



Spl.C.S. No.141/2021
Nasrin Vs. Roshanbegum

ORDER BELOW EXHIBIT - 5

The instant application has been filed by the plaintiff for grant of temporary injunction under order 39 rule 1 and 2 of the Code of Civil Procedure.

2. The plaintiff has contended that, the suit has been filed for partition of her deceased father's estate under the Muslim Personal Law. As per the contentions of the plaintiff late Shri Mohammad Yunus Haji Jan Motiwala was a successful businessmen carrying on several businesses and was permanent resident of Aurangabad. Defendant no.1 Roshan begum is the wife of deceased Mohammad Yunus Haji Jan Motiwala and had seven daughters and one son i.e. the defendants no.2 to 8. children of deceased are married and having their respective families. After the death of Mohammad Yunus Haji Jan Motiwala the defendants no.4, 9 and 10 started interfering with the entire business and properties of said deceased. The defendants no.4, 9 and 10 were never the business partners of said deceased. During the lifetime the said deceased had several self acquired movable and immovable properties mentioned in para no.4 of the application. That properties are possessed by the deceased at the time of his death. During the lifetime the deceased was carrying on his business along with his son and daughter being the defendants

no.2 to 8 and the plaintiff was actively carrying on several businesses mentioned in para no.5 of the application. After the death of Mohammad Yunus Haji Jan Motiwala the defendants no.4 ,9 and 10 without consent and authority started leasing, letting/ selling many of the properties of the deceased.

3. It is further contended after the sad demise of said deceased defendant no.4, 5 and 9 parted all the money with the inventory which at the time of said deceased was in excess of 9 to 10 crores. The assets of Ajanta Agate Handicraft which his estimated within the tune of 9 to 10 crore INR is illegally kept under the custody of defendants no.4. 5 and 9. The defendants no.1, 4, 5 and 7 are in custody of gold and silver jewellery of deceased. The Mohammad Yunus Haji Jan Motiwala died intestate on 07.08.2020 in Aurangabad. After the death Mohammad Yunus Haji Jan Motiwala the defendants no.1, 4, 5 and 9 took control of entire property and business of deceased and they are making the statement that, “now the defendants no.4, 5 and 9 are the sole authority and the applicant or any other daughter of Mohammad Yunus Haji Jan Motiwala will get nothing”. The defendants no.4, 5, 7 and 9 invariably abusing the plaintiff and physically tourchered on several occasions and all the defendants are avoiding to partition the property. The defendants no.1 to 10 are collided together with ulterior motive to deceive the plaintiff. The defendants have filed false complaint against the plaintiff and threatened the plaintiff that not to visit defendant no.1 and never to discuss partition at all. The deceased has left several residential and commercial premises at the time of his death which are in

power and custody of defendants no.1, 4, 5, 7, 9 and 10. the plaintiff even does not know the details of bank accounts of deceased and other properties of deceased. The plaintiff is having right in the estate of her deceased father's properties which has been denied by the defendants no.1, 4, 5, 7, 9 and 10. The plaintiff is entitle to get 1/6th share in the estate, properties, business and money left behind the deceased. The defendants are not having any right to dispose off the assets of the deceased. They have no power to alienate the share of his co heirs not even for the purpose of discharging the debts of the deceased without permission of the following interim reliefs by this application all the co-shares. Therefore the plaintiff has prayed as -

- i) Prayed to grant preliminary decree of partition in respect of all the properties and estate of the deceased to ascertain the 1/6th share of the plaintiff.
- ii) Prayed for mandatory order and injunction and thereby restraining the defendants or any of them or through their agents in any manners dealing with properties, business or estate of the deceased.
- iii) To direct the defendants to furnish on oath the details of all the assets of the deceased which is allegedly held and enjoyed by them but not limiting to all benefits, incomes, profits arising or attached to the said properties.
- iv) Direct the defendants to file the statements of accounts before the court giving details of money of the profits, income received by them from the business of the properties and direct to deposit the benefits of business in the court.

- v) To appoint fit and proper person as the court receiver in respect of the properties and estate of the deceased.

The plaintiff has further prayed to allow the above mentioned interim reliefs till final decision of the suit. Hence, the application.

4. The defendants have contested the application by filing their say vide Exh.34, 53, 57 and 58.

5. The defendants no.2, 5 and 7 contended that, the suit is not maintainable on the ground that boundaries of the suit properties are not mentioned and the suit properties are not properly identified and traceable. It is further contended that, cause of action for the suit is not proper and suit is also not maintainable on the ground of misjoinder of necessary party. As per the contentions of the defendants no.2, 5 and 7 the suit properties are not having Matruka properties or Tarka left by the deceased. It is contended by the defendants that, the plaintiff is in knowledge of the distribution of the suit properties as per the Mohammedan Law between the plaintiff and the defendants no.1 to 8 by way of written agreement cum settlement dated 11.09.2020. The said document is signed by the plaintiff and the defendants no.1 to 8. Thereafter the plaintiff has avoided implementation of above mentioned agreement cum settlement. It is further contended that the defendant no.4 filed a suit for declaration bearing R.C.S. No.166/2021 against the plaintiff and present defendants. Therefore the application for temporary injunction and suit is not maintainable. The defendants also denied all the allegations made by the plaintiff in his application.

