

Order below Exh.73 in R.C.S. No.26/2013
Pandurang @ Vinod Marodkar -Vs- Subhash Marodkar+2
Date: 08/10/2021

This is an application filed by defendant nos.1 and 2 for grant of temporary injunction for restraining plaintiff or his agent or Power of Attorney holders and friends from creating third party interest in the suit fields mentioned in para no.1 of the plaint till the disposal of the suit.

2. Plaintiff has filed his say vide Exh.74 and denial all the averments of defendants.

3. On going through the rival pleadings and documents on record, following points arose for my determination. I have recorded my findings thereon for the reasons given therefore as follows:-

Sr.No.	Points	Findings
1.	Whether defendant nos.1 and 2 are having prima-facie case ?	No
2.	Whether balance of convenience lies in favour of the defendant nos.1 and 2?	No
3.	Whether the defendant nos.1 and 2 would suffer irreparable loss if the injunction is not granted ?	No
4.	What order ?	As per final order.

REASONS

4. Present defendants have filed application to restrain the plaintiff from creating third party interest in the suit property. It is important to note here that matter is fixed for cross-examination of

plaintiff by defendant no.1. During the evidence, present defendant has filed application for interim injunction. Hence, the validity of present application needs to be scrutinized.

5. I have minutely gone through and carefully examined the documents, plaint, instant application and say. Heard Mr.Karde advocate for defendant nos.1 and 2, advocate for plaintiff Mr. Pimpalgaonkar advocate.

As to point no.1 to 3 :

6. While considering the question of prima-facie case it is required to see whether there is a fair question involved in the suit for decision and it will suffice, if it is found that the party has a strong probability of ultimate success. All that the party is required to show is that he has a fair and serious question to be tried. The prima-facie case means a case to go for trial, and that balance of convenience lies in maintaining the status quo. However, the present suit is fixed for evidence of plaintiff.

7. As above mentioned that suit is fixed for evidence of plaintiff and same is pending for cross-examination by defendant nos.1 and 2. Advocate for defendant nos.1 and 2 submitted that plaintiff is representing himself in the name of his deceased brother namely Pandurang. Prior to this Vinod and Pramod had also demonstrated that they are Pandurang. Plaintiff by taking disadvantage of this fact and entries in 7/12 extract, he is trying to

create third party interest on the suit field. Therefore, he has filed present application for interim injunction against plaintiff at this stage.

8. Whereas advocate for plaintiff submitted that defendant cannot file interim injunction application in the suit of plaintiff. Plaintiff is not creating third party in the suit property. Hence, he prayed that application has no value in the eyes of law and prayed to reject the application.

9. Perused the record and submission of both the parties. As per the argument of plaintiff. I would like to mention here the provision of

Order 39 Rule 1(a) : it is mentioned that where in any suit it is proved by affidavit or otherwise that **any property** in dispute in a suit is in a danger of being vested, damaged or alienated by any **party** to the suit, or wrongfully sold in execution of the decree, or alienated.

It is clear from the above provision that if **any party** to the suit is in danger of being vested or damaged or alienated the suit property at any stage of the trial can file interim injunction application. Hence, defendant can file interim injunction application in the suit of plaintiff. Therefore, the argument of advocate for plaintiff has no force.

10. Now turned to interim injunction application. Defendant nos.1 and 2 has not filed any documentary evidence i.e. plaintiff is trying to create third party interest at this stage. He has not filed any agreement to sale on record which shows that plaintiff is trying to sell the suit property. Mere assertion that plaintiff is trying to create third party interest without any supporting evidence cannot be considered. Defendant nos.1 and 2 submitted that suit property is trying to be sold. However, defendant nos.1 and 2 has not mentioned any name as to who, plaintiff is trying to sell the suit property. At this stage if defendant nos.1 and 2 are in apprehension that plaintiff will sell the suit property and create third party interest. In that situation principle of lis-pendence will be applicable to both the parties of the suit as well as third party. Therefore, without filing any documentary evidence that plaintiff is trying to create third party over the suit property by selling it, is not considered at this stage.

11. Defendant nos.1 and 2 have not prove their case prima facie at this stage of leading evidence. Hence, if interim injunction is not granted in their favor, no irreparable loss would cause to them at this stage.

12. Therefore from the pleadings and submissions and discussion supra, prima facie it appears that the balance of convenience is not in favour of defendant nos.1 and 2. If injunction is not granted they will not suffer loss. Hence, this court record findings to point nos.1 to 3 in negative and to answer the point no.4,

I proceed to pass the following order.

ORDER

1. Application (Exh.73) is hereby rejected.
2. Cost in cause.

Dt:08/10/2021

(Seema A. Ladse)
Civil Judge J.D., Bhatkuli,
Dist.Amravati.

Certified that PDF copy of Order supra is word-to-word identical to the original Order.

Name of Stenographer: U.P. Chendke

Dictated on : 08.10.2021

Checked on : 08.10.2021

Signed on : 08.10.2021

Uploaded on : 08.10.2021