

MHBI110021102023

R.C.S. No. 556/2023
(Surekha Vs. Janardhan)
ORDER BELOW EXHIBIT – 5

1. This is the application filed by plaintiff under Order- 39, Rule-1 and 2 of the Code of Civil Procedure for grant of temporary injunction restraining the defendants from creating third party interest in the suit properties.

2. Plaintiff contended that, field bearing survey No. 47/1 admeasuring 0-H 79.5-R situated at Mouje Shekte Budruk Tq. Shevgaon Dist. Ahemednagar, survey No. 48/2(B) admeasuring 0-H 95-R situated at Mouje Shekte Budruk Tq. Shevgaon Dist. Ahemednagar, surve No. 47/2 admeasuring 2-H 79.5-R situated at Mouje Shekte Budruk Tq. Shevgaon Dist. Ahemednagar, Block No. 92 admeasuring 7-H 07-R out of it 2-H situated at Mouje Ardhapimpri Tq. Georai Dist. Beed, Block No. 180 admeasuring 4-H 74-R out of it 1-H 58-R situated at Mouje Ardhpimpri Tq. Georai Dist. Beed and Block No. 8 admeasuring 5-H 15-R out of it 1-H 72-R situated at Mouje Ardhpimpri Tq. Georai Dist. Beed are the suit properties. She had married with defendant No. 2 prior to 23 years. Out of the wedlock son namely Angad Balasaheb Salunke was born who died on 19.02.2020. Field in Block No. 180 admeasuring 0-H 79-R situated at Mouje Ardhpimpri Tq. Georai Dist. Beed was recorded in the name of her son Angad. After the death of her son defendant No. 2 got is name recorded in respect of that field on the basis of heirship certificate issued in Civil No. 210/2020. Defendant No. 2 had married for second time. Defendant No. 2 is having addicted of alcohol and bad vices. Therefore, he is trying to sell the suit properties. Due to his addiction to

alcohol defendants have thrown the plaintiff from her matrimonial home. Due to her illness plaintiff cannot be any work. Whereas, defendant No.2 take the crops of cotton, wheat and Chana from the suit properties and earn annual income of Rs. 15,00,000/- but does not give any amount for her maintenance. The suit properties are joint family properties of the plaintiff and defendants. Plaintiff got information that, defendant is going to sale the suit properties. Therefore, she asked defendant No. 2 for maintenance amount but defendant No. 2 refused. Therefore, this suit is filed and by filing this application plaintiff is seeking interim injunction restraining the defendants from creating third party interest in the suit properties.

3. By filing say defendants admitted the relation with the plaintiff. They contended that, due to family dispute plaintiff has left her matrimonial home in the year 2013-2014. Thereafter, by compromise in RCS No. 726/2015 defendant No. 1 to 3 and sister of defendant No. 2 i.e. Jayashri Prakash Bhagyawan have got partitioned the suit properties. In that suit, Jayashri Prakash Bhagyawan had relinquished her share. Ferfar on the basis of decree in that suit was taken. After leaving the matrimonial home plaintiff and her son Angad had filed suit bearing RCS No. 982/2015 for partition and in that suit by way of compromise 79-R field in Block No. 180 was given to Angad Babasaheb Salunke and as a permanent alimony amount of Rs.75,000/- was given to the plaintiff. Therefore, at present plaintiff is in possession of that 79-R field and taking income out of it. After the death of Angad Ferfar in the name of plaintiff and defendant No. 2 was also taken. Thereafter, defendant No. 2 has relinquished his half share in that Block number in the favour of plaintiff. Plaintiff has no concern with the field recorded in the name of defendant No.3 and deceased

Tarabai. Therefore, they sought for rejection of this application.

4. Heard Ld. Counsel for plaintiff and defendants. After considering the pleading and argument of the Ld. counsels for both sides following points arise for my determination to which I have recorded my findings against them for the reasons mentioned thereunder:-

Sr. No.	Points	Findings
1.	Does plaintiff prove that, prima facie case lies in her favour ?	...Negative
2.	Does plaintiff proves that, balance of convenience lies in her favour ?	...Negative
3.	Does plaintiff proves that, she will suffer irreparable loss if the injunction prayed not granted ?	...Negative
4.	What order ?	...As per final order

REASONS

AS TO POINT NO. 1 TO 4 :-

5. Perusal of record shows that, this suit is filed for grant of maintenance and to keep charge of maintenance over the suit properties and for perpetual injunction. In support of the contention taken by the plaintiff copies of 7/12 extracts are filed on record. Perusal of copies of 7/12 extract shows that, field in Block No. 47/1, 48/2(B) are

recorded in the name of Tarabai Janardhan Salunke. But Tarabai is not made party to this proceeding. Though, defendants mentioned that Tarabai is dead but such death certificate is not on record. Plaintiff has not filed any document to show that, the fields recorded in the name of Tarabai are joint family properties. Therefore, both these properties cannot be considered as joint family properties. Perusal of 7/12 extract further shows that, field in Block No. 47/2 is recorded in the name of Janardhan Kisan Salunke, field in Block No. 180 is recorded in the name Prakash Janardhan Salunke and Surekha Balasaheb Salunke i.e. plaintiff. Field in Block number is recorded in the name of Prakash Janardhan Salunke. Field in Block No. 8 is recorded in the name Balasaheb Janardhan Salunke. However, plaintiff has not filed any document to show that, these fields are ancestral properties or joint family properties of the plaintiff and defendants. Even, perusal of 7/12 extract of Block No. 180 shows that, 79-R field in that Block number is recorded in the name of plaintiff Surekha Balasaheb Salunke but plaintiff has not mentioned this fact in her pleading. Therefore, plaintiff does not appeared to have come before this Court with clean hands.

6. Another factor which is required to be considered is that, this suit appears to have filed due to matrimonial dispute. In view of provision given in explanation "C" to the section 7 of The Family Courts Act 1984 jurisdiction to decide such matrimonial dispute appears to have lies with the family Court and not civil Court. Hence, prima facie this suit does not appear to be tenable. Therefore, at this stage of proceeding injunction against the recorded owners of the suit properties cannot be granted. Therefore, prima facie case and balance of convenience does not lie in favour of plaintiff. If, the injunction prayed not granted no loss will be caused to the plaintiff as if the maintenance

as she prayed granted then it can be recovered by other modes. Hence, I answer point No. 1 to 3 in negative and for the answer to point No. 4 proceed to pass following order.

ORDER

01. This application is hereby rejected.
02. Cost in cause.

Date : 07-01-2025

(Shri. S. P. Wankhade)
C.J.J.D. AND J.M.F.C. GEORAI

Certificate

I affirm that the contents of this PDF file are same word to word as per original order.

Dictated on : 07/01/2025
Transcribed on : 07/01/2025
Checked & signed on : 07/01/2025

Sd/-
(V. V. Mandve)
Stenographer Grade- 3
C.J.J.D & J.M.F.C., Georai.