

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.327/2022

Date of order : 11th Day of July, 2023

Between:

1. Sharanappa S/o Bhimaraya Anur and Another
...**Plaintiff/s.**

-//Versus//-

1. Mallanna S/o Devindrappa Anur and Another.
...**Defendant/s.**

IA No.I

1. Sharanappa S/o Bhimaraya Anur and Another.
...**Org. Plaintiff/ Applicant.**

-//Versus//-

1. Mallanna S/o Devindrappa Anur
...**Org. Defendant No.1/ Opponent.**

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Applicants by Sri. SA Advocate

Opponent by Sri.MRB 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 the suit property land in Sy No.10/*

measuring to the extent of 02 acres 28 guntas out of 05 acres 14 guntas situated at village Kadamgera (B), Tq: Wadgera Dist.Yadgiri till the disposal of suit in the interest of justice.

2. In the accompanying affidavit, it is contended that, plaintiffs are the owners and possessors of suit property, the suit property had been fallen to the share of the father of plaintiffs, there was a partition in the year 1983 between the father of plaintiffs and defendant No.2, after the death of father of plaintiff No.1, plaintiff No.1 along with plaintiff No.2 are in joint possession of the suit property; since the suit property is standing in the name of defendant No.1, he is trying to alienate the suit property to the other people and thereby, the present application is filed.

3. Notice and suit summons was issued to the defendants, in pursuance to the said notice and summons, Sri.MRB advocate for vakalat for defendants No.1 & 2, objections and written statement are not filed by defendant No.1 & 2.

4. Heard the counsel for plaintiffs.

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

Points

Point No.1: *Whether the plaintiffs have made out prima-facie case?*

Point No.2: *Whether the plaintiffs prove that the balance of convenience is in their favour?*

Point No.3: *Whether the plaintiffs prove that, if T.I is not granted irreparable loss would be caused to them?*

Point No.4: *What order?*

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

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

REASONS

7. **Point No.1 to 3:-**This is the suit of plaintiffs for partition and separate possession; one Bhimaraya and Ningappa were brothers, that in a partition Bhimaraya had received the suit property as per the boundaries mentioned in the schedule, the plaintiff No.1 and husband of plaintiff No.2 are brothers, the suit property Sy No.10/* measuring 05 acres 14 guntas is the ancestral property of plaintiffs and defendants, the defendant No.1 is son of defendant No.2, there was a partition between father of plaintiff No.1 and father of defendant No.2 on 09.02.1983 and the suit property was equally divided among them, that the suit property was earlier numbered as Sy No.10/3 and now it is Sy No.10/*, that defendant No.1 has got mutated the suit land to his name and by the said entry, the defendants are interfering in the peaceful possession of the suit property, the plaintiffs requested to give their separate share, but they refused to do so, hence the suit is filed.

8. Plaintiffs in support of their case have got produced the RORs in land Sy No.10/3 standing in the name of defendant No.1 and numbered as Sy No.10/* standing in the name of defendant No.1 and the mutation entry of the property Sy No.10/3 wherein an application was filed to mutate the names of Ningappa and Bhimaraya as there was partition. Whether the suit properties are ancestral properties and had fallen to the share of plaintiff No.1 can be determined at the time of full fledged trial, further it is to be noted that, no objections are filed by the defendants No.1.

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 plaintiffs have got share in the suit property or not. The 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 plaintiffs. Hence I am of the opinion that irreparable loss would be caused to the plaintiffs 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 the suit property land in Sy No.10*/* measuring to the extent of 02 acres 28 guntas out of 05 acres 14 guntas situated at village Kadamgera (B), Tq: Wadgera Dist.Yadgiri 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 11th day of July, 2023)

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