

ORDER BELOW EXH.05 IN RCS NO.151/2018

(Asha Supekar V/s. Anil Supekar & Others)

1] The plaintiff has filed present application to restrain defendant no.1 to 3 from creating any third party interest in the suit property.

2] It is contention of the plaintiff that, the suit property as described in plaint para 1 i.e. City Survey No.1284 and 1286 are ancestral and Joint Hindu Family properties of plaintiff and defendant no.1. It is further contended that, father of plaintiff died on 08.04.2007 and thereafter name of plaintiff, defendant no.1 and there mother Chhababai were mutated to the suit properties. It is further contended that, on 27.09.2017, mother of plaintiff and defendant no.1 died and name of plaintiff and defendant no.1 was continued as legal heirs of deceased. It is further contended that, defendant no.1 has obtained loan from defendant no.2 and mortgaged the suit property without the consent of the plaintiff. Moreover, defendant no.1 has also leased some part of the suit property to defendant no.3 without the consent of the plaintiff. Defendant no.3 is running the Bhel Center in the suit property. It is specifically contended that, till date, there is no partition by meets and bounds between plaintiff and defendant no.1. On 02.05.2018, defendant no.1 refused to allot plaintiff's undivided share over the suit property and threatened to create third party interest. Thus, the suit came to be filed and accordingly the present application.

3] Defendant no.1 failed to file his written statement, hence, the suit proceeded without written statement of defendant no.1 and ex-parte

against defendant no.2 and 3.

4] Heard Ld. Advocate D. K. Tarde for the plaintiff. Considering the contentions and documents on record, following points arise for my consideration and I have recorded my findings thereon along with the reasons below;

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff proved the Prima Facie?	In the affirmative.
2.	Whether the balance of convenience lies in favor of plaintiffs?	In the affirmative.
3.	Whether the plaintiff will suffer irreparable loss if the injunction is not granted?	In the affirmative.
4.	What order ?	As per final order...

REASONS

5] It is pertinent to note here that, the plaintiff has filed Certified Copy of City Survey No.1284 and 1286 which shows the suit properties are inherited in the name of plaintiff and defendant no.1's father Babu after demised of Gena Hari supekar i.e. Grandfather of the plaintiff. The entry specifically shows that, it is an ancestral property. Moreover, on demise of Babu Hari Supekar and Chhababai Babu Supekar i.e. parents of plaintiff, name of plaintiff and defendant no.1 are in Regard of Rights. This prima facie shows that, the suit properties are ancestral properties. Moreover, the

plaintiff has filed supporting affidavit to the contentions made in the application which prima facie could not be disbelieve. Moreover, the contentions of the plaintiffs are supported/corroborated by documentary evidence.

6] It is further contended that, till date no partition is effected by meets and bounds between plaintiff and defendant no.1. The contentions of plaintiff has remained unchallenged and defendant no.1 is the person who has personal knowledge of in regard of partition of the suit properties. But, he has not filed his written statement and contested the suit. So, it can be concluded that, partition has not yet been effected between the parties. Moreover, the document shows that, defendant no.1 has created a mortgage over the suit property. This shows that, possibility of creating third party in the suit property at the hands of defendant no.1 could not be ruled out. As the partition has not yet been effected, prima facie is having her undivided share over the suit properties and in case defendant no.1 succeeded to create any third party interest over the suit property it would certainly create multiplicity in the litigation and complication in the suit. So, as to avoid such multiplicity and complications, it is necessitated that, the suit properties are to be protected. Whether the plaintiff succeeded in the suit or not is a part of a full fledged trial and it could not be considered at this stage. Order 39 of C.P.C. contemplates so, as to protect the property, injunction has to be granted on the basis of property from creating any third party interest is justified. Unless to mention that, in case any third party interest is created, plaintiff will suffer from irreparable loss which could not be compensated in terms of money. Hence, considering all the facts and circumstances of the case, I answer point no.1 to 3 in the affirmative and for point no. 4 I pass following order.

ORDER

- 1) The application vide Exh.05 is allowed.
- 2) Defendant No.1 to 3 and their relatives, servants, or any person on behalf of defendant no.1 to 3 are hereby temporarily restrained to create any third party interest by way of mortgage, gift, lease, etc. till the final disposal of the suit.
- 3) Cost in cause.

Date: 13/02/2019

(R. B. KULKARNI)
2nd C.J.J.D, Shrigonda,
Ahmednagar.