



Order below Exhibit No.05

CNR. No. MHAH230006752022

The present application has been filed by the Plaintiff for restraining the defendants from creating third party interest in the property.

2. It is the case of the learned advocate for the Plaintiff have Plaintiff's No. 01, 03 and 4 are children of Plaintiff no. 2 and defendant no.1. Defendant No. 2 is the second wife of defendant no.1. Further defendant No. 3 is the son from the second wife of defendant No. 2. It is further the case of the Plaintiff that properties more particularly described in para 1 a and one B of the plaint are joint family properties of the Plaintiff and defendant no.1 the partition of the suit property as not yet taken place between the Plaintiff and defendant. It is the case of the Plaintiff that defendant no.1 illegally married defendant No. 2 despite being married Plaintiff No. 2. It is the case of the Plaintiff that the father of the Plaintiff illegally transferred

the suit property vide mutation entry bearing No. 507 and mutation entry bearing No. 3705 to defendant No. 2 the same are illegal. The aforesaid property is in the possession of defendant no.1. It is the case of the Plaintiff that Plaintiff no.1 to 4 have 1/5 undivided share in the suit properties. Therefore, the Plaintiff has filed present application restraining the defendants from creating third party interest in the suit property.

3. Defendant number 1 to 3 have appeared and filed their say to the present application at Exhibit 14. It is the case of the defendants that no valid marriage and has taken place between Plaintiff No. 2 and defendant no.2. It is further the case of the defendants that defendant number one is the absolute owner of the suit property. The Plaintiff have no share in the suit property. Defendant no. 02 is the absolute owner of the suit property and the plaintiff do not have any right title in the suit property. The suit filed by the plaintiff is bared by law of limitation. Hence, the present application is liable to be rejected.

4. I have heard the Ld. Advocate for the parties and perused the record, on hearing the Ld. Advocates for the parties, following points arise for my determination.;

Sr. No.	POINTS	FINDINGS
1	Whether the plaintiffs prove that, they have made out prima facie case for seeking interim injunction restraining the defendants from creating third party interest in the suit properties. ?	Yes
2	Whether the plaintiffs prove that, balance of convenience lies in their favour ?	Yes
3	Whether the plaintiffs prove that, irreparable loss would be caused to them if the injunction is not granted in their favour ?	Yes
4	What order ?	Application is allowed.

REASONS

As to Point No.01

5. For the grant of interim injunction in favour of the plaintiffs, the plaintiffs have to establish that, they have prima facie case. Prima facie case means that they have arguable case. The Hon'ble Supreme Court in a catena of

cases has held that "*Prima facie case*" means that, the Court should be satisfied that, there is a serious question to be tried at the hearing, and there is a probability of plaintiffs obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. In view of the aforesaid position of law, now, I proceed to determine whether the plaintiffs have made out prima facie case in their favour.

6. The plaintiffs in support of their case have relied upon the certified copy of 7/12 of suit property bearing Gat No. 46 along with list of document at Exh. 3/3. Perusal of the same reveals that, name of defendant no. 01 is recorded in occupant column of the 7/12 extract vide mutation entry bearing no. 3705. Further, it is the case of the plaintiff that, plaintiff no. 01, 03 and 04 are children of defendant no. 01. The defendants have disputed the second marriage of defendant no. 01 with plaintiff no. 02 is illegal. The question whether the marriage of defendant no. 01 with plaintiff no.02 is illegal are not can only be decided during trial, in light of the led by the parties to that effect.

Further, the question whether plaintiffs no. 01,03 and 04 are illegitimate of defendant no. 02 will have to be decided only during trial. As per the law laid by the Hon'ble Supreme Court even illegitimate children have a right in the self acquired property of their parents. This being the position of the law, I am of the considered opinion that, prima facie plaintiff no. 01,03 and 04 have undivided share in the suit properties.

7. The Ld. Advocate for the defendant has argued that, the suit properties that defendant no. 01 and defendant no. 03 are absolute owners of the suit properties. The question whether the defendants are absolute owner of the suit properties can only dealt during trial. Therefore, I am of the prima facie opinion that, it is necessary to restrain the defendants from creating third party interest in the suit properties in order to preserve the suit properties and to avoid multiplicity of litigation. Hence, I am of the considered opinion that, the plaintiffs have made out a prima facie case for grant of temporary injunction in their

favour. Hence, I answer point no. 01 in affirmative and record my findings thereon.

As to Point no. 02 and 03

08. I have already held that, the plaintiffs no.01, 03 and 04 have share in the suit properties. Therefore, I am considered opinion that, greater in convenience would be caused to the plaintiffs if injunction is not granted in their favour.

09. I am of the considered opinion that, irreparable loss would caused to the plaintiffs if injunction is not granted in favour of plaintiffs. Hence, I answer point no. 02 and 03 in affidavit and record my findings thereon.

As to point no. 04

10. I have already held that, plaintiffs have made out prima facie case balance of convenience and made out a case that they have prima facie case in their favour. They also proved that, balance of convenience lies in their favour. They have further proved that, irreparable loss would be

caused to them if injunction is not granted in their favour.

Therefore, I pass the following order;

ORDER

1. Application is allowed.
2. The defendant no. 01 to 03 are restrained from creating third party interest in the suit properties more particularly described in the para no. 01 and 02 of the plaint till disposal of the suit.
3. No order as to cost.

Date: 05.01.2024

Sd/-
(N. P. Baji)
2nd Jt. Civil Judge J.D.,
S h r i g o n d a.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original judgment.

Name of the Stenographer : D. T. Kasare
Name of the Court : Shri. N. P. Baji,
2nd Jt. C.J.J.D.,
Shrigonda.
Date of Order : 05 -01-2024
Date of PDF : 05 -01-2024
Date of uploading : 05 -01-2024