

Order below Exh. 154

1] The present application is moved by the plaintiff for temporary injunction under order 39 Rule 1 & 2 of the Civil Procedure Code 1908.

2] The plaintiff contended that, they are siblings. on dated 23.06.2021 defendant no. 3 have executed agreement of sale in favour of the Sarswati Mahadeo Jadhav. Defendant no. 3 has also filed application before the concerned Tahsildar for obtaining permission to alienate the alleged property in gut no.15 situated at mouje Selu. The present suit is pending for the final argument, with intent to harass the plaintiff defendant no. 3 is trying to sale this property. As the defendant no. 3 has no right to transfer the suit property during the pendency of suit. Therefore, to avoid multiplicity of the suit the plaintiff have filed the present application.

3] Per contra ld Adv. for the defendants have filed say at Exh. 159 and submitted that, the present application is filed by the plaintiff with the collusion of defendant no. 1 & 2. As the plaintiff have filed the pursis at Exh. 39 for withdrawal of the suit against the defendant no.3, but he had again not pressed it. Plaintiff, defendant no. 1 & 2 have no concern with defendant no.3's land therefore, the application is liable to be rejected.

4] Heard. Both the side at length.

5] Considering rival contentions of the parties, following points arise for my determination. I record my findings against each of them for the reasons stated thereon.

POINTS

FINDINGS

- | | |
|---|------------------------------------|
| 1) Whether plaintiff made out prima-facie case ? | ... In the affirmative. |
| 2) Whether balance of convenience is lies in favour of plaintiff ? | ... In the affirmative. |
| 3) Whether irreparable loss will be cause to plaintiff if the temporary injunction is not granted in his favour | ... In the affirmative. |
| 4) What Order? | ... Application is allowed. |

REASONS

6] Relevant oral and documentary evidence will be referred at appropriate place.

AS TO POINT NO.1 TO 3:-

7] To avoid repetition all the issues are taken up together for discussion. The present suit is for partition, separate possession and cancellation of sale deed no. 1293/99 and 3053/13. Defendant no.1 is alcoholic person, therefore, under the influence of liquor he has executed sale deed of Gat No. 15 having area 81R in favor of the defendant no.3. The present suit is pending before the Court and it is listed for the evidence of defendant no. 3 & 4.

However, without arguing the matter the defendant no. 3 is trying to alienate the property to the third person. Document below Exh. 157. It is not in dispute that, defendant no. 3 is a purchaser of the one part of the suit property and he has been added to the suit as a defendant. So also defendant no.3 has not denied that, he is trying to sale the alleged property. Per contra he is disputing that, the plaintiff, defendant no. 1 & 2 have no concern with his property.

8] The suit is pending and the alleged property is subject matter of the suit, therefore, to avoid multiplicity of the proceeding, it will be proper to stop the defendant no.3 from alienating the property to the third person. Suffice to say that bar of Section 52 of transfer of the property act will also attract here. Therefore, the prima-facie it appears that, plaintiff are disputing the sale deed of the defendant no.3. Suffice to say that, this is the application of temporary injunction. It is settled legal position is that, at this stage it is not necessary to go into the roots of the matter. Thus, prima facie case is made out in favour of plaintiff.

9] So far as concern the balance of convenience considering the nature of the suit, at this stage certainly it lies in plaintiff's favour. If the order of temporary injunction will not be granted in plaintiff's favor it will really harm and prejudice to them and not to the defendant no.3. Therefore, the plaintiff who will suffer irreparable loss which cannot compensate in terms of money. Thus, point no.1 to 3 answered in the affirmative.

AS TO POINT NO.4

10] As to findings of point no. 1 to 3 the application for temporary injunction deserves to be allowed. In the result following order is passed.

Order

- 1] The application is allowed.
- 2] It is hereby directed to the defendant no. 3 not to alginate the 81R land out of gut no.15 situated at mouje Selu in favor of any person till the disposal of the suit.
- 3] considering the stage of the matter trial of the suit is expedited.

Dt:-20/10/2021.

Sd/-
[Miss. M.M. More/Pawde]
Jt. Civil Judge Junior Division,
Parli V, Dist. Beed.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original Judgment/Order.

Sd/-
Akash B. Kabne
Stenographer Gr-III

Dictated on : 20.10.2021

Transcribed on : 20.10.2021

Checked & Signed on : 20.10.2