

MHAU050020412024 	RCS No.331/2024. Satish Jivrak Vs. Bansi Jivrak.
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ORDER BELOW EXH.15.

1. This is an application filed by the defendant seeking temporary injunction as per Order XXXIX Rule 1 and 2 of the Civil Procedure Code, 1908 (hereinafter referred to as the CPC for brevity).
2. Landed property at Gat No.57, admeasuring 2 acres situated at Village Dhondalgaon, Tal.Vaijapur, Dist. Aurangabad is the subject matter of this suit, **(hereinafter referred to as “the suit property” for brevity).**
3. The original suit is filed by plaintiffs for injunction against defendant from creating third party interest in the suit property. According to plaintiffs as per compromise deed in R.C.S no. 283/2009 suit property was given to defendant. However, as per the said compromise deed it was decided that the defendant would not create any third party interest in the suit property. The defendant has filed his Counter claim to the suit seeking declaration that the condition imposed in para 4 of the compromise deed in R.C.S no. 283/2009 is illegal and not binding upon him. Also filed

the present temporary injunction application.

4. The defendant has come up with the case that plaintiffs are his children. Plaintiffs had filed previous suit R.C.S no. 283/2009 for partition and injunction against defendant. In that suit after the appearance of defendant, plaintiff no. 1 and 2 and their maternal uncles i.e. Baburao and Ramesh Sathe, assaulted the defendant and threatened that if he does not partition the properties they would kill him. Relatives forced the defendant to compromise the suit R.C.S 283/2009.

5. Plaintiffs told had told him that the compromise deed is regarding partition only. Trusting the plaintiffs and frightening their threats, defendant signed on the compromise deed. The plaintiffs did not allow him to read the compromise deed. Defendant was unaware that condition is put by plaintiffs that defendant would not create any third party interest in the suit property. Defendant and plaintiffs are residing separately and defendant is having Blood pressure, Diabetes and weak eyesight. Therefore, the defendant never read the compromise pursis.

6. It is only after receiving the summons of present suit that defendant became aware of the present condition in the compromise deed of R.C.S NO. 283/2009. According to defendant the said condition is

illegal and against his constitutional rights. Once the property is acquired in partition, the party becomes absolute owner of the same and can deal with the property as per his wish.

7. Defendant is old and plaintiffs do not take care of him. For his medicinal and day to day need defendant is in need of money. Apart from the suit property he has no other means of livelihood. The condition put by plaintiffs in the compromise deed is preventing the defendant from enjoying the suit property and the said condition was not put with the consent of defendant. On 10/08/2024, plaintiffs came to defendant and threatened him that till the decision of the present suit he should not cultivate the suit property and if defendant tries to cultivate the suit property they would not leave him alive. Hence, defendant through this interim application has prayed before the Court that during the pendency of the suit the plaintiffs be restrained from obstructing the defendant from cultivating and taking crops from the suit property.

8. Plaintiffs filed their say to the present application and admitted their relationship between the parties. They have admitted that in the previous partition suit R.C.S No. 283/2009 compromise took place between plaintiffs and defendant herein. Plaintiffs have denied that the terms of the compromise were not read

over to the defendant and defendant was not aware of the same. According to plaintiffs on the compromise deed itself is the order of the presiding officer that the contents of the deed is admitted to both the parties. Accordingly the compromise deed was read and recorded and decree was passed in R.C.S No. 283/2009. According to plaintiffs defendant is currently residing with his third wife Mandabai and their two sons Sagar and Atul. His entire constancy is towards those two children. There is no cause of action to defendant to file the counter claim and present interim application. The incident of 10/08/2024 is never took place and is imaginary. Lastly, prayed for rejection of the present application.

9. After going through the application and documents filed along with it, following points arose for consideration and I have given findings thereon for reasons stated thereunder-

Sr.No.	Points	Findings
1	Whether Defendant has established prima-facie case ?	Affirmative
2	Whether the balance of convenience lies in favour of defendant ?	Affirmative
3	Whether defendant will be put to irreparable loss, if injunction is not granted ?	Affirmative

4	What order ?	As per final order.
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Reasons

10. In support of their contention the original plaintiffs filed 7/12 extracts of the suit property i.e. Gat no.57 and also filed Decree of R.C.S 283/2009 and compromise deed in R.C.S No. 283/2009.

AS TO POINT NO.1 TO 3 :-

11. It is settled position of the law that, any party claiming injunction against the other must prove firstly that, he has prima-facie case in his favor. Secondly that, balance of convenience lies in his favor, and lastly that, if injunction is refused, he will be put to irreparable loss. It is also settled law that, mere institution of suit does not entitle the plaintiff to relief. He must satisfy the Court that there is a fair and substantial question to be tried. No injunction would be issued if the final relief cannot be granted. To make out a prima-facie case for a temporary injunction, it is not required that, the plaintiff should establish his title, but it is enough if he can show that he has a fair question to raise as to the existence of the right alleged and the property in the meantime should be preserved as it is till the final order.

12. Perused the application, documents filed on record and considered the argument of the plaintiffs and

defendant. Through the present interim application defendants are praying before this COURT to restrain plaintiffs from obstruction the defendant from cultivating and taking crops from the suit property till the disposal of the present suit.

13. It is undisputed between the parties that in previous partition suit RCS 283/2009 suit property was given to defendant. The only grievance of the plaintiffs is that as per the compromise deed defendant cannot create third party interest in the suit property. However, as per the plaintiff's own pleading, 7/12 extract of the suit property and the compromise deed the defendant appears to be in possession of the suit property since the execution of the compromise deed in RCS 283/2009. Admittedly the defendant is old aged person and needs money for his medical and day to day expense. Defendant has source of income from the suit property by cultivating the same. Therefore, prima facie case for present application is in favour of defendant. If plaintiff obstruct the defendant from cultivating the suit property it would definitely cause irreparable loss to him. Allowing the present application would not cause much harm to plaintiff then in reverse situation to defendant. Hence, balance of convenience is also in favour of the defendant. In the result, I answer point no. 1 to 3, in the affirmative.

AS TO POINT NO.4:-

14. In view of my findings to point No.1 to 3, it is clear that defendant established prima-facie case in his favour. Thus, in answer to point No.4, I proceed to pass following order.

Order

1. Application is hereby allowed.
2. Plaintiffs, their representative, agent or any other person through plaintiffs are hereby temporarily restrained from causing any hindrance or obstruction to the possession of the defendant over the suit property and restrained from obstructing the defendant from cultivating the suit property till decision of the suit.

Vaijapur.
Date- 05/09/2024

(Smt. S. K. Khan)
2nd Jt.Civil Judge J.D.,
Vaijapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per dictated by the P.O.

Name of the Stenographer	:	S. M. Bhosale, Stenographer Grade-III,
Court	:	Smt. S. K. Khan, 2 nd Jt.Civil Judge J.D., Vaijapur, Dist. Aurangabad.
Date of order	:	05/09/2024
Order signed by the presiding officer on	:	05/09/2024
Order uploaded on	:	05/09/2024.