

**ORDER BELOW EXH. 5 IN SPL. C. S. NO. 231/2022.**

(CNR-MHAH23001324-2022)

01] The plaintiff has filed this application seeking temporary injunction against defendant Nos. 1 to 3 and 7, 8 restraining them from alienating the suit properties described in para 1A i.e. land in Gat No. 194/1 admeasuring 1H 99 R, out of it, land admeasuring 0-99 R, para 1B i.e. land in Gat No. 194/2 admeasuring 2H 39 R, out of it, land admeasuring 1H 60 R and para 1C i.e. land in Gat No. 194/5 admeasuring 2H 98 R all situated at village Wadali, Tal. Shrigonda, Dist. Ahmednagar (in short the suit property) is subject matter of present application.

02] The case of the plaintiff, in short is as under-

That defendant No. 1 and 2 are father and mother and defendant No. 3 is brother of the plaintiff. Defendant No. 4 is real sister of grandmother of plaintiff namely Jankabai and defendant No. 5 to 8 are third persons. According to plaintiff, earlier suit properties were standing in the name of her grand father Laxman Kandekar. Her grandfather effected partition wherein suit property described in para 1 came to the share of defendant No. 1, suit property described in para 1B came to the share of defendant No. 2 and suit property described in para 1C was given to the share of defendant Nos. 2 and 3 by way of family arrangement. It is contended that there is one house situated in suit property 1B along with the cattle shade. However, the plaintiff and defendant Nos. 1 to 3 are possessing the land Gat No. 194/2 and cultivating it. Plaintiff has contended that suit properties are ancestral properties of herself and defendant Nos.1 to 3 and therefore she is having 1/4<sup>th</sup> undivided share in it.

03] However, on 28/03/2005 defendant No. 2 has sold suit

property described in para 1B of the plaint in favor of defendant No. 4 and Avinash Deshmukh by registered sale deed bearing No. 894/2005 without having any legal necessity. Till date, the plaintiff and defendant Nos. 1 to 3 are in possession the said land and its possession was never handed over to defendant No. 4. So also, defendant No. 2 has given the land admeasuring 80 R out of land Gat No. 194/2 in favour of defendant No. 4 and 5. However, its possession was never handed over and plaintiff and defendant No. 1 to 3 are possessing the same.

04] According to plaintiff, after the demise of husband of defendant No. 4, names of his legal heirs i.e. defendant No. 4 to 7 came to be recorded on the land Gat No. 194/2. Thereafter, on 28/07/2015, defendant No. 4 has executed bogus and illegal Gift deed in favour of defendant No. 5 in respect of land in Gat No. 194/2. However, its possession was never handed to defendant No. 7. It is contended that defendant No. 5 has alienated the land in Gat No. 194/2 admeasuring 1H 99 R in favour of defendant No. 8. However, the said sale deed is also without possession and consideration. It is not binding on the share of the plaintiff.

05] It is further contended that on 30/10/2022 when the plaintiff was cultivating the suit property described in para 1B of the plaint, defendant No. 8 illegally entered upon in his property and informed the plaintiff that he has purchased the suit property in para 1B of the plaint and threatened to the plaintiff if she tries to cultivate the same. Thereafter, when the plaintiff collected the information from revenue office, she came to know sale deed, release deed and Gift deed. Lastly, it is contended that the plaintiff is taking the higher education and when plaintiff demanded her undivided share to

defendant No. 1 to 3, they have refused the same. According to plaintiff, it will take certain time to decide the suit on merits. Plaintiff has prima facie case and balance of convenience in her favour. In the meantime, if defendant Nos. 1 to 3, 7 and 8 alienated the suit property in favour of third persons, the plaintiff will suffer irreparable loss, which cannot be compensated in terms of money. Hence, the application.

