MHAK070006122022	**ORDER BELOW EXH. 5 IN RCS No.20/2022** **Sarfaraz V/s. Jahangir** **(Passed on 12th of September, 2023)**

Plaintiff has sought application for temporary injunction for restraining the defendant No-1 from alienating and creating third party interest in the suit property *vide* Order XXXIX Rule 1 & 2 and section 151 of the Code of Civil Procedure, 1908 ('**CPC**' in short)

2. Gat No-233, ad-measuring 1.H.52.R (old survey No-52/1-A and survey No-52/2) situated at village-Paras, Taluka-Balapur, Dist-Akola, more particularly described in paragraph No-1 of the plaint, is the subject matter of the suit. ('**the Suit property**' for short).

Plaintiff's case in short-

3. The suit property originally belonged to Rasul Khan Jahangir Khan. Following his demise in 1988, the plaintiff and defendants jointly became the owners, and their names were duly recorded in the revenue records. The plaintiff resides at Chandrapur with the support of his married sister, while defendant No-1 has been cultivating the suit property. In the year 2020, the plaintiff became aware that defendant No-1 had, without any proper partition collusion with revenue officers, removed all names from the revenue records of the suit property. Defendant No-1 has also shown a clear intention to wrongfully acquire the suit property. Despite receiving notices dated 08/06/2020 and 13/09/2021 from the plaintiff, defendant No-1 responded with false information. The plaintiff holds an undivided share of 42.R in the suit property, and to date, there has been no formal partition between the plaintiff and the defendants. Furthermore, defendant No-1 is actively attempting to create third-party interests by attempting to sell the suit property. Hence, he prayed for restraining the defendant No-1 from alienating or creating third party interest in suit property until the decision of the suit.

Defendants case in short-

4. Defendants No-1, 2, 4, and 5 have submitted their reply vide Exh-13, while Defendants No-3 and 6 to 8 have submitted their reply vide Exh-18. Despite separate filings, their contentions are largely consistent. They denied their status as heirs of Rasul Khan Jahangir Khan with the plaintiff's claims. They contended that the suit property is exclusively owned and possessed by defendant No-1. Further, defendants contended that the plaintiff received cash payments from defendant No-1 and, in exchange, gave up his ownership shares in various properties, including Gat No-233 (Suit property) and the ancestral house in Village-Paras, on 02/01/2006. This action was formalized through an affidavit before the Tahsildar-Balapur. According to the defendants, since that time, the plaintiff has had no legal claim or interest in the suit property. The defendants further contended that the plaintiff and all sisters of the plaintiff's and defendant No-1 relinquished their undivided shares in the suit property in favour of defendant No-1 approximately 20 years ago. Moreover, it is contended that the defendant No-1 initially sold 81.R of land from the entire suit property to Avinash Gopalrao Khandare and then bought it back on 14/08/2013. Hence, the defendants assert that the plaintiff has no valid right to the suit property and has instituted this suit with the ulterior motive of wrongfully claiming ownership. Accordingly prayed for rejection of application.

5. From the pleading of parties, argument advanced on behalf of them and record of the case, following points arise for determination. I have mentioned my findings against each of them for reasons to follow -

Sr.No	Points For Determination	Findings
1	Whether plaintiff has *prima-facie* case?	Yes
2	Whether balance of convenience is in favour of plaintiff ?	Yes
3	Whether plaintiff will suffer irreparable loss, in case of refusal of injunction ?	Yes
4	Whether plaintiff is entitled for temporary injunction as prayed ?	Yes
5	What order ?	As per final order

R E A S O N S

6. It is settled principle of law that while deciding application for temporary injunction, mini trial should not be conducted. Three cardinal principles to be assessed while deciding this application are prima facie case, balance of convenience and irreparable loss.

7. Heard Ld. Advocate Shri. R.S.Thakare for plaintiff and Ld. Advocate Shri. S.T.Ingale for all defendants. I have perused all the documents produced by the parties on record and I have given thoughtful consideration to the rival submissions.

As to Point No -1 to 3

8. In reply by the defendants' (Exh-13 & Exh-18), they have denied previous ownership of the Rasul Khan in the suit property. According to them, defendant No-1 is sole owner of the suit property. They denied that after Rasul Khan's passing in 1988, they became the owners of the property, along with the plaintiff. They also denied that the names of the plaintiff and defendants were ever updated in the revenue records after Rasul Khan's demise. Therefore, it's imperative to review the documents submitted by the plaintiff.

9. The plaintiff has relied on a copy of document dated 28/04/2021 (Exh- 4/5), which indicate that Survey No-52/1-A and Survey No-52/2, which later became Gat No-233 (the suit property), were previously owned by Rasul Khan Jahangir Khan, the father of the plaintiff and defendants. The copy of Kotwal Book (Exh-4/7) confirms Rasul Khan's death on 11/08/1988. Moreover, the copy of the 7/12 extract (Exh-4/3 & 4/4) shows Rasul Khan as the former owner of Survey No-52/1-A and Survey No-52/2, later transformed into Gat No-233. Subsequently, the 7/12 extract (Exh-4/4) demonstrates that after Rasul Khan's death, the names of the plaintiff and defendants were entered into the revenue record.

