

ORDER PASSED BELOW EXH.5 IN Reg.C.S. No. 73/2019..
Sarita Yadav V/s. Dinanath Yadav + 5

1. This is an application for grant of temporary injunction, as provided under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908.
2. Perused the application supported with affidavit, Reply Exh.19, Pleadings and documents placed on record. Heard Learned Advocate Shri G.S. Inamdar for the plaintiff and Learned Advocate Shri C.N. Lipte for the defendants.
3. The plaintiff alleged that the suit properties being the properties of joint Hindu family property. She is in possession of suit property 1(A), as described in plaint. She is running milk business therein since 2009. She claimed her undivided share by demanding partition to defendants. Since January 2019, the defendants are threatening and abusing to the cattle purchasers. It hamper her milk business. In case of continuous of such interference, she would sustain irreparable loss. The defendants are trying to dispossess her from the suit property. Hence, this application.
4. The defendants have contended that the entire properties are the self acquired properties of defendant No. 1 and 2. The properties are not joint family properties. Defendant No. 1 and 2 came in Maharashtra from Utter Pradesh since long back. They did not possess any property. They earn properties out of their personal pay and agony. The buffalo and its calves are purchased in the name of defendant No.1 and 2 by advancing loan from Tata Capital Finance. The plaintiff is the married daughter of defendant No. 1 and 2. As the plaintiff and her husband had no source of income, therefore, they handed over 10 buffalo and calves as

care taker and to direct to deposit the amount received from milk business, in the loan transaction. However, the plaintiff did not deposit the amount in loan account. The plaintiff is in attempt in selling the buffalow. The plaintiff is trying to take undue advantage of the love and affection of defendant No.1 and 2. The plaintiff has no prima-facie case, balance of convenience. There is no possibility of causing irreparable loss. Hence, defendants prayed for rejection of application.

5. The plaintiff is the married daughter of defendant No. 1 and 2. The defendants are joint family members. The plaintiff alleged that since 2009, she is in possession of suit property 1(A) and running milk business, in the suit property. According to defendants, the plaintiff and her husband came to Shrirampur since 2012. They have no source of income. Hence, they extended the helping hand to the plaintiff and her husband. It shows that there is no dispute, as to the residence of plaintiff since 2012. The plaintiff alleged the possession of the suit property 1(A). The defendants have not specifically denied the fact of possession, as alleged by the plaintiff. Though it is in the nature of permissive possession, the possession of suit property 1(A) is since 2012. In view of the plaintiff's contention, the defendants are trying to dispossess her. In case of dispossession, the plaintiff would suffer irreparable loss. She would become landless. It will cause great hardship to her. On the contrary, in case of allowing the application, no hardship would cause to the defendants, in comparing the plaintiff.

6. The hardship is a material factor, while considering the application for temporary injunction. In case of rejection of application, the possibility of causing relief infructuous, cannot be ruled out.

7. The defendants relied upon the observations made by Hon'ble Madhya Pradesh High Court in the case of Smt. Rajeshwari and others

Vs. Balchand Jain and others [AIR 2001 Madhya Pradesh 179]. In the said judgment the benami transaction was within consideration in the suit of partition. The facts of the said matter are totally different from the present facts.

8. The defendants further relied upon the observations made by Hon'ble Supreme Court in the case of *Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack De Sequeria (Dead) through Lrs. [AIR 2012 S.C. 1727]*. The Hon'ble Supreme Court observed that the care taker holds property on behalf of principal, he cannot seek injunction against true owner. The present matter is subjudiced. The defence is taken that the plaintiff was allowed as Care-Taker. However, the plaintiff alleged that the suit property and the cattle were handed over to her as Stridhana and for her livelihood. Therefore, the plaintiff was care-taker of the suit property, are yet to be proved. Therefore, at this stage of proceeding, the observations does not applicable.

9. The defendants further relied upon the observations made by Hon'ble Supreme Court in the case of *M/s. Gujarat Bottling Co. Ltd. And others Vs. Coca Cola Company and others, [AIR 1995 Supreme Court 2372]*. In view of observations of Hon'ble Apex Court, the conduct of the parties must be taken into consideration, while granting or rejecting the relief of injunction.

10. The plaintiff relied upon the observations made by Hon'ble Supreme Court in the case of *Lakshmi Alias Bhagyalakshmi & Anr. Vs. E. Jayaram (D) by Lr. [2013 (0) CCI 11]* and *Rame Gowda (dead) by L.Rs. Vs. M. Varadappa Naidu (dead) by L.R.s & another [2004(3) Bom.c.R. 788]*. The Hon'ble Apex Court held in the judgments that in case of possession of the suit property, the eviction must be followed the due process of law. One cannot law in their own hand. The possession

must be recovered by taking recourse of law.

11. Admittedly, in the present matter, the plaintiff is in possession of the suit property since 2012. The defendants, even they are rightful owner of the suit property, they cannot recover the possession of dispossess the plaintiff by illegal means. The recovery of possession must be effected by adopting due process of law. Moreover, under the guys of interim relief, the plaintiff cannot permitted to do illegal acts. The cattle's possession and ownership is in dispute. The plaintiff cannot permitted to sale-out the cattle under the protection of interim relief. Her illegal acts cannot be protected by legal process. Considering the facts on record, I pass the following order.

ORDER.

1. The application at Exh.5, is partly allowed.
2. The defendants, themselves or through servant, officer, agent or any person on their behalf, is temporarily restrained from interfering in the peaceful possession of the plaintiff over the suit property 1(A), till final adjudication of the suit or further order.
3. The plaintiff is precluded from making any transfer, in respect of any cattles involved in the suit, to any person, by any means, till the final decision of the suit.
4. Cost in cause.

Sd/- x x x
(**Sudhir M. Bomidwar**)
Jt. Civil Judge (J.D.),
Shrirampur.

Date : 24th April, 2019.