06] The defendant Nos. 1 to 3 have filed say at Exh. 39 wherein they have partly admitted the claim of plaintiff and stated that they along with plaintiff are in possession of suit property. Defendant No. 5 and 8 have contested the application vide their say at Exh. 48 and 25 respectively. Defendant No.5 has stated that earlier land in Gat No. 194/3 was owned by defendant No. 2 which she has sold the same in favour of defendant No. 4 and her husband Avinash Deshmukh. Thereafter, in the year 2013 after the death of Avinash Deshmukh, names of defendant Nos. 4 to 7 came to be recorded on the 7/12 extract of land in Gat No. 194/2. Thereafter, on 28/07/2015 defendant No. 4 has executed gift deed in land Gat No. 194/2 in favor defendant No. 5 and defendant No. 5 has become the owner of said land since year 2013 to 2022. Thereafter, on 20/10/2022, defendant No. 5 has sold land in Gat No. 194/2 by registered sale deed in favour of defendant No. 8 for valuable consideration of Rs. 39,00,000/-. Prior to the said sale deed, on 25/09/2022 defendant No. 8 had issued public notice in daily 'Lokmanthan' calling for objection for said transaction. However, in that period nobody has raised any objection and thus on 20/10/2022, defendant No. 8 had purchased the property in land Gat No. 194/2 and on the same date he was put in the possession. Therefore, plaintiff in collusion with defendant No. 1 and 2 has filed the false suit and the present application. Therefore, it is prayed to

reject the application with costs.

07] Defendant No. 8 in his written statement has stated that earlier land in Gat No. 194/3 was owned by defendant No. 2 which she has sold the same in favour of defendant No. 4 and her husband Avinash Deshmukh. Thereafter, in near 2013 after the death of Avinash Deshmukh, names of defendant Nos. 4 to 7 came to be recorded on the 7/12 extract of land in Gat No. 194/2. Thereafter, on 28/07/2015 defendant No. 4 has executed gift deed of her undivided share in land Gat No. 194/2 in favor defendant No. 2 and defendant No. 2 has become the owner of said land since year 2013 to 2022. Thereafter, on 20/10/2022, defendant No. 5 has sold land in Gat No. 194/2 by registered sale deed in favour of defendant No. 8 for valuable consideration of Rs. 39,00,000/-. Prior to the said sale deed, on 25/09/2022 defendant No. 8 had issued public notice in daily 'Lokmanthan' calling for objection for said transaction. However, in that period nobody has raised any objection and thus on 20/10/2022, defendant No. 8 had purchased the property in land Gat No. 194/2 and on the same date he was put in the possession. According to defendant No. 8, from 2005 to 2021 there was no entry of house 'घरपड' on the 7/12 extract of Gat No. 194/2. However, in the year 2022 in collusion with the Kamgar Talathi plaintiff has got recorded the said entry. There was and is no house in land Gat No. 194/2. Therefore, plaintiff in collusion with defendant No. 1 and 2 has filed the false suit and the present application.

08] In view of the rival contentions of the parties, following points are arise for consideration. The points and its findings along with reasons are as follows.

| SR. NO. | POINTS   | FINDINGS                   |
|---------|--|----------------------------|
| 1       | Whether plaintiff proves prima facie case ?  | <b>In the negative.</b>    |
| 2       | Whether balance of convenience lies in favour of the plaintiff ?                             | <b>In the negative.</b>    |
| 3       | Whether plaintiff will suffer irreparable loss in case the temporary injunction is refused ? | <b>In the negative.</b>    |
| 4       | What order ?   | <b>As per final order.</b> |

### REASONS

#### AS TO POINTS NO. 1 to 4 :-

09] In order to substantiate the claim of temporary injunction, it is for the plaintiff to prima facie establish that the suit properties are ancestral properties of herself and defendant Nos. 1 to 3. In that context, it is specific case of the plaintiff that the suit properties were partitioned by her grandfather Laxman Kandekar and out of it land in Gat No. 194/1 came to the share of defendant No. 1, land in Gat No. 194/2 came to the share of defendant No. 2 and land in Gat No. 194/5 came to the share of defendant Nos. 2 and 3. So also, copy of 7/12 extract of land Gat No. 194/1 filed along with list Exh. 3/1 reveals that the name of Laxman Kandekar has been removed by virtue of M.E. No. 2974 and name of defendant No. 1 and his brother Kapilmuni Kandekar has been inserted. Admittedly, when the suit properties have been partitioned by grandfather of the plaintiff and given to the separate share of defendant No. 1, 2 and 3, the nature of the suit properties does not remain ancestral but self acquired properties.

10] Moreover, it is specific case of the plaintiff that defendant

No. 2 without being any legal necessity has sold the land Gat No. 194/3 to defendant No. 4 and her husband Avinash Deshmukh. However, its possession was not handed over to them. However, careful perusal of certified copy of sale deed dated 28/03/2005 reveals that defendant No. 2 has sold the entire land in Gat No. 194/3 to defendant No. 4 and her husband Avinash Deshmukh for valuable consideration of Rs. 2,50,000/- and the sale deed contains recital that on the same day the possession of the said land has been handed over to the vendees. Not only that the names of defendant No. 4 and her husband also came to the recorded on the revenue record of land in Gat No. 194/3. Since, 28/03/2005 till date, defendant No. 2 has not raised any objection to the alleged transaction nor she has filed any proceeding that the sale deed dated 28/03/2005 is a sham document and without consideration.