Hence prayed to reject the application.

6. The defendants no.1, 3 and 8 have denied all the allegations made by the plaintiff and contended that, the plaintiff avoided to implement the written agreement cum settlement deed executed on dated 11.09.2020 which is signed by the plaintiff and defendants no.1 to 8. They further contended that, the father of the plaintiff marked 7 plots of equal sizes in the above mentioned properties and gifted 7 plots to 7 daughters including the plaintiff and on 25.06.2020 father of the plaintiff executed registered gift deed in favour of plaintiff defendants no.2, 3, 5, 6, 7 and 8 in respect of plot no.1 to 7. Thereafter the plaintiff and defendants no.2 to 8 become the owners of said property. The husband of defendant no.1 namely Mohammad Yunus Haji Jan Motiwala by way of oral gift deed given the property, bungalow consisting ground floor and first floor situated in Gat No.175/2/B to his wife that is defendant no.1 has accepted the presence of witnesses 2 to 10. The defendant no.1 is accept the oral deed and therefore she is the owner of the said property. As per the provisions of Mohammedan Law registration of oral gift is not necessary. The plaintiff is well aware of the above oral gift by her father to mother. In view of the above circumstances prayed to reject the application.

7. The defendant no.6 has supported the claim of the plaintiff by this application. The defendant no.4 has filed his say similar to defendant no.1 to 5, 7 and 8.

8. I have heard learned counsel for the plaintiff and defendants at sufficient length. Considering the application and

submissions, the following points arise for my determination and I have recorded my findings thereon with reasons stated below.

Sr. No.	Points	Findings
1.	Whether the plaintiff has made out prima-facie case?	'No'
2.	Whether the balance of convenience lies in favour of the plaintiff?	'No'
3.	Whether irreparable loss will cause to the plaintiff, if the injunction as prayed is not granted?	'No'
4.	What order?	Application is rejected.

REASONS

AS TO POINT NO.1 TO 3

9. In order to support the respective claims the parties have placed reliance on various documentary evidence. The reference of the said documents will be made at relevant places in the discussion.

10. Learned counsel for the plaintiff has vehemently argued that, the plaintiff and defendant no.2 to 8 are the children of defendant no.1 and deceased Mohammad Yunus Haji Jan Motiwala. Defendant no.1 is the mother of defendants no.2 to 8 and the plaintiff. The defendants have not disputed relationship of the plaintiff and nature of the suit properties. The defendants have produced one Urdu Script Memorandum of partition along with English translation but the said document is bogus and unregistered document. He further argued that, the plaintiff has never signed the said document because it is bogus and not

executed by the deceased father of the plaintiff. The defendants are adopting shady tactics for alienating and creating third party interest in the suit property. Therefore it is necessary to restrain the defendants no.1 to 8 from alienating the suit property and creating any third party interest over it. The learned counsel for the plaintiff relied upon ratio laid down in the following case laws.

- i) Chelikam Rajamma Vs. Padileti Venkataswami Reddy and others, 1993 (2) ALT 154,
- ii) VijaiKumar Vs. Smt. Kiran Devi and Ors., AIR 2007 Pat 166, 2007 (2) BLJR 2962,
- iii) Kamal Chaudhary And Anr. Vs. Rajendra Chaudhary And Ors., AIR 1976 Pat 366, 1977 (25) BLJR 21,
- iv) Ramesh Chand Ardawatiya Vs. Anil Panjwani, decided on AIR 2003 SC 2508,
- v) Sukhwinder Singh Vs. Tarlok Singh & Others, Civil Revision No.439 of 2011,
- vi) Vidyashankar Vajpayee Vs. Harveer Singh, M.P. No.5342/2019,
- vii) C L City Division Vs. Alimamad Karim, Second Appeal No.90 of 2012 with Civil Application No.12281 of 2014,
- viii) Deshmukh and Company (Publishers) Private Ltd Vs. Avinash Vishnu Khandekar, 2005 CJ(Bom) 313,
- xv) Laxmikant S/o Diliprao Garje Vs. Shrikant S/o Diliprao Garje, Writ Petition No.6849 of 2020, decided on 16.12.2020
- x) Manilal Ratanchand Shah Vs. Nanubhai Jesingbhai And Ors., AIR 1947 Bom 394,
- xi) Dorab Cawasji Warden Vs. Coomi Sorab Warden, 1990 CJ(SC) 178,
- xii) C. Kunhammad Vs. C. H. Ahamad Haji, 2000 CJ(Ker) 53,
- xiii) Anathula Sudhakar Vs. P. Buchi Reddy, 2008 CJ(SC) 41,
- xiv) Smt. Henriqueta S. Afonso And Anr. Vs. Shri Lino Falcaon And Ors., 1997(1) BomCR 349,

- xv) Dalpat Kumar Vs. Pralhad Singh, Civil 5054 and 5055 of 1991,
- xvi) Subraya Vs. Vittala, Civil Appeal No.5805 of 2016, decided on 05.07.2016
- xvii) Kale & Others Vs. Deputy Director of Consolidation, 1976 AIR 807, 1976 SCR (2) 202,
- xviii) Korukonda Chalapathi Rao & Anr. Vs. Korukionda Annapurna Sampath Kumar, Civil Appeal No (s).6141 of 2021,
- xix) A. C. Lakshmipathy And Another Vs. A.M. Chakrapani Reddiar And Five, AIR 2001 Mad 135, (2001) 1 MLJ 1.

