

CNRMHAU100005672024

ORDER BELOW EXH. 05 IN R.C.S. No. 100/2024
(Raju Holkar Vs. Kantabai Holkar)

Plaintiff has filed suit for perpetual injunction, wherein plaintiff has filed application for temporary injunction under Order 39 Rule 1 & 2 r./w. Section 151 of Code of Civil Procedure (hereinafter referred as CPC) for seeking temporary injunction restraining the defendants not to alienate the suit property i.e. Gut No. 142 admeasuring 66 R out of 22 R Mauja Mamnapur Tq. Khultabad Dist. Aurangabad. (hereinafter referred as suit-property). Application is supported by an affidavit.

02. It is the contention of plaintiff that, the suit property is ancestral property of plaintiff and defendant is the mother of plaintiff. The Gut no. 86 admeasuring 24 R land is given to the Sadashiv and Sadashiv has given Gut no. 42 admeasuring 22 R to Mithu Holkar. But the said land not transferred as per the partition in the name defendant therefore by way of sale-deed dated 06.06.2019 transferred in the name of defendant. The defendant has not given any consideration to Sadashiv about said sale-deed. The father of plaintiff has amount of Rs. 35 lakh including sum amount of plaintiff with them. The defendant went to Dongoan Tq. Gangapur Dist. Aurangabad by taking total 35 lakh Rupees taken with her. Since then she never came to his village.

03. The plaintiff contended that defendant is about to sale the suit property. The suit property is in the possession of plaintiff. Therefore prayed to allow the application.

04. The defendant inspite of service of summon not appeared therefore on 11.04.2025 court has passed ex-party order against defendant.

05. The following points arise for my determination; I record my finding with reason stated thereon:

SR. No.	POINTS	FINDINGS
1.	Whether the plaintiff proves prima facie case in his favour ?	Yes.
2.	Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3.	Whether plaintiff would suffer irreparable loss if temporary injunction as prayed is not granted ?	Yes.
4.	What order ?	The application is allowed.

06. Plaintiff in support of his contention has filed documents below Exh. 4 i.e. Copy of sale-deed, copy of partition deed, copy of 7/12 extract of land Gut no 142, copy of mutation entry dated 01.10.2019, copy of 7/12 extract of land Gut no 142 of year 2004-05 to 2014-15, copy of mutation entry dated 01.12.1997, copy of partition deed and legal notice given by defendant no. 2 to defendant no. 1. On the contrary defendant has not filed any document as matter proceeded ex-party against defendant.

REASONS

AS TO POINTS NO. 1 to 3 :-

07. All three points are interlinked with each other hence, all are taken for discussion together.

08. Considering the relief sought by the plaintiff, it is an appropriate to refer Order-XXXIX, Rule-1 of Civil Procedure Code 1908.

09. Order-XXXIX, Rule 1 of C.P.C. in which cases temporary injunction may be granted- where in any suit it is proved by affidavit or otherwise -

- a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- b) That the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,
- c) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

10. The Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal or disposition of the property [or dispossession of the plaintiffs, or otherwise causing injury to the plaintiffs in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

11. After going through the aforesaid provision, in the light of facts and circumstances involved in the case at hand, it is pertinent to mention that Order-XXXIX, Rule-1 (c) of C.P.C. is applicable, wherein, plaintiffs are supposed to prove or bring prima facie material on record in accordance with Order-XXXIX, Rule-1(c) of C.P.C, in order to show his possession. It is thus, after considering every provision of Order-XXXIX, Rule-1 (c) of C.P.C. it is binding on the plaintiffs to prove his prima facie possession over the suit land.

12. Perused the application, say and record of the case. Heard respective parties. It is the contention of the plaintiff that the suit property is ancestral property of plaintiff and defendant is the mother of plaintiff. The Gut no. 86 admeasuring 24 R land is given to the Sadashiv and Sadashiv has given Gut no. 42 admeasuring 22 R to Mithu Holkar. But the said land not transferred as per the partition in the name defendant therefore by way of sale-deed dated 06.06.2019 said land is transferred in the name of defendant No.1. The defendant No.1 has not given any consideration amount to Sadashiv about said sale-deed. The father of plaintiff having amount of Rs. 35 lakh including some amount of plaintiff with him. The defendant No.1 went to Dongoan Tq. Gangapur Dist. Aurangabad by taking total 35 lakh Rupees with her. Since then she never returned to his village.

13. The plaintiff contended that the partition deed is filed on record. Wherein the partition land are mention. The defendant No.1 with the amount of Rs.35 lakh went to her parent house and about to sale suit property. The suit property is ancestral property. The defendant No.2 has given notice to reside with him but she never return. The defendant No.1 has not accepted the said notice . The suit property is in the possession of plaintiff and defendant No.1 is residing with her parent house which clear that plaintiff is in the possession of suit property. Further the defendant has not filed on record any document which shows that she is in possession of suit property. Prima face it appears that defendant No.1 is residing with her parent house and the plaintiff is in the possession of the suit property. The said contention is not challenged by the defendant. Therefore there is no reason to disbelieve the contention of the plaintiff.

14. It is the contention of the plaintiff that the suit property is ancestral property. Defendant No.1 has never given any consideration

amount to the seller. Further it is the contention of the plaintiff that the suit property is ancestral property and by way of partition the defendant No.2 is the owner of suit property. But the suit property have been transferred to defendant No.1. The contention of the plaintiff is required further adjudication. The plaintiff only prayed not to alienate the suit property and to the extent of alienation injunction be grant. If the injunction is granted to the extent of not to alienate suit property then no irreparable loss will cause to defendant. Hence, I answered to point Nos. 1 to 3 in affirmative and pass following order in answer of point No.4:-

ORDER

1. Application Exh. 05 is allowed.
2. The defendant is directed not to alienate the suit property till disposal of this suit.
3. Cost will follow in main cause.

Khulatabad.
Date - 26/06/2024

(G. D. Gurnule)
Jt. Civil Judge Jr. Division
Khulatabad.