10. Therefore, upon perusal the documents submitted by the plaintiff, it becomes evident that Rasul Khan was indeed the previous owner of the suit property. The mutation entry after Rasul Khan's demise (Exh-4/4) further to support a claim with facts. Thus, the defendants' denial regarding Rasul Khan's original ownership is not well-supported or strongly based. The 7/12 extract (Exh-4/4) clearly indicates that the names of Rasul Khan's two sons and three daughters were added to the revenue record after his passing.

11. Furthermore, it is argued by the Ld. Advocate R.S.Thakare for plaintiff that the plaintiff resided in Chandrapur with the assistance of his married sister since 1983. During this period, his brother (defendant No-1) took care of the suit property in good faith. However, in a later development, it came to light that defendant No-1, in collusion with revenue officers, removed others' names from the records, leaving only his own.

12. On the other hand, the Ld. Advocate S.T. Ingale, representing the defendants, argued that the plaintiff received cash payments from defendant No-1 and, in return, relinquished his ownership shares in properties, including Gat No-233 (the suit property) and the ancestral house in Village-Paras, on 02/01/2006. This transaction was formalized through an affidavit (Exh-14/1) before the Tahsildar-Balapur. According to the defendants, since that time, the plaintiff has had no legal claim or interest in the suit property. In reply, the plaintiff argues that he did not receive any payment and he did not sign any affidavit before the Tahsildar.

13. After considering the arguments from both parties, it is crucial to examine Section 17(1)(b) of the Indian Registration Act, which states that registration is compulsory for non-testamentary instruments that create, declare, assign, limit, or extinguish any right, title, or interest in immovable property, whether present or future, valued at one hundred rupees or more. The contents of the affidavit filed by the defendant (Exh-14/1) supports with the defendant's argument. However, based on the provisions of Section 17(1)(b), of Indian Registration Act this document cannot be considered a valid instrument for the relinquishment of a share in immovable property.

14. Ld. Adv for plaintiff has relied in the case of **Santosh Motiram Solanke Vs. Arjun Asaram Solanke 2014(2) ALL MR 273** In this case, The Hon'ble Bobay High court held an unregistered agreement relinquishing property shares, even arising from a family arrangement, must be registered as per Section 17 of the Indian Registration Act, 1908. Failure to do so renders the document inadmissible as evidence.

Upon a careful examination of decision of the Hon'ble Bombay Court and the provision outlined in Section 17(1)(b) of the Indian Registration Act, it is evident that the affidavit submitted by defendants as proof of the plaintiff giving up his rights in the suit property (Exh-14/1) cannot be regarded as a valid document.

15. Furthermore, the plaintiff argues that since the property is ancestral and a proper partition wasn't partitioned with meets and bounds between them defendant No-1 has taken advantage of this and is preparing to sell the property. On the contrary, the defendant denies the property's ancestral status. It's important to noting that the defendant has contradicted himself by denying ownership by his father, Rasul Khan, while claiming that the plaintiff released his share in the property on 02/01/2006. This raises the question- if the property wasn't owned by Rasul Khan, as per defendants' assertion, how did it come into the defendant's possession? The 7/12 extract (Exh-4/4) clearly shows that after Rasul Khan's death, both the plaintiff and defendant's names were recorded in the revenue record.

16. Moreover, the defendant has argued that he sold the property to Avinash Gopalrao Khandare and then re-purchased it in year 2013. To support this claim, the defendant has submitted mutation entry No. 6960, dated 16/08/2013 (Exh-14/2). In reply, the plaintiff argues that he has been residing at Chandrapur since year 1983 therefore is unaware of the defendant's transactions. The plaintiff asserts that Avinash Khandare is neither the owner nor the possessor of the suit property and, therefore, is not a necessary party to the suit. The plaintiff also reiterates that there has been no partition between the parties.

17. It's important to highlight that the suit property appears to have been previously owned by Rasul Khan. Adhar Card (Exh-4/12) and Election Card (Exh-4/13) supports the claim of plaintiffs that he resides at Chandrapur. The document submitted by the defendants (Exh-14/1) is not a valid document for relinquishment of shares in the immovable property, as discussed earlier. However, there is no partition deed between the parties, and the defendant relies solely on the affidavit dated 02/01/2006 (Exh-14/1). It's important to note that the defendant has only provided a mutation entry and not a sale deed for both transactions. Furthermore, upon perusal the mutation entry No. 6960, it appears to pertain to only a portion (0.81-R) out of the total area of the suit property (1.H.52.R). Consequently, there may be merit in the plaintiff's claims.