11. Learned counsel for the defendants no.2, 3, 5, 7 and 8 vehemently argued that, only 7/12th extract and electricity bill are filed by the plaintiff. No document as to ownership are placed on record by the plaintiff. It is further argued that the suit property is still in the name of deceased Mohammad Yunus Haji Jan Motiwala. Therefore there is no chance of creating third party interest over the suit property. The cause of action is imaginary one. No document as to ownership are placed on record. Therefore there is no prima facie case in favour of the plaintiff. The learned counsel for the plaintiff relied upon ratio laid down by the Hon'ble Apex Court in **Dalpat Kumar and another, Vs. Pralhad Singh and Others, AIR 1993 Supreme Court 276.**

12. Learned counsel for defendant no.6 argued that, it is admitted position that plaintiff and defendants no.1 to 8 are the legal heirs of deceased. The defendant no.6 will produce the 7/12th extract of the property. He further submitted that there is no necessity of granting any injunction.

13. It is for the plaintiff to establish prima facie case in his

favour for issuance of temporary injunction. Because prima facie case is sine qua non for issuance of temporary injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908. The plaintiff has produced on record R.C. Book of Mercedes Benz Car, electricity bills, fence on suit property at Abdimandi, photocopies of shop which are on lease, photocopies of shop after lease, photocopies of illegal activities by JCB and false affidavit by defendants. Also relied upon the documents which will discuss at the proper stage. It is the case of the plaintiff that, defendants no.1 to 8 and the plaintiff are entitle to get share in the property of deceased Mohammad Yunus Haji Jan Motiwala, but the defendants are illegally in possession of the suit property and trying to alienate / trying to create third party interest in the suit property. The plaintiff has further contended that the agreement of settlement regarding partition of suit property that document is false and not registered one also not signed by the plaintiff. I have gone through the agreement cum settlement placed on record which is Urdu language and also bears the signatures of the parties. English translation of the said document is also on record along with Exh.55/1 and 2. As per the contentions of the plaintiff the document is fraud and not registered. Whether the document of agreement cum settlement is fraud or not, whether the document is legal or illegal that cannot be decided at this stage in absence of any evidence. The prayer of the plaintiff regarding preliminary decree upto 1/6th share of the suit property is like deciding the suit finally.

14. Having considered the aforesaid submissions of the

learned counsels for the parties, if the instant case is dealt with, it is seen that no such substantial material placed on record by the plaintiff regarding obstruction by the defendants. Because as per the submissions of defendants the suit property is still in the name of the deceased Mohammad Yunus Haji Jan Motiwala.

15. We have to see the prima facie case, balance of convenience and irreparable loss. Whether the document of agreement cum settlement is legal or not that can be decided after appreciation of the evidence. That is for the plaintiff to prove that facts by adducing the evidence.

16. Therefore I am accepting the arguments advanced by the learned counsel for the defendants. The ratio laid down in the case laws cited by the plaintiff is not perfectly applicable to the case in hand. Therefore the plaintiff has not establishes the prima facie case, the obstruction and interference done by the defendants.

17. Considering all the aforesaid facts and circumstances, the only conclusion can be drawn is that there is no prima facie case in favour of the plaintiff for issuance of temporary injunction as prayed for. If this being a position, I find that no balance of convenience lie in favour of the plaintiff and therefore no irreparable loss would be suffered by the plaintiff. On the other hand, the defendants will suffer irreparable loss. In view of the above discussion I answer point no.1 to 3 in the negative.

AS TO POINT NO.4

18. The upshot of the aforesaid finding is that, the instant

application is deserves to be rejected. Hence, in answer to point no.4, I proceed to pass the following order:

ORDER

1. Application Exh. 5 stands rejected.
2. There shall be no order as to costs.

Date : 16.02.2022.

(Dr. Smt. Ujwala Musale)
10th Jt. Civil Judge (Sr. Division),
Aurangabad.

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per original order

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|---|---|
| 1) Name of Stenographer | :- Pankaj Ravindra Saindane |
| 2) Name of Court | :- 10 th Jt.Civil Judge (S.D.),
Aurangabad. |
| 3) Date | :- 25.04.2022 |
| 4) Order signed by the presiding officer on | :- 25.04.2022 |
| 5) Order uploaded on | :- 25.04.2022 |