

R.C.S.No. 03/2014.
Sambhaji / Bhawan & ors

Order below Exh. 5 :

1) Seen the application and the say filed by defendants. Heard both the sides. Perused entire record.

2) In short, the contention of plaintiffs is that all the suit properties are their ancestral properties wherein they have got undivided share, no partition of all the suit properties is as yet effected and that as all the properties are standing in the name of defendants, there are chances of defendants' depriving plaintiffs from their legal right by disposing of the suit properties. Therefore, plaintiffs have prayed for temporary injunction whereby they have requested to grant injunction against defendants from alienating the suit properties or from creating third party interest in the suit properties.

3) While opposing the application, defendants have contended that plaintiffs are having no concern either with them or with the suit properties, they are not members of joint Hindu family of defendants nor they are coparceners and that they can not claim any right in the suit properties. In the additional statement, it is the contention of defendants that plaintiff no. 2 is not at all wife of defendant no. 1 and therefore, plaintiff no. 1 can not be treated as son of defendant no.1. Considering all these facts, they have prayed for rejection of application.

4) In view of rival pleadings of the parties, points arising for my determination are as under. I had recorded my findings against them for the reasons discussed below;

Points:

Findings:

- 1) Whether plaintiffs prove prima facie case in their favour ?.....In affirmative.
- 2) Whether plaintiffs have balance of convenience in their favour ?.....In affirmative
- 3) Whether plaintiffs would suffer irreparable loss of injunction is refused ?.....In affirmative
- 4) What order ?.....Application is allowed.

// REASONS //

5) In the present suit, from the pleadings of both the sides, the only controversial aspect is about locus standi of plaintiffs to file the instant suit and to claim the relief of partition. From the defence of defendants, it is clear that the only ground on which they have objected the claim of plaintiffs is about their theory of no relationship between plaintiffs and defendants. Rest of the facts such as source of suit properties and its inheritance by defendant no.1 is not denied by the defendants.

6) As far as denial of relationship between the parties interse is concerned, plaintiffs have come before court by contending that plaintiff no. 1 is son of defendant no.1 and plaintiff no. 2 who has been begotten out of their wedlock. It is further case of plaintiffs that plaintiff no. 2 is legally wedded wife of defendant no.1, who has later on performed illegal marriage with defendant no.2. In the background of this specific averment in the plaint, it is necessary to consider the points raised by defendants in their written statement. In the written statement-cum-say filed by defendants, they have categorically denied that plaintiff no. 2 is first wife of defendant no.1. Similarly, they have also denied that plaintiff no. 1 is son of defendant no.1 begotten out of said

wedlock. As defendants have objected claim of plaintiffs only on this ground, at this juncture, it is necessary to consider that aspect only.

7) Though defendants have denied their relations with plaintiffs from certain averments in the additional w.s. of defendants, there appears to be some relationship between the parties. In additional w.s. of defendants i.e. in para no. 12 of w.s., defendants have contended that plaintiff no. 1 is illegitimate child of defendant no.1. In other words, defendants have indirectly admitted their relationship with plaintiffs. In such circumstances, whether plaintiff no. 1 is legitimate or illegitimate child of defendant no.1 is the issue which can not be decided without parties being able to lead their respective evidence. Naturally, at this stage of the matter, the only fact which has to be considered is the fact that plaintiffs have got some nexus with the defendants. Naturally, that means that they have some nexus with the suit properties.

8) As prima facie it is established that plaintiffs have got certain interests in the suit properties, the next question would be whether balance of convenience is in the favour of plaintiffs or not. As far as present suit is concerned, this suit being suit for partition, prima facie, it appears that plaintiffs have got certain interest in the suit property. In such circumstances, if the injunction claimed is not granted, that right of plaintiffs can get adversely affected. On the contrary, no such right of defendants would get affected if the injunction is granted in the favour of plaintiffs. Therefore, in my opinion, balance of convenience also lies in the favour of plaintiffs.

9) As far as aspect of irreparable loss is concerned, if the injunction claimed is not granted and if defendants succeed in

alienating the suit property or creating third party interest in it, that can adversely affect the right and interest of plaintiffs which can not be compensated in terms of money. Similarly, that would lead to multiplicity of the proceeding. However, if injunction is granted, no such prejudice would be caused to the rights of defendants as by grant of interim reliefs which are claimed by plaintiffs, no right of defendants get adversely affected. Even otherwise, it is not at all the case of defendants that because of particular legal necessity, they desire to dispose of the suit property. Considering all these facts, in my opinion, plaintiffs have made out prima facie case and also balance of convenience lies in their favour. Naturally, if injunction is refused, they would suffer irreparable loss. Hence, I answer points no. 1 to 3 in affirmative. In the result, application is disposed of by following order.

// O R D E R //

- 1) Application is allowed.
- 2) Defendants no. 1 to 4 are hereby temporarily restrained from alienating the suit properties or creating any third party interest therein, till final disposal of this suit.
- 3) Cost shall be cost in cause.

Sd/-

Date: 07/02/2015.

(S.S. Jahagirdar)

Place: Dharur.

Civil Judge, Jr. Division,
Dharur.