

Order below application Ex.5 in R.C.S.No.576/2014

1. The present application is filed by the plaintiffs for grant of temporary injunction restraining the defendants from alienating the suit property in any manner by way of sale or in any manner till final disposal of the suit.

2. The plaintiffs contended that they have filed present suit for partition, possession, declaration and injunction against the defendants. Suit property gut no.385 was previously in the name of Fakira Walke. Defendant no.1 and Bhaskar effected partition of suit property on 18/10/2002 between them. As per partition, 0.81 R area came in the name of defendant no.1 and 80 R area came in the name of Bhaskar. Suit property mentioned in para 1B was ancestral property and it is in the name of defendant no.1. On 9/6/2010, marriage of plaintiff no.1 with the son of defendant no.1 and brother of defendant no.2 and 3 was solemnized as per Hindu religion at Alandi Devachi, Tq. Haveli, Dist. Pune. Out of said wedlock, plaintiff no.1 gave birth to plaintiff no.2, who is now aged about 2 years and 6 months. After marriage, plaintiff no.1 came for cohabitation at the house of defendants at Wadegavhan. Her husband Dinesh was running grocery shop and zerox center. Plaintiffs, her husband Dinesh and defendants were living jointly. On 22/7/2012 due to sickness, Dinesh died. After performing all necessary religious ceremonies, defendants told plaintiff no.1 to make their own arrangement and to go to her father. Thereupon, plaintiff no.1 told them that her parents are unable to look after her, she will do work there and feed up plaintiff no.2 and not to let her to leave the place. Thereafter they started to give more and more illtreatment to her. Lastly, they reached plaintiffs at her parental house and warned them not to bring them back towards them. The defendants did not make any arrangement for their maintenance. Therefore she demanded defendants to get partition and separate possession of the share of her husband in the suit properties. Defendant no.1 told her that unless plaintiff no.2 attains age of 18 years, partition will not be effected. Then she came to know on

20/5/2014 when she drew 7/12 extract of gut no.385 that for avoiding share of Dinesh, defendant no.1 sold out 41 R and 40 R to defendant no.2 and 3 respectively by registered sale deed no.516/2013. Said sale deed is hollow and without consideration. Therefore, it is illegal and not binding on their share. So, the plaintiff sent notice to defendants on 22/5/2014 through lawyer and intimated them to get cancel said illegal sale deed and to effect partition of her share. Said notices were received to them however they replied it falsely and denied for the same. If said act is continued by defendants, then they will suffer irreparable loss. The plaintiffs therefore pray that the defendants be restrained to alienate suit property in any manner upto the decision of suit.

3. The defendant no.1 to 3 resisted the application of the plaintiffs by filing their say cum counter claim vide Ex.18. They contended that the application is false and frivolous. The contentions of the plaintiff are not correct. The application is illegal and not within limitation. Contentions made in this application and the suit are different. The suit is hit by principles of limitation, non joinder of necessary parties and non inclusion of all properties in the suit. Except contentions of plaintiff regarding her marriage with Dinesh, that he was running grocery and zerox shop, he died, plaintiff sent them notice, the remaining contentions are false and frivolous. The defendants contended that since beginning, plaintiff no.1 was disliking Dinesh. She was taunting him on the count of his disease and saying that her marriage was solemnized against her wish. She never cohabited with him properly and not provided marital pleasure to him. She used to create quarrels and leave the matrimonial house. Deceased Dinesh was bringing her back by giving understanding. Meanwhile she conceived child namely Chaitanya, even then her nature was not changed. They never reached her to parental house. Due to her quarrelsome nature, in the old age, defendant no.1 is paralyzed and since 2 years, he is bed ridden. He is totally depending upon help of others. Defendant no.1 for meeting his medical expenditure and to repay loan of deceased Dinesh, he sold out 81 R area of gut

