

ORDER BELOW EXH. 5 IN R.C.S. NO.186/2009

(Date : 29.10.2010)

Plaintiff has filed an application for temporary injunction Under Order XXXIX Rule 1 & 2 of Civil Procedure Code.

2. Plaintiff contends that, (a) suit property is gut no.56/1, total admeasuring 8 hectare 10 ares land, out of it, an area admeasuring 4 hectare 7 ares stands in the name of defendant no.1, and (b) Gram panchayat house property no.41, situated at village Kolibodkha, Tq. Paithan. Both the suit properties are an ancestral properties of plaintiff and defendants. Plaintiff has ½ share in the suit properties. Suit property (a) is in the name of defendant no.1 and Suit property (b) is partly in the possession of plaintiff and defendant.

3. Plaintiff further contends that, during the life time of father of plaintiff and defendant no.1, defendant no.1 did not obstruct possession of plaintiff over suit property (b) to the extent of one room. But after the sad demise of their father, defendants started obstructing to the possession of plaintiff over the suit property (b) to the extent of one room. Therefore, in such circumstances, plaintiff is constrained to file this application.

4. On the other hand, defendant nos.1 and 2 have filed their written say and W.S. at Exh.12. Defendants have denied that, suit properties (a) and (b) are their ancestral property and plaintiff has ½ share in the suit properties. Plaintiff has not included all the properties which stands in the name of their Late father. Defendants further contend that, they want share in the suit property (b). Plaintiff has no share in the suit property (a) because plaintiff already got share in the gut no.56/3, situated at Kolibodkha, to the extent an area 5 acres 5 gunthas. Since, then plaintiff has been in possession of that property. Defendant no.1 got an area 10 acres 7 gunthas from his father by partition deed. Name of defendant no.1 also came to be recorded by mutation entry no.1031. At that time, plaintiff did not object that mutation entry. During the life time of father of plaintiff and defendant no.1, their properties had already been partitioned. Therefore, in such a circumstances, the application of plaintiff is required to be rejected.

5. I have gone through the pleadings of both the parties and perused the documents on record. I heard respective advocates for both the parties. Considering the documents on record and nature of contention, following points have emerged for my determination and I have recorded my findings

thereon with respect to each point as follows.

POINTS

FINDINGS

- | | |
|---|---------------------|
| 1) In whose favour prima facie case is made out either plaintiff or defendants ? .. | Plaintiff |
| 2) In whose favour balance of convenience lies either plaintiff or defendants ? .. | Plaintiff |
| 3) Who would suffer irreparable injuries, if the injunction is not granted ? .. | Plaintiff |
| 4) What order ? .. | As per final order. |

REASONS

6. Plaintiff has filed original copies of 7/12 extract and its Pherphar No.1021 of the land gut no.56/1, situated at Kolibodkha, dated 9.9.2008, original copy of extract of Namuna no.8 of Milkar No.4 situated within the boundaries of Grampanchayat, of village Kolibodkha, Tq. Paithan dated 06.3.2009 and original copy of Death certificate of Naruji s/o Bhaurao Gaikwad, dated 23.11.2008.

7. On the other hand, defendants have filed various documents, at Exh.11. These are, original copy of Medical certificate issued by Dr. Khatgaonkar Dhanantari Hospital, at Pachod, dated 4.9.2009, original copy

of Discharge Card issued by Medical College and hospital Aurangabad in the name of defendant no.2, dated 03.10.2009 and original copy of C.T. Scan report in the name of defendant no.2.

8. The primary purpose of granting temporary injunction is the preservation of property in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interest, i.e. injury and prejudice, likely to be caused to the plaintiff if the relief is refused; and injury and prejudice likely to be caused to the defendant if the relief is granted. Keeping in mind above purpose of interim relief, I discuss above points as follows.

As to Point No. 1 :

9. In order to obtain relief of temporary injunction, the first rule is that the applicant must make prima facie case in support of the right claimed by him. The court must be satisfied that there is a bona fide dispute raised by the applicant, that there is a strong case for trial which needs investigation

and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of temporary injunction. The burden is on the plaintiff to satisfy the court by leading evidence or otherwise that he has a prima facie case in his favour.

10. It is the main contention of plaintiff that, suit properties are ancestral properties and she is having $\frac{1}{2}$ share in the suit properties. Suit property (a) is in the name of defendant no.1, while suit property (b) is partly in possession of plaintiff and defendants.

11. On the other hand, defendants have denied all the allegations of plaintiff. But while considering their say and W.S as a whole and prayer made in prayer clause of W.S, it seems that, suit properties are ancestral properties.

12. While perusing 7/12 extract of suit property (a) i.e. Gut no.56/1, it is found that, it stands in the name of defendant no.1 while suit property (b) stands in the name of father of plaintiff and defendant no.1.

13. So also considering mutation entry no.1021, it is found that, suit

property (a) came to the share of defendant no.1 by partition deed, executed by their father.

14. While considering say and W.S of defendants who contended that, partition of suit properties already effected during the life time of father of plaintiff and defendant no.1, but at the same time, both defendants prayed for fixation of the share of defendant no.2.

15. Therefore, considering all above circumstances, in my opinion, two things have been clear that, suit properties are ancestral properties and defendant no.2 had not given any share in the suit properties. But whether plaintiff had given share in the ancestral properties, this fact has not come on the record at this stage. Therefore, considering nature of contentions and available record, in my opinion, plaintiff has prima facie case in her favour at this stage. Hence, I answer this point in favour of plaintiff.

As to Point No. 2 :

16. The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the

injunction will be greater than that which is likely to be caused to the opposite party by granting it.

17. While considering above principle and facts of present case, it is revealed that, suit properties are ancestral properties. So also defendant no.2 had not given share in the suit property at the time of partition. Therefore, in such circumstances, in my opinion, balance of convenience lies in favour of plaintiff as it seems that, she has also not given share in the suit properties at relevant time, therefore, if interim relief is allowed to the plaintiff, this would not cause more hardship to the defendants. Hence, I answer this point in favour of plaintiff.

As to Point No. 3 :

18. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. In other words, the court must be satisfied that refusal to grant injunction would result in "irreparable injury" to the party seeking

relief and he needs to be protected from the consequences of apprehended injury.

19. While considering above principles and facts of present case, it is seen that, the grievance of plaintiff seems to be genuine and material one, as defendants admitted that, suit properties are ancestral properties and defendant no.2 be given share in the suit properties. Therefore, considering peculiar aspects of say and W.S. of defendants, in my opinion, the interest of plaintiff is required to be protected at this stage. Therefore, if interim relief is not granted to the plaintiff, plaintiff would suffer irreparable injury which can not be compensated later on, but if interim relief is allowed, defendants would not suffer irreparable injury at this stage. Hence, I answer this point in favour of plaintiff.

As to Point No. 4 :

20. Having considered all these discussions, I proceed to pass the following order.

ORDER

- 1) Application Exh. 5 is hereby allowed.
- 2) Defendants are hereby restrained from

selling out suit properties to the third person till
the final disposal of the suit.

3) Cost in cause.

Sd/-
(S. M.Sarode)
Jt. Civil Judge, J. D.
Paithan.

Date : 29.10.2010.