

CNR NO. MHAH-20-001154-2020
ORDER PASSED BELOW EXH.5 IN REG.C.S. NO. 260/2020.
Sau. Kavita Ghule Vs/. Bhaginath Funde + 4

Plaintiff has filed present application for relief of temporary injunction in respect of property Gat No. 178, area admeasuring 4 H. 35 R, situated at Village Koradgaon, Tal. Pathardi, Dist. Ahmednagar bounded as mentioned in the plaint. Hereinafter called as “**Suit Property**”.

2 According to plaintiff, suit property is an ancestral and joint Hindu joint property of plaintiff, defendant No. 1 to 5. Out of the suit property area admeasuring 0.20 R is purchased by defendant No.1 Bhaginath in his wife defendant No.2 out of the income of joint family property. Thereafter, the said area 0.20 R out of the suit property is sold by defendant No. 1 and 2 to Dnyandeo Vishwana Andhale for domestic purpose. Accordingly Mutation Entry No. 3020 is prepared in the name of Dnyandeo Andhale. Thereafter, said Dnyandeo Andhale executed sale-deed of the said area in favour of defendant No.1 on 29/12/2008 and the name of defendant No.1 Bhaginath is mutated in revenue records vide Mutation Entry No. 4058. Since then, plaintiff, defendant No.1 & 2 are cultivating the said property. Defendant No.1 is a Karta of joint family. However, he is liquor as well as gambling addicted. Defendant No.1 is trying to alienate the joint family property to one businessman of village Koradgaon and create third party interest. Thereafter, plaintiff approached to defendant No.1 and asked not to alienate the suit property. However, defendant No.1 denied the same. Therefore, plaintiff has claimed relief for not to alienate suit property till disposal of suit.

3. The defendants appeared in the suit but, failed to file Written Statement and Say on the present application.

4. Heard Learned Advocate Shri V.S. Bade for the plaintiff. Perused the record and proceeding.

5. On rival pleading of the plaintiff, following points do arise for my determination. I have recorded my findings thereon with reasons there to as under.

No.	Points	Findings.
1.	Does plaintiff prove that, she has prima-facie case ?	No.
2.	Does the plaintiff further prove that, the balance of convenience is in her favour?	No.
3.	Does the plaintiff further prove that she will suffer irreparable loss by denying the relief ?	No.
4	What order ?	As per final order.

REASONS

6. The plaintiff has filed on record photo copy of 7/12 Extract of land Gat No. 178, photo copies of Mutation Entry No. 3020 & 4058 along with list Exh.3. Defendants have not filed any document.

7. The plaintiff is claiming temporary injunction for the suit properties mentioned in plaint. The plaintiff claimed for temporary

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injunction not to alienate the suit property till disposal of the suit. The plaintiff has not filed any document on record to show that, the defendant No.1 & 2 are trying to alienate the suit property. It is argued by the advocate for the plaintiff that, the defendants are trying to sale the suit property situated at Koradgaon, Tal. Pathardi. Here I would like to refer the case law in the case of ***Shri Prakash Gobiandram Ahuja Vs. Shri Ganesh Pandharinath Dhone, decided on 4th October-2016,*** in para 177 it is observed by the Hon'ble Bombay High Court that,

“ 177. In view of the above said discussion, we answer the questions placed before us for reference as follows:

Question No.(I): Does Section 52 of the Transfer of Property Act provide adequate protection to the parties from transfers pendente lite since such transferees are not required to be, or entitled as of right to be, impleaded as parties to the suit and cannot resist execution proceedings in view of provisions of Order XXI Rule 100 of the Code as amended by this Court.?

Answer: Section 52 of TP Act does not provide adequate protection to the parties from transfers pendent lite. The question does lay down a correct proposition of law that, transferees pendent lite are not required to be or entitled as of right to be impleaded as parties to the suit, and they cannot resist execution proceedings in view of provisions of Order XXI Rule 100 of the Code, as amended by this Court.

Question No.(II) Would plaintiffs' registering notices of their suits under Section 18 of the Indian Registration Act (though such registration may not be compulsory) not secure for AO-256-13-doc plaintiffs more than what an injunction could secure since transferees, who purchase property, pendente lite in spite of such registration would be deemed to have notice of pendency of the lis and could not claim to be transferees without notice? And, would such registration not be preferable to clamping an injunction on adversary ?