18. Ld. Adv for plaintiff has relied in the case of **Jagannath Balaji Zagare Vs. Kisan Balaji Zagare 2015(5) ALL MR 656** In this case, The Hon'ble Bombay High court held that an unregistered partition deed was not admissible as evidence of partition.

Upon careful examination of this decision of Hon'ble Bombay High Court, it becomes evident that the affidavit submitted by the defendant as evidence of the plaintiff relinquishing his rights in the suit property or a partition between them (Exh-14/1) cannot be considered a valid document.

19. The plaintiff submitted a notice dated 08/06/2020 (Exh-4/8), and received a reply from defendant No-1 dated 03/07/2020 (Exh-4/9). Then, the plaintiff submitted another notice on 13/09/2021 (Exh-4/10), and defendant No-1 replied on 29/09/2021(Exh-4/11). In these exchanges, both parties reiterated their submissions and arguments.

20. Therefore, above discussion set forth that the plaintiff has successfully demonstrated that a prima facie case supports his position. Hence, If the plaintiffs' right is not protected, then will undoubtedly face inconvenience and hardship, leading to irreparable loss. **Accordingly, I answer point No-1 to 3 in affirmative.**

As to point No.4:-

21. Ld. Adv for defendants has relied in the case of **Kachhi Properties Satara a Partnership Firm Vs Ganpatrao Shankarrao Kadam MANU/MH/0844/2010** In this case, The Hon'ble Bobay High court held that Section 52 of the Transfer of Property Act offers substantial protection during property disputes, and unnecessary injunctions to restrain transfers pendente lite should be avoided.

After perusing the citation, I must respectfully state that, in my humble opinion, the citation may not be particularly beneficial to the defendants. The authority mentioned below offers a thorough exploration of the Doctrine of Lis Pendens, the effectiveness of temporary injunctions, the constraints of Lis Pendens, and the unique function of temporary injunctions in safeguarding the rights and interests of parties involved in disputes.

22. **In the case of Shri Prakash Gobindram Ahuja Vs Shri Ganesh Pandharinath Dhonde, 2016 SCC OnLine Bom 8884** Hon'ble High Bombay High Court highlights the significance of the Doctrine of Lis Pendens and temporary injunctions in property litigation, clarifies the limitations of Lis Pendens, and underscores the importance of judicial remedies to protect parties' interests during ongoing legal proceedings as follows.

A) **Doctrine of Lis Pendens** is a fundamental legal doctrine enshrined in Section 52 of the Transfer of Property Act. It is a legal precept that restricts the transfer or disposition of properties that are the subject of ongoing litigation. This doctrine serves a crucial purpose -to prevent parties from attempting to undermine or circumvent the outcome of an ongoing suit by engaging in property transactions.

B) **However, there are notable limitations to the Doctrine of Lis Pendens.** It's important to understand that this doctrine does not invalidate or deem property transactions as illegal. Instead, it subordinates such transactions to the ultimate outcome of the suit. Parties are not obligated to register notices of pending suits, although such registration is a prudent measure to alert potential buyers or transferees of the ongoing litigation.

C) **Per Contra, Temporary Injunctions, as provided for in Order XXXIX of the Civil Procedure Code (CPC),** offer a more potent and comprehensive legal remedy. These injunctions empower the court to take immediate action to prevent actions that could jeopardize the interests of litigating parties during the course of legal proceedings. Whether it's preserving the status quo, restraining certain actions, or preventing potential harm, temporary injunctions serve as a dynamic tool for the court to safeguard the interests of justice. In short, this authority provides a comprehensive exploration of the Doctrine of Lis Pendens, the potency of temporary injunctions, the limitations of Lis Pendens and the distinct role of temporary injunctions in protecting the rights and interests of parties in litigation.

23. Therefore, in this case, the plaintiff has successfully demonstrated three essential principles required for the issuance of a temporary injunction. Considering these factors, it is appropriate to grant the plaintiff the equitable remedy of a temporary injunction. Hence, I passed the following order-

O.R.D.E.R

1. Application Exh-5 is allowed.

2. Defendant No 1 including his representatives, agents, servants, heirs, family members, or anyone claiming through him are temporarily restrained from from alienating and creating any third party interest in the suit property

3. Costs in main cause.

(Self typed and pronounced in the open court)

VISHNU DATTARAO GITE
Digitally signed by VISHNU DATTARAO GITE
Date: 2023.09.15 12:49:09 +0530

(Vishnu D. Gite)
Jt. Civil Judge Junior Division
Balapur.

Date- 12/09/2023.

I affirm that the contents of this P.D.F. File Judgment/Order are same, word to word, as per the original order.		
Name of the Court	:-	Jt. Civil Judge, J.D. & J.M.F.C., Balapur
Name of the Stenographer	:-	Shaikh Rafique Shaikh Rasheed
Date of Decision	:-	12/09/2023
Order signed by P.O on	:-	12/09/2023
Order uploaded on	:-	15/09/2023