

**ORDER**

These I.A.No.I and II have been filed by the plaintiffs along with affidavit and documents. On perusal of the check slip there is no caveat filed in this case. The suit is for partition and separate possession and consequential relief of injunction restraining the defendant No.16 from interfering in the peaceful possession enjoyment of the suit schedule property.

2. IA. No.I and II have been filed U/o. XXXIX Rules 1, 2 & 7 R/w 151 of CPC., for the relief of ad-interim temporary injunction restraining the defendant no.16, his men, agents or any person claiming under him from alienating, transferring, mortgaging or creating charge over the suit property bearing Sy.No.118/1 area 00-10-04 and also restraining the defendant no.16 from

constructing any structure in the said property till the disposal of this suit.

3. The suit property is the land bearing Sy.No. 118 area now numbered as Sy.No.118/1 area 00-10-04 and Sy.No. 118/2 area 00-30-12 situated at Bobruvada village of Ankola. These two applications are filed with respect to Sy.No.118/1 measuring area 00-10-04.

4. The case of the plaintiff in brief is that one by name Jogi is the grand father of the plaintiffs and defendants, who had four sons by name Ira, Thaku, Govind and Phalgun who are deceased now. The plaintiffs are the legal heirs of the said Phalgun. The plaintiffs and defendants constitute joint family and are in join possession and cultivation of the suit property which is the ancestral tenancy property. The said four sons of

the Jogi had jointly filed Form No.7 for the occupancy rights in the said property. Accordingly, the land tribunal by its order had conferred occupancy rights in the name of the fathers of the plaintiffs and defendants. Form No.10 had also been issued and accordingly, their names were mutated in the revenue records. There is no partition by metes and bounds till today. Being this case, the name of the defendant no.16 who is the stranger to the family, having no right, title or interest, appeared suddenly in the cultivators column in revenue records for the year 1999–2000 as per ME No. 7268 which was entered on the basis of the phodi of the property. Sy.No. 118/1 area 0–10–04 is mutated in the name of the defendant No.16 and Sy.No. 118/2 area 00–30–12 is mutated in the name of the fathers of the defendants. The name of the father of the

plaintiffs is not forthcoming. The plaintiffs tried to enquire the same by applying for the the information under RTI but of no veil. The plaintiffs are having 1/4th share in the suit property and the defenadant no.16 by taking undue advantage of his name, with an intention to defeat the legitinate share of the plaintiff, trying to raise the huge loan by mortgaging the said property and also started construction illegally in the said property. Hence prays to issue ad-interim temporary injunction.

5. I have carefully perused the available materials on record and also I have heard the Id. Counsel for the plaintiffs.

6. On perusal of the materials on record it prima facie appears that the suit properties are joint family properties of the plaintiffs and

defendants. The land tribunal has granted occupancy right of the suit property in the name of the fathers of plaintiffs and defendants jointly. RTC from the year 1983 upto 1999 was standing in the name of the fathers of the plaintiffs and defendants but in the year 1999–2000, the name of the defendant no.16 is forthcoming on the basis of ME No.7268. If the prayer sought for is rejected, then there is every possibility for the defendant no.16 in succeeding in alienating the said property and also may succeed in constructing the structure. The Court can not hold a mini trial at this stage and if at all if the suit properties are alienated it will certainly cause hardship to the plaintiffs and also for the subsequent purchasers which leads to complexity and multiplicity of proceedings. If the said applications are not

allowed, then the very intention of the suit will become infructious.

7. This Court is conscious that, granting of injunction after issuing notice to the other side is a rule and granting of injunction without issuing the notice is an exception, however in the present case on hand I am of the considered opinion that if at all if the exparte temporary injunction is not granted, the purpose of granting injunction may well be defeated by delay. Upon perusal of the case papers I am of the opinion that the plaintiffs have made out the prima facie case, therefore I proceed to pass the following;

**ORDER**

The defendant no.16, his men, agents or any person claiming under him are hereby restrained from

alienating the suit properties in any manner and also restrained from constructing any structure over the suit property bearing Sy.No.118/1 area 0-10-04 and shall maintain status quo till the present I.A is disposed off on merits.

Since *exparte* injunction is granted, the plaintiff shall comply the following conditions as per Order XXXIX Rule 3 (a) of CPC, they are

- 1) The plaintiff shall send
  - a) The copy of the interlocutory application along with affidavit.
  - b) The copy of the plaint.
  - c) The copies of the documents on which the plaintiffs had relied to get

this injunction to the concerned defendant by way of registered post.

2) The plaintiff shall file an affidavit to the office regarding the compliance of the same on this very same day or on the day immediately following this day.

Needless to say, non compliance of any of the aforesaid conditions, the exparte injunction granted will be vacated.

Issue suit summons to all the defendants if the PF and necessary copies of the plaints are furnished.

R/by

Sd/-

**Addl., Civil Judge**

OS-35/2023