

ORDER BELOW EXH.5 IN R.C.S. NO. 34 OF 2012

[Raju + 2 Vs. Machchhindra + 4]

Perused the application and say. Heard both the sides at considerable length.

2] The original suit is for declaration, partition, separate possession and for perpetual injunction. Through this application the plaintiffs prayed for restraining defendant No.5 from alienating and creating third party interest over 67 R land from field Gat No. 200 situated at mauje Dhorkin, Tal. Paithan, Dist. Aurangabad [hereinafter referred to as the “suit property” for the sake of brevity]. The boundaries of the suit property are not in dispute. According to the plaintiffs the suit property is their ancestral and joint family property with defendant Nos. 1 to 3. Defendant No. 1 is the *karta* of the joint family. However, he is addicted to liquor. Without any legal necessity and for fulfillment of his addiction defendant No. 1 has alienated the suit property in favour of defendant Nos. 4 and 5. Vide sale-deed dated 08.05.2002, 40 R land was sold out in favour of defendant No. 4. Later on, defendant No. 4 had sold out said 40 R land vide sale-deed dated 19.08.2003 in favour of defendant No. 5. Thereafter, on 03.06.2005 defendant No. 1 again without any legal necessity has alienated 27 R land to defendant No. 5. According to the plaintiffs they are having undivided lawful share in the suit property. Defendant No. 5 is trying to alienate the suit property. Hence, they prayed for allowing the application.

3] On the other hand defendant No. 5 vide his written statement [Exh.24] has resisted the application. According to him he is absolute owner of the suit property. The alienation of the suit property made by defendant No. 1 was for legal necessity. Hence, prayed for rejection of the

temporary injunction application.

4] On the basis of facts and documentary material placed on record following points arise for my determination to which I have recorded my findings for the reasons as follows :

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether prima-facie case lies in ... favour of plaintiffs ?	In the negative.
2) Whether balance of convenience ... lies in favour of plaintiffs ?	In the negative.
3) Whether irreparable injury ... would occasion to plaintiffs, if temporary injunction not granted ?	In the negative.
4) What Order ?	... The application is rejected.

REASONS

AS TO POINT NOS. 1 TO 4 :

5] The above points are interlinked to each other, hence are taken for discussion and determination at once.

6] In order to entitle for injunction it is incumbent upon the plaintiffs to show that they have prima-facie case and further also to show that balance of convenience lies in grant of temporary injunction application. Again the plaintiffs are duty bound to show that if the temporary injunction is not granted then irreparable injury would occasion to them. Prima-facie case means a case that there is serious question to be tried in the suit and that on the facts before the Court there is possibility of

the plaintiffs being entitled to the relief asked by them. Likewise, it must be shown that the Court's interference is necessary to protect the plaintiffs from that species of injury which the Court feels irreparable.

7] Taking into account the prima-facie requirement for deciding temporary injunction application if one goes through the averments made and documents supplied by both, plaintiffs and defendants on record, it is not disputed by both sides that defendant No. 1 is the *karta* of joint family. It is also not disputed that at the time of execution of sale-deeds in favour of defendant Nos. 4 and 5, defendant No. 1 was the *karta* of the joint family. As per provisions of the Hindu Succession Act a *karta* of the joint family has every right to alienate the joint family property. No doubt, according to the plaintiffs the alienation made by defendant No. 1 was not for legal necessity and it was for fulfillment of his addiction. However, at this preliminary stage it cannot be said that the alienations made by defendant No. 1 was not for legal necessity. Admittedly, by virtue of registered sale-deeds, defendant No. 5 has obtained the possession of the suit property. The sale-deeds are seen to be executed by obtaining valuable consideration. The sale-deed dated 03.06.2005 is seem to be signed by defendant No. 2 i.e. mother of the plaintiffs.

8] Thus, considering the facts and evidence on record, no prima-facie case seems to be lies in favour of the plaintiffs. Prima-facie case follows balance of convenience. So far as irreparable loss is concerned definitely it would be the defendants who would suffer irreparable loss if the application as prayed is granted. On the other hand the plaintiffs can establish their claim on merits. Moreover, section 52 of the Transfer of Property Act imposes prohibition on transfers or otherwise dealing with any property during the pendency of the suit. The section also provides an

adequate protection to the parties from transfer *pendente lite* and the occasion of invoking powers under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, arises only in rare cases, when the plaintiffs demonstrates that the rule of *lis pendens* is inadequate to protect their interest. However, considering material provision of section 52 of the Transfer of Property Act it cannot be said that the plaintiffs would suffer irreparable loss if the injunction refused to them. Hence, considering the discussion given above, I answer Point Nos. 1 to 3 in the negative and in answer to Point No. 4, I proceed to pass the following order :

ORDER

- (1) The application for temporary injunction is rejected.
- (2) Ad-interim temporary injunction shall stand vacated.
- (3) Costs in cause.

Date : 09.10.2015
Place : Paithan

Signed/-
[S. K. Fokmare]
Jt. Civil Judge [J.D.],
Paithan

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of Stenographer	:- Bhalchandra Raosaheb Zende,
Court	:- Jt. Civil Judge (J.D.), Paithan
Date	:- 09.10.2015
Order signed by Presiding Officer on	:- 09.10.2015
Order uploaded on	:- 09.10.2015

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