

ORDER PASSED BELOW EXH. 5 IN R.C.S. NO.506/2018.

The present suit is filed for partition, possession and perpetual injunction. By way of present application, the plaintiff has sought temporary injunction against the defendants from conveying or transferring the suit property in favor of third party. The defendants vide **Exhibit 13** filed say and resisted the same. Heard both sides.

2. The plaintiff has come up with the case that, the suit property is joint ancestral family property of plaintiff as well as defendants no. 1 to 9. Plaintiff is sister of defendants no. 1 to 3 by blood and cousin of defendants no. 4 to 9. As the plaintiff has undivided inherent share in the suit property, hence the present suit. By way of present application the plaintiff has sought to restrain the defendants from making any kind of transfer or to convey suit property in favor of third party.

3. The defendants no. 1 to 3 and 8 to 9 has resisted the contentions of the plaintiff and has come up with the case that the defendants had purchased 0.26 R of the suit property in the name of their deceased mother namely, Hamida. Hence suit property is self acquired property and not ancestral property. The defendants had time and again extended financial help to the plaintiff. The defendants 1 to 3 purchased property bearing no. 125 admeasuring 264.5 Sq.ft. in the name of the plaintiff for consideration of Rs. 2 Lakhs from Gulab Fakir Mohammad Shaikh and Zamin Gulab Shaikh dated 04/12/2017. On the same day i.e. 04/12/2017, the plaintiff had executed registered release deed in favor of defendants

no. 1 to 3 in respect of suit property, at Sub Registrar by virtue of which Mutation Entry no. 1754 was mutated. Hence, plaintiff has no concern with suit property. Hence, prayed to reject the application.

4. In the backdrop of the rival contentions of both sides, in order to arrive at just and proper decision, following points arose for determination which are answered along with findings and reasons as under -

| Sr.No. | Points | Findings |
|--------|--|--------------------------|
| 1. | Does the plaintiff establish <i>prima-facie</i> case in her favor ? | No. |
| 2. | Does the plaintiff prove that, balance of convenience exist in her favor ? | No. |
| 3. | Does the plaintiff prove that, she will suffer irreparable loss if the present application gets rejected ? | No. |
| 4. | What order ? | Application is rejected. |

REASONS

5. The Ld. Counsel for the plaintiff Shri. S.Y. Wakchaure argued that the plaintiff has never executed release deed in favor of defendants no.1 to 3 .In exchange of release deed, no consideration is given to the plaintiff. If the defendants were genuinely trying to protect the rights and interests of the plaintiff,the *factum* of purchasing the property for consideration of Rs. 2 Lakhs was requisite to be mentioned in release deed. The release deed does not contain the recital of the *factum* that in exchange of waving her

rights, the defendants are purchasing suit property for plaintiff which shows that the release deed was executed by coercion, fraud.

6. The Ld. Counsel Shri S.M. Jondhale for the defendants argued that since Muslim Personal Law is applicable to both the parties, the concept of tenant in common exist hence the suit is *prima-facie* not tenable. The entire case of the plaintiff depends upon the documents placed by the defendants. Not a single document is produced by the plaintiff to believe her case. No *prima-facie* case is established by the plaintiff to prove her case. The plaintiff was in knowledge of 7/12 extract which shows removal of her name vide Mutation Entry No.1754 by virtue of release deed. Hence, prayed to reject the application.

As to point No. 1 :-

7. Perused the record. At this juncture it is pertinent to consider that whether the plaintiff has undivided share and interest in the suit property will be decided on merits of the case during hearing on the strength of cogent evidence and not at this juncture. It is pertinent to consider that vide **Exhibit 18**, my predecessor allowed status quo till hearing of present application. The vital factor is to be considered whether the plaintiff establishes *prima-facie* case in her favor for the purpose of granting interim injunction.

8. The plaintiff has come up with the case that the plaintiff had never executed release deed in favor of defendants no. 1 to 3. The release deed was executed by fraud, coercion by which the

defendants have deprived the plaintiff from her undivided share and interest in the suit property. On the contrary the defendants have come up with the case that plaintiff executed release deed in favor of defendants no. 1 to 3, whereby she waived her rights and interest in suit property, in view of which Mutation Entry no. 1754 has been effected. Hence, the plaintiff has no rights and interest in the suit property .

9. Perused the record. In support of contentions, the defendants no. 1 to 3 filed release deed. On perusal of same, it appears that the deed has been duly registered before Sub Registrar. Hence, *prima-facie* the said deed can be considered to determine the present application. On perusal of recital of release deed, it appears that *the plaintiff had waived her undivided share, inherent rights and interest in favor of defendants no. 1 to 3 without consideration in respect of suit property* and further it is specifically contended that *she will not claim any right or interest being legal heir and will not cause any obstruction to the rights and interests of defendants no. 1 to 3 over suit property*. On perusal of mutation entry no. 1754 the *factum* of release deed executed by plaintiff in favor of defendants has been mutated in record of rights and also brought on record on 7/12 extract.

10. In the light of aforecited discussion, it can be said that the release deed is titled as विना मोबदला हक्कसोड पत्र. From the recitals of the release deed *prima-facie* it appears that the plaintiff has waived her undivided share, rights, interests without consideration. Hence the contentions of the Ld. Counsel for the plaintiff that the reference of

purchasing property for consideration of Rs. 2 Lakhs by defendants for plaintiff is not mentioned in release deed is hereby rejected. Further the plaintiff in her pleadings has nowhere whispered about the *factum* that the defendants got executed the release deed fraudulently or under coercion. On the contrary, the release deed *prima-facie* shows that it bears the signature and thumb impression of the plaintiff, and the deed is duly registered. Hence the contentions of the Ld. Counsel for the plaintiff that release deed is executed by fraud or coercion is hereby rejected. On perusal of Mutation Entry No. 1754, *prima-facie* it appears that the *factum* of release deed was mutated whereby the plaintiff have waived her undivided inherent share in favor of defendants No. 1 to 3. Hence, it can be said that the plaintiff has failed to establish *prima-facie* case for the purpose of present application. Hence I answer point no. 1 in negative.

As to point No. 2 :-

11. The second factor while granting interim injunction, it is requisite to consider whether there exists balance of convenience in favor of defendants. By virtue of second factor, the Court has to consider whether there is comparative hardship or inconvenience caused to either party before granting or refusing interim injunction. The case in hand *prima-facie* shows that, the plaintiff has executed registered released deed in favor of defendants no. 1 to 3 by virtue of which she had waived her undivided share, rights and interest in respect of suit property in favor of defendants no. 1 to 3. Hence, if the present application is allowed, it may cause comparative hardship or inconvenience to the defendants no. 1 to 3

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more than that of plaintiff. Hence, I answer point No. 2 in negative.

As to point no 3 :-

12. The third factor while granting interim injunction, the Court has to consider whether the plaintiff will suffer irreparable loss for refusing the said application. The case in hand shows that *prima-facie* case is in favor of the defendants, hence if the present application is not allowed, the defendants will be deprived from effectively exercising their rights and interests over suit property which cannot be compensated in monetary form and it will cause irreparable to the defendants no. 1 to 3. Hence, I answer point no. 3 in negative. Therefore, while answering point No. 4, the following order is passed :-

ORDER

1. The application is rejected.
2. Application is disposed of accordingly.

Date : 20/03/2021.
Place : Sangamner.

(Smt. M. M. Gangurde)
3rd Jt. Civil Judge Junior Division,
Sangamner.