Answer: Mere registration of notices of pending suit cannot secure for plaintiffs more than or even equivalent to what an injunction could secure, as the consequences of alienation in breach of interim injunction

render such alienation illegal and exposes the party to the consequences provided under Order XXXIX Rule 2A and Rule 11 CPC in addition to the punishment for contempt of Court. Hence, such registration of notices of pending suit, though desirable as an additional safeguard, cannot be preferable or substituted to clamping an order of injunction on adversary. Question (III): Since a plaintiff seeking a temporary injunction is required to show that he would suffer irreparable if AO-256-13 doc temporary injunction is not issued, would it be inappropriate to expect such plaintiff to show that the provisions of Section 52 of the Transfer of Property Act do not afford adequate protection before an injunction to restrain transfer pendente lite is issued?

Answer: Though it may not be inappropriate for the court to expect the plaintiff to show that the provisions of Section 52 of TP Act do not afford adequate protection, it cannot laid down as a blanket proposition of law that in each and every case, plaintiff is expected to show it as a condition precedent for grant of injunction order.

8. In the above judgment it is observed by the Hon'ble Bombay High Court that, the plaintiff claiming for the relief of not to alienate or create third party interest in the suit property, has to show that, the provisions of Section 52 of the T.P. Act do not afford adequate protection. However, the plaintiff in the present case has not stated any thing how the protection provided under Section 52 of the T.P. Act is not adequate. Mere oral submissions is not sufficient in that regard. However, the reasons mentioned by the plaintiff are not satisfactory. If it is not on the record that, the defendants are trying to dispose of the suit property the injunction can not be granted. Section 52 of Transfer of Property Act bar is there for sale of any property for which litigation is pending.

9. Also I would like to mentioned here that the case law in the case of ***Kachhi Properties Vs. Ganpatrao Shankarrao Kadam, 2010(5) ALL MR 366*** in Para No.7. It is observed by the Hon'ble Bombay High

Court that, While doing so on the principle of lis pendens the Court observed as under :

"See Turner L.J.'s judgment in Bellamy v. Sabine [(1857) 1 De G.&J. 585]. "No case, so far as I am aware, has yet occurred in which the doctrine has been applied so as to affect the title of the alienee of a defendant by virtue of a claim not interfering with the title of the plaintiff in the pending litigation."It will of course be remembered that the doctrine of lis pendens is not based on the equitable doctrine of notice but on the ground that it is necessary to the administration of justice that the decision of the Court in a suit should be binding not only on the litigant parties but on those who derived title from them pendente lite whether with notice of the suitor not - see Bellamy v. Sabine [(1857) 1 De. G.&J. 566]. This being so no question of priority can arise to defeat the plaintiff's claim herein "pending litigation."

The authorities are clear that the conveyance to the plaintiff herein pendente lite cannot be said to be void-ab-initio. If that had been intended s.52 must have been differently worded, whereas the section expressly says that the property cannot be transferred or other wise dealt with by any party to the suit or proceeding so as to affect the rights of any other party there to under any decree or order which may be made therein. The effect of the doctrine is not to annul the conveyance but only to render it subservient to the rights of the parties to the litigation. Thus, the Master of the Rolls said in *The Bishop of Winchester v. Paine* [(1805) 11 Ves.197] "Ordinarily, it is true, the decree of the Court binds only the parties to the suit. But he, who purchases during the pendency of the suit, is bound by the decree, that maybe made against the person, from whom he derives title. The litigating parties are exempted from the necessity of taking any notice of atitle, so acquired. As to them it is as if no such title existed. Otherwise suits would be in determinable: or which would be the same in effect, it would be in the pleasure of one party, at what period the suit should be determined." And the Vice-Chancellor in *Metcalfe v.Pulvertoft*, [(1813) 2 Ves.&B. 204]says:- "The effect of the maxim pendente lite nihilinnovetur,"understood as making the conveyance wholly inoperative, not only in the suit depending but absolutely to all purposes in all future suits and all future time, is founded in error."

Hence, in view of above discussion I am of the view that, the prima-facie case is not proved. As such I answer point No.1 in the negative.

As to Point Nos.2 and 3..

10. The balance of convenience and irreparable loss is sine-qua-non of the prima-facie case. If the prima-facie case is not proved, it cannot be said that, the balance of convenience lies in favour of the plaintiff and he suffers any irreparable loss. In the given suit, the plaintiff failed to prove his prima-facie case, therefore, balance of convenience does not tilt in his favour. It is not proved that, he is the separate owner of the suit land, hence he cannot suffer any irreparable loss. As a result I answer point Nos.2 and 3 in the negative.

As to Point No. 4..

11. The plaintiff failed to establish basic ingredients of temporary injunction. Hence, application is liable to be rejected. Accordingly, I pass the following order.

O R D E R..

1. Application is rejected.
2. No order as to costs.

Sd/- x x x
(A.S. Birajdar)
Civil Judge (J.D.),
Pathardi.

Date : 04/12/2021.