



ORDER BELOW EXH.102
(Gopal Wankhade Vs. Suresh Khasbage)

1. This is an application filed under section 94(e) of Code of Civil Procedure (for short "C.P.C.") by the defendant No.1 against the defendant No.2 for granting of temporary injunction.

The brief facts of the plaintiffs case are as under-

2. This is a suit for partition and possession in respect of the suit property. By this application, defendant No.1 wants to temporary restrained defendant No.2 from alienating the suit property.

3. All the dispute pertains to the property which is more precisely described in para 2 of the plaint. According to the plaintiff, suit property is purchased by her grand-mother late Gangubai Khasbage on 04/04/1968. After the death of Gangubai Khasbage, name of plaintiffs and defendant being legal heirs of Gangubai were recorded in to revenue record.

4. By way of this application defendant No.1 contended that during the pendency of suit, defendant No.2 Prakash Kashbage has recorded his name on record of right. Therefore, defendant no.1 has challenged mutation entry in this regard before the S.D.O., Morshi for removing name of defendant No.2 from record of right. It is further contended that defendant No.2 is trying to create third party interest in the suit property. Hence, this application for temporary injunction.

5. Defendant No.2 filed say on back of application itself and strongly opposed the application. He contended that defendant No.1 is not claimant in the suit and in partition suit all the co sharers are deemed to be owner of the property. Therefore, injunction against other co owners would not be granted. Hence, he sought for rejection of application.



6. Heard Ld. Advocates of the respective parties.

7. On perusal of the application and document on record, it appears that there is no dispute between the parties about the relationship with each other. The dispute is regarding partition in respect of suit property. All the parties of the suit are legal heirs of late Gangubai Khasbage. Therefore, till the partition open, all the legal heirs are deemed to be co owner of the suit property. Therefore, it would not be proper to give injunction against co owner of the same property. The defendant No.1 contended that defendant No.2 is trying to create third party interest in the suit property. However, there is no contention made in this regard in plaint and WS. Therefore, defendant has not made out prima-facie case in his favour. Further, ground of during the pendency of the suit, property likely to be transferred is not sufficient to invoke power under section 94(e) of the CPC. Therefore, there is not sufficient ground to grant injunction against defendant No.2. Under these circumstance, I am of the view that, the defendant No.1 has not made out prima facie case in his favour. Therefore, decline to grant temporary injunction, it will not cause multiplicity of civil disputes and irreparable loss to the plaintiff, defendant No.1. Therefore, I am of the view that, temporary injunction is not necessary. Hence, considering all the above mentioned aspects, I am of the view that the application is deserves to be rejected. Hence, **I pass following order :-**

ORDER

Application **Exh.102** is rejected.

Date : 14/07/2023
Warud.

(S. P. Lankeshwar)
Civil Judge,J.D.,Warud