

**IN THE COURT OF THE PRL CIVIL JUDGE AND JMFC.,
SHAHAPUR.**

PRESENT

SHOBHA, B.Sc. LLB.
Prl.Civil Judge and JMFC.,
Shahapur

O.S.No.155/2023

Date of order : 18th Day of July, 2024

Between:

1. Khasim Sab S/o Moulansab Warkur

...Plaintiff/s.

-//Versus//-

1. Nabisab S/o Molansab Warkur & Ors.

...Defendant/s.

IA No.I

1. Khasim Sab S/o Moulansab Warkur.

...Org. Plaintiff/ Applicant.

-//Versus//-

1. Nabisab S/o Molansab Warkur

...Org. Defendant No.1/ Opponent.

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Applicants by Sri. RND Advocate

Opponent by Sri KNT Advocate

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ORDER ON IA NO.I
FILED U/O.39 RULE 1 & 2 OF CPC

I.A No.I is filed U/o 39 Rule 1 & 2 of C.P.C seeking Temporary Injunction against the defendant No.1 restraining him from alienating, mortgaging, leasing or any mode of transferring the suit property land bearing Sy No.133/1 to the

extent of 02 acres 11 guntas situated at Naikal village, Tq: Shahapur Dist.Yadgir till disposal of the suit.

2. In the accompanying affidavit, it is contended that, suit properties are matruka properties of plaintiff and defendants No.1 to 6, father of plaintiff by name Moulansab S/o Lalalsab Warkur had 3 sons namely Jalalsab, Nabisab (Deft.No.1) and Khasimsab (Plaintiff), Moulansab Warkur and his wife are died, defendant No.1 is the real brother of plaintiff, the another brother of plaintiff Jalalsab died leaving behind the defendants No.2, 3 & 4 and the another deceased son by name Meheboobsab, the defendants No.5 & 6 are the wife and son of Meheboobsab, the plaintiff and defendants are joint owners and joint possessors of suit properties as tenants in common, no partition is effected in between the plaintiff and defendants, the defendant No.1 with bad and malafide intention trying to alienate the suit property Sy No.133/1 to Andhra people to deprive the share of plaintiff. If application is not allowed, plaintiff will be put to hardship, hence prayed to allow the application as sought for.

3. Notice and suit summons was issued to the defendants No.1 to 6, they appeared through Sri KNT advocate, but have not filed any objections to the application.

4. Heard the counsel for plaintiff.

5. The points that arise for my consideration are as follows;

Points

Point No.1: *Whether the plaintiff has made out prima-facie case?*

Point No.2: *Whether the plaintiff proves that the balance of convenience is in his favour?*

Point No.3: *Whether the plaintiff proves that, if T.I is not granted irreparable loss would be caused to him?*

Point No.4: *What order?*

6. My answers to the above points are as follows;

Point No.1 : In Affirmative
Point No.2 : In Affirmative
Point No.3 : In Affirmative
Point No.4 : As per order.

REASONS

7. **Point No.1 to 3:**-This is the suit of plaintiff for partition and separate possession; it is the contention of the plaintiff that, the plaintiff and defendants No.1 to 6 are in joint possession of suit property as tenants in common, defendant No.1 without having any right, title or interest over the suit property illegally trying to alienate the same which will put into multiplicity of litigation, the plaintiff has got 1/3rd share in the suit properties, hence prayed to allow the application.

8. I have perused the RORs of suit land Sy No.133/1 measuring 02 acres 11 guntas for the year 2003-04 and its mutation copy which reveals that, the said land was standing in the name of the father of plaintiff and defendant No.1 by name

Moulansab, subsequently it was mutated in the name of defendant No.1 as per mutation order dated 09.06.2016. Admittedly plaintiff and defendants No.1 are the brothers in relation and the sons of one Moulansab. Admittedly this is the suit of plaintiff for partition and separate possession. Whether or not the plaintiff is having share in the suit properties, that is a matter of trial. At this juncture, if the defendant No.1 succeed in his attempt, plaintiff will be put to hardship and it leads to multiplicity of litigation. Hence, I am of the opinion that, plaintiff has made out prima facie case.

9. One of the principal consideration that is to be taken into account for grant of injunction is balance of convenience or inconvenience. The other is existence of prima-facie case. The question involved in the present case in hand would be whether the plaintiff has got share in the suit property or not, all said facts are to be determined at the full fledged trial. If the T.I. is not granted, it would lead to multiplicity of proceedings and cause damage to the plaintiff. Hence I am of the opinion that irreparable loss would be caused to the plaintiff if T.I. is not granted. Hence I answer point No.1 to 3 in the ***Affirmative***.

10. Point No.4: In view of my discussion held above, I proceed to pass the following.

ORDER

**I.A.No.I filed U/o.39 Rule 1 & 2 of CPC is hereby
allowed.**

The defendant No.1 is hereby temporarily restrained from alienating, mortgaging, leasing or any mode of transferring the suit property land bearing Sy No.133/1 to the extent of 02 acres 11 guntas situated at Naikal village, Tq: Shahapur Dist.Yadgir till disposal of the suit.

No order as to costs.

(Directly dictated to the Stenographer on computer, corrected and then pronounced by me in the Open Court on this the 18th day of July, 2024)

**(Shobha)
Prl Civil Judge and JMFC.
Shahapur**