11] Moreover, on 28/07/2015 defendant No. 4 has executed registered gift deed in favour of defendant No. 5 in respect of an area of 80 R out of land Gat No. 194/2. It is the case of the plaintiff that the said gift deed is also a sham document without consideration and possession. However, certified copy of registered gift deed dated 28/07/2015 filed along with list Exh. 3/5 reveals that the defendant No. 4 on the basis of her name and area of 80 R on the 7/12 extract of land Gat No. 194/2 has executed the registered gift deed in favour of defendant No. 5, who is her son and the gift deed also contains recital that its possession is handed over on the same day. Not only that the name of defendant No. 5 also came to the recorded on the revenue record of land in Gat No. 194/2. Since, 28/07/2015 till date, plaintiff or defendant Nos. 1 to 3 have not raised any objection to the alleged transaction nor they have filed any proceeding that the gift deed dated 28/07/2015 is a sham document and without consideration.

12] So also, it reveals that on 20/10/2022, defendant No. 5 has executed registered sale deed of an area of 1 H 99 R out of land Gat No. 194/2 in favour of defendant No. 8 for consideration of Rs. 39,00,000/-. It is the case of the plaintiff that the said sale deed is also a sham document without consideration and possession. However, certified copy of registered sale deed dated 20/10/2022 filed along with list Exh. 3/7 reveals that the defendant No. 5 on the basis of his name and area of 1 H 99 R on the 7/12 extract of land Gat No. 194/2 has executed the registered sale deed in favour of defendant No. 8 and the sale deed also contains recital that its possession is handed over on the same day. So also, in the said sale deed the consideration amount of Rs. 39,00,000/- has been shown to be transferred by defendant No. 8 in favour of defendant No. 5 through RTGS. Since, 20/10/2022 till filing of the suit, plaintiff or defendant Nos. 1 to 3 have not raised any objection to the alleged transaction nor they have filed any proceeding that the sale deed dated 20/10/2022 is a sham document and without consideration.

13] Thus, on the foregoing discussion, it reveals that all the above mentioned sale deeds and gift deed are registered instruments and after prima facie perusal of those deeds, it is crystal clear that the possession of the properties stated therein has been handed over to the vendees and beneficiary on the same date. The fact of possession is fortified on the basis of names of defendant Nos. 4 and 5 on the 7/12 extract of the suit properties. It is worth here to note that at the time of filing of suit, the age of the plaintiff has been shown as 24 years and she has stated that in the year 2005, defendant No. 2 her mother without there being legal necessity has alienated the land in Gat No. 194/3 in favour of defendant No. 4 and her husband Avinash Deshmukh. Admittedly, in the year 2005, plaintiff must have been

aged at about 7 years and at that time she must have been living with and under the guardianship of defendant Nos. 1 and 2. Thus, obviously it is practicably not possible for the plaintiff at that age to know and understand as to whether the sale deed dated 28/03/2005 was without legal necessity and without consideration and possession. On the other hand, the sale deed and revenue record exactly shows the contrary position.

14] Thus, after considering all these aspects, it is fact on record that the suit properties have changed its hands many times before filing of the suit that too by way of registered instrument, the plaintiff has miserably failed to prove prima facie case in her favour. So also, in the present application, it is nowhere stated by the plaintiff that defendant Nos. 1 to 3 and 7, 8 are intending to alienate the suit properties or they have made any act in that regard. Therefore, the balance of convenience is not in favour of the plaintiff. In absence of prima facie case and balance of convenience, the question of irreparable loss will not arise. The plaintiff is, therefore, not entitled to the relief of temporary injunction as prayed for. Hence, I answer points Nos. 1 to 3 in the negative. Hence, the application deserves to be rejected. Hence, in answer to point No. 4, the following order is passed :-

**ORDER**

- 1] Application Exh. 5 stands rejected.
- 2] The order of maintaining '*status quo*' passed below Exh. 20 on 25/01/2023 stands vacated forthwith.
- 3] Costs in cause.

Place : Shrigonda.  
Date: 22/08/2023.

( A. N. Kulkarni )  
Civil Judge, Senior Division,  
Shrigonda.