of prima – facie case, Balance of convenience and irreparable loss etc., also tilts in favour of defendants No.1 & 2. Other defendants being purchasers of the plots from defendants No.1 & 2 they cannot be restrained from exercising their rights at this stage. Accordingly, I answer **points No.1 to 3 in the Negative.**

10. Point No.4: For the above said reasons on points No.1 to 3, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff U/o XXXIX Rule 1 and
2 R/w 151 of CPC is hereby rejected.

(Dictated to the Stenographer, transcript by him, corrected, signed and then pronounced in the open court by me on this the 3rd day of February - 2023).

SD/-

(Mahajan Ramesh Appasab)

II-Addl. Sr.Civil Judge, Raichur