

ORDER BELOW EXHIBIT 05

1. The suit is filed for declaration and injunction that the plaintiff is owner and purchaser of suit land situated at village kajj Tq. kajj Dist. Beed, bearing survey No.224 total area admesuring 03H.10R out of which 00.03.50R disputed land (herein after referred to as suit land for convenience.)
2. It is his further contention that the survey number 224 area 07 Ekar 30 gunthe was originally owned by Late Jafar dadamiya Shaikh. After his demise Mutation entry No. 2597/120 of heirship is recorded.
3. Plaintiff and defendant no. 3 to 11 belongs to Muslim community. Defendant no. 1 and 2 belongs to Hindu community. Defendant no. 3 to 11 and father of defendant no. 2 illegally obtained mutation entry of partition bearing no. 3558 and thereby Carved out ownership and possession of 0.02R land of suit land survey No. 224 on the name of father of defendant no. 2 and on the basis of the same father of defendant no. 2 illegally executed Sale deed bearing no. 4820/2004 dated 30/12/2014 in favor of defendant no. 2, thereby mutation entry no. 8369 is mutated.
4. Thereafter defendant no. 2 transferred this 0.02 R land on the name of defendant no. 1 by way of illegal sale deed no. 2436/2008 and got mutation entry no. 6753.
5. By way of these illegal mutation entries and bogus sale deed

transactions defendant no. 1 is illegally creating obstruction and hurdle to the suit land and tin shed constructed on the suit land and owned by the plaintiff.

6. So, the present application u/o. 39 R. 1 and 2 code of civil procedure the claim and prayer that defendant no. 1 be restrained from creating hurdle and obstruction to the suit land, till final decision of suit.

7. As the present application is concentrated and limited to the defendant no. 1 only, he has filed his pleading at exh. 25.

8. It is his contention that, he is bonafied purchaser for consideration without notice. He has a registered sale deed 2436/2008 and mutation entry no. 6753, non agriculture order plot on survey no. 224 for a legal existent in his favor. The plaintiff without any right, title and interest is illegally challenging and obstructing his legal house no 6314. The application of the plaintiff and his existence and construction is illegal and so the application devoid of merit be reject with heavy cost.

9. With the three cardinal settled principles of law my findings recorded as under -

Sr. No.	<u>Points</u>	<u>Findings.</u>
1	Do prima facia case lies in favour of the plaintiff ?	No.
2	Do balance of convenience exist in favour of the plaintiff?	No.

3	Do irreparable loss would be caused to the plaintiff ?	No..
4	What order ?	As per final order

REASONS

10. In support of the application plaintiff has filed documents i.e. certified copy of 7/12 extract of survey no.244, Mutation Entry no. 2597/120, 3558, 6753, 3694, certified copy of sale deed bearing number 4820/2004 and 2436/2008, panchnama of survey no.244 dated 04/08/2023, copy of appeal before sub-divisional office, Ambajogayi.

11. Plaintiff also filed the affidavit of Asharaf Mehmood Shaikh and Imran Gulab Shaikh, and photo of tin shed on the suit land.

12. In rebuttal defendant has filed documents as certified copy of sale deed bearing number 4820/2004 and original sale deed bearing number 2436/2008, 7/12 extract of survey no. 224, Mutation no. 5999, PTR house no. 6314.

13. Heard both side at length. Perused application, say and document, affidavit and filed on record.

14. Learned advocate for plaintiff urged that, in support of prima faci case he relied upon the Mutation entry no. 2597/120, affidavit of ocular witness as adjacent landholder of suit land and photo of tin shed and strongly urged that these documents strongly proves his prima-facie case, so application be granted with

heavy cost.

15. Learned advocate for defendant no.1 has filed written notes of argument at Exh. 43. He urged as per the say and document filed and strongly prayed for rejecting the application.

As to Point No.1 :-

16. Adverting to prima facie case the plaintiff has approached the jurisdiction of equity of this court for the relief of equity, the settle principle is that, whoever desire the relief of equity must come with clean hands, that is the plaintiff must established his legal existence and then challenge the existence of the defendant and then claim the relief of equity.

17. To adjudicate this application the existence of both the parties needs to be initially adjudicated. Before adverting to the existence of the plaintiff, it would be desirable to adjudicate the existence of defendant no. 1.

18. Plaintiff at the very inception says that under the Mohammedan Law there is no concept of partition. But concept of devolution of fixed share among the sharer and residua. So the 0.02 R land partitioned from the suit land which was the joint family holding of plaintiff and defendant no. 3 to 11 at any length, strength of imagination can not be carved out on partition in favor of defendant no.1's predecessor in tittle and so very existence of defendant no.1 is illegal and so he has no right, title and interest to object plaintiff and his construction on suit land.

19. To prove the plaintiff legal existence he has relied initially on deriving title by Mutation entry no. 2597. This mutation depicts devolution of share, on basis of heirship, in favor of plaintiff and defendant 3 to 11 .

20. Plaintiff further pleads that by Mutation entry no. 3558 the suit property was partitioned among defendant no. 3 to 11 and father (Shri. Sundar nivrutti Raut) of defendant no. 2 and thus their existence created by illegal, baseless partition and mutation.

21. In the said transaction plaintiff do not claim of any share by it. Plaintiff's existence is thus by M.E. no. 2597 the devolution of share among sharer but exact nature and measurement to his share has not be stated by the plaintiff.

22. Moreover, how the existence of his 00.03.50 R are of land which is a fragment as per Fragmentation Act, has not been specifically stated, not the revenue record of the said area being carved out as a fragment, is also not placed on record. The plaintiff has also not produced any legal and sanctioned document of the consideration of the tin shed by the plaintiff.

23. The existence of his share which is a fragment and the tin shed which he is trying to protect was constructed legally, is also not on record.

24. At the fag end plaintiff has filed M.E.No. 3694, but no

pleading in the plaint nor any argument is submitted. This mutation is of partition. The partition deed is not file on record. This mutation depicts that 0.03 R land in partition was given to plaintiff. Plaintiff claim 00.03.50 R area. This area do not coincide with this mutation , so the same is not considered.

25. In such fact and circumstances the relief of equity claims by the plaintiff would not be available to him. Thus the net residue would result into conclusion that no prima faci case is made out by the plaintiff in his favour . Hence I answer point no. 1 in negative.

AS TO POINT NO. 2 & 3

26. As I have hold in foregoing paras that prima-facie case do not lies in favor of plaintiff, no question of irreparable loss to plaintiff arise, though dispute is in respect to immovable property. So balance of convenience also do not lies his *favor*. I answer point No. 2 and 3 in negative.

AS TO POINT NO. 4

27. As all three cardinal principles of law do not lies in favor of plaintiff, so he is not entitled to temporary injunction against defendant no. 1 as prayed. So, the order;

ORDER

1. Application rejected.
2. Costs in cause.

Date : 07.03.2024

Sd/-
(A.T. Jagtap)
Civil Judge J.D. (Court No.3)
Kaij.