no.385. Defendant no.1 has purchased suit property gut no.385 from Popat Rambhau Wagh on 31/3/1978 out of his own income by registered sale deed. Defendant no.1 is having right to dispose off his self acquired property in his lifetime. Plaintiffs are not at all concerned with said self acquired property of defendant no.1. He is not inherited any property from his father or forefather. Defendant no.2 is became physically handicapped in accident and therefore he is unable to do any work. They provided medical treatment to Dinesh in hospitals at Mumbai and Pune since many years. Defendant no.2 and 3 are became the owners of suit property gut no.385 by sale deed. Plaintiff no.1 has relinquished rights of her husband in the suit property mentioned in plaint para 1B as the defendant no.2 and 3 have expended money on his medical treatment. Defendant no.1 has purchased 2 R area out of gut no.213/54 situated at Supa out of his own income. The plaintiff has recorded names of defendants to record of right of said property after the death of her husband though they were having right, title and interest therein. The defendants are having another joint Hindu family property like the property of Supa and they are ready to get it partitioned. Except property of Supa admeasuring 2 R, they have no objection for effecting partition. The plaintiff has concealed material facts and filed false suit and application against them. Further, the defendants prayed in counter claim that in consonant to above averments, it be declared that the suit property in gut no.385 was self acquired property of defendant no.1, defendants no.2 and 3 expended money for the medical expenditure of husband of plaintiff no.1 namely Dinesh in his sickness and in return he had relinquished his rights in suit property mentioned in para 1B and that the defendants no.1 to 4 have 1/5 share each or as the court may fix in 2 R area of gut no.214/54 situated at Supa be partitioned by metes and bound and given in their separate possession. Lastly they prayed for rejection of application with cost and to allow their counter claim.

4. The plaintiffs have filed their say to counter claim at exh.21 and denied the contentions of defendants in toto. They contended that the

counter claim of the defendants is false and frivolous. The contentions therein are not correct. It is not maintainable and filed by suppressing material facts. The defendants have not affixed sufficient court fee stamp, therefore preliminary issue regarding tenability of suit be framed and decided firstly. The defendants have filed false counter claim with a view to avoid and grab share of deceased Dinesh in the suit property. After the death of Dinesh, the defendants refused plaintiffs to give his share in the income or to get partitioned his share in the suit property. Suit property gut no.385 was ancestral property of deceased Dinesh. Same is partitioned between defendant no.1 and his brother and separate mutation is effected therefor. Deceased Dinesh had purchased 2 R area of gut no.213/54 situated at Supa out of his own income during his lifetime by registered sale deed. It is purchased by him out of income from grocery and zerox shop. After his death, names of plaintiffs being his legal heirs are recorded. The defendants have not objected till their names were recorded. They filed false counter claim only to avoid share of deceased Dinesh and so it be rejected with cost.

5. Considering rival pleadings of both parties, the following points arise for my consideration and I have recorded my findings on those points hereinafter referred as under.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether plaintiffs have made out prima facie case in their favour ?	In the affirmative.
2	Whether the balance of convenience lies in favour of the plaintiffs ?	In the affirmative.
3	Whether irreparable loss will cause to the plaintiffs if the order of injunction is refused ?	In the affirmative.
4	What order?	The application is allowed.

REASONS

6. I have gone through the record and proceeding of the suit and

I have heard arguments of both the learned advocates.

7. To support plaintiffs' contentions, they have filed documentary evidence i.e. mutation extract of gut no.385 at exh.8, 7/12 extracts of gut no.385 and 389 at exh.9 and 10, 6D extract of gut no.385 at exh.11. The defendants have not filed any documentary evidence in support of their defence.

8. **As to point no.1 :-**

Plaintiff no.1 contended that they have filed suit for declaration, partition and injunction. Suit property gut no.385 was previously in the name of Fakira Walke. Defendant no.1 and Bhaskar effected partition of suit property on 18/10/2002 between them and accordingly 0.81 R area came in the name of defendant no.1 and 80 R area came in the name of Bhaskar. Suit property para 1B was ancestral property which is in the name of defendant no.1. On 9/6/2010, her marriage with Dinesh- son of defendant no.1 and brothers of defendant no.2 and 3, was solemnized as per Hindu religion at Alandi Devachi, Tq. Haveli, Dist. Pune. Out of said wedlock, she gave birth to plaintiff no.2. After marriage, she came for cohabitation at the house of defendants at Wadegavhan. Her husband Dinesh was running grocery shop and zerox center. Plaintiffs, her husband Dinesh and defendants were residing jointly. On 22/7/2012 due to sickness, her husband Dinesh died. After performing all necessary religious ceremonies, defendants told her to make their own arrangement and to go to her father. Thereafter they started to give more and more illtreatment to her. Lastly, they took them to her parental house and warned her parents not to bring them back. The defendants did not make any arrangement for their maintenance. Therefore she demanded partition and separate possession of the share of her husband in the suit properties. Defendant no.1 told her that unless plaintiff no.2 attains age of 18 years, partition will not be effected. Thereafter on 20/5/2014, when she drew 7/12 extract of gut no.385, she came to know that for avoiding share of Dinesh, defendant no.1 sold out 41 R and 40 R to defendant no.2

