

Order Below Exh.5 in R.C.S.No.689/2015

1. The plaintiff moved instant application under O.XXXIX, R.1 of C.P.C. for temporary injunction against the defendant no.1 from alienating the suit land in favour of others. The lands involved in property schedule hereinafter referred as "Suit Land". The plaintiff claimed suit land was Joint Family Property. His grandfather had four sons. However, the defendant no.2 & 3 deliberately concealed their names in Mutation and without any legal necessity sold to defendant no.1. Mutation has been challenged. If the defendant no.1 is not restrained from alienation, plaintiffs will suffer great hardship and injury. Accordingly, prayed for injunction. Plaintiff filed affidavit at Exh.6.

2. The defendant no.1 resisted the application vide Say Exh.21. He put forth after denying the plaintiff's claim that he purchased the suit land for consideration from defendant no.2 & 3 as a bonafide purchaser. The plaintiffs have no interest in suit land. He became legal owner of suit land. Supported affidavit Exh.22. Accordingly, prayed for rejection.

3. Following points arises for my determination to which, I have recorded my findings for the reasons stated below.

Sr. No.	Points	Findings
1)	Do plaintiffs prove that they have prima-facie case ?	Yes.
2)	In whose favour the balance of convenience tilts ?	In favour of plaintiffs.
3)	Whether plaintiffs will suffer irreparable loss, if injunction is not granted ?	Yes.
4)	What order ?	As per final order.

REASONS

As to Point No.1 :-

4. The prima-facie case indicates there must be foundation in favour of applicants and there must be arguable question in the litigation. For ascertaining prima facie case, there should be sufficient material to infer arguable question in the matter. In present case, the plaintiffs claimed to be the heirs of Vijay, who is son of Jaywant and brother of 2 & 3. Misfortune to be noted is that the father and mother of minor plaintiffs were died prior to the alienation of suit land. Not only this, the factum of non entry of their names vide Mutation No.7532 makes it clear that plaintiffs were not shown as shareholder in a revenue record. However, same Mutation Entry No. 7532 has been quashed by Ld. Sub-Divisional Office, Shrirampur upholding the share in suit land. Thus, I am of the opinion that the plaintiffs have prima

facie case. Thus, I have no hesitation to hold that the plaintiffs have prima facie case and the nature of suit land needs to be protected from further escalation. Hence, I answer Point No.1 in affirmative.

As to Point No.2 -

5. In order to ascertain balance of convenience the test of comparative hardship is to be evaluated. In view of the aforesaid discussion, I am of the opinion that if the suit land subject of partition are alienated in any form, it would certainly frustrate the plaintiff's interest and right therein which would ultimately deprive their claim therein. Thus, certainly hardship will be caused to them greater than caused to the defendant no.1 on its refusal. It means, there is satisfactory prima-facie documentary evidence available on record to gather foundation for the suit claim of the plaintiffs. In the light of prima-facie case of plaintiffs, if the defendant no.1 succeed in alienation of suit land, then certainly hardship will be caused to plaintiffs. Hence, balance of convenience lies in favour of plaintiffs also. Hence, I answer Point No. 2 in the affirmative.

As to Point No.3 -

6. In view of aforesaid discussion, I am of the opinion that if the suit land

is not available at the time of fag-end of trial for actual partition then, an irreparable loss will be certainly caused to plaintiffs. Hence, the plaintiffs would not be remedied by way of money. Thus, irreparable loss will be caused to plaintiffs on refusal of injunction. Hence, I answer Point No.3 in affirmative.

7. In view of aforesaid discussion, I am of the view that the plaintiffs have arguable case. Thus, this is a good case to extend the benefit of discretionary relief of temporary injunction in favour of plaintiffs in order to avoid legal injury to suit land. No prejudice will be caused to defendant no.1 as he is holding the suit land. Thus, following order.

Order

- 1) Application Exh.5 stands allowed.
- 2) The defendant no.1 is hereby temporarily restrained by way of temporary injunction from alienating the available suit land, in any manner.

Date : 02-05-2017.

(Pravin P. Deshmane)
Jt. Civil Judge J.D., Rahuri.