and 3 respectively vide registered sale deed no.516/2013. Said sale deed is hollow and without consideration. Therefore, it is illegal and not binding on their share. They sent notice to defendants on 22/5/2014 through lawyer and intimated them to get cancel said illegal sale deed and to effect partition of her share. Said notices were received to them however they falsely replied it and denied for the same. If said act is continued by defendants, then they will suffer irreparable loss. The defendants have denied contentions of plaintiffs. Their defence is that the husband of plaintiff no.1 had relinquished right in suit property mentioned in plaint para 1B as they had expended money in his disease. Further they spent money for his medical treatment at Mumbai and Pune. The suit property is not an ancestral property but it is self acquired property of defendant no.1. So, the plaintiffs can not ask partition in suit property. On perusal of 7/12 extract of gut no.385 at exh.9 produced by plaintiffs, it appears that name of defendant no.1 is shown in bracket and names of defendant no.2 and 3 are shown as owner. The relevant sale deed by which their names are recorded to 7/12 extract was executed on 28/1/2013. Husband of plaintiff no.1 Dinesh was died on 22/7/2013. Therefore, it is clear that the sale deed was executed after his death. Documentary evidence corroborates the version of plaintiff. Further, the defendants could have produce the documentary evidence to show that they expended money on medical expenditure of Dinesh and at present they are expending money on the treatment of their father. However, they failed to do so. Only vague denial is not sufficient to disprove contentions of plaintiffs. It is pertinent to note here that the defendants are ready to effect partition in another property except 2 R area situated at Supa as it is joint family property. However, regarding this property, the plaintiffs have not sought relief of any kind. The defendants have not denied relations with plaintiffs. All these things indicates that there may have possibility of alienation at the hands of defendants. The documentary evidence produced by plaintiffs on record is supporting to their contentions. The plaintiffs prima facie proved that they have right, title and interest in the suit properties. On the other hand, the defendants

have miserably failed to disprove right, title and interest of plaintiffs in the suit properties. At this juncture, rights of the parties are required to be protected. Therefore I come to the conclusion that the plaintiffs have made out prima facie case in their favour. Therefore I have recorded my findings to the point no.1 in the affirmative.

9. **As to point no.2:**

The balance of convenience goes alongwith the prima facie case. The plaintiffs have specifically proved that they have right, title and interest in the suit properties. Therefore balance of convenience is also go in favour of the plaintiffs. The defendants have has miserably failed to prove the balance of convenience in his favour. Therefore I have recorded my findings to the point no.2 also in the affirmative.

10. **As to point no.3:**

Considering the documentary evidence which came on record and considering the contentions of the plaintiffs and defendants, it is crystal clear that the plaintiffs are their right, title and interest in the suit properties. Therefore they prove prima facie case in their favour and also prove that balance of convenience go in their favour. I am of the considered view that if the injunction is granted in favour of the plaintiffs and defendants are restrained from alienating the suit properties, then there will be no irreparable loss caused to the defendants. But if the injunction order is not passed, then plaintiffs will suffer irreparable loss which can not be compensated in the terms of money. To avoid the multiplicity of the judicial proceedings, the restraining order is necessary. Therefore I held that the plaintiffs are entitled for the injunction and I have recorded my findings to the point no.3 in the affirmative.

11. Considering the facts and circumstances of the case, I held that the plaintiffs are having right, title and interest in the suit properties. They have proved the prima facie case in their favour. Then they have proved that balance of convenience lies in their favour and irreparable loss will be caused to them if the injunction is refused.

Therefore I have recorded my findings to the point no.1 to 3 in the affirmative and in point no.4, I proceed to pass the following order.

Order

- 1) The application is allowed.
- 2) The defendants, their agents, servants, power of attorney holders or any other person acting on their behalf are hereby restrained from alienating suit properties by way of sale or in any manner till final disposal of the suit.
- 3) Cost in cause.

Date - 17/2/2017.

(M.A.Pathan)
Joint Civil Judge Junior Division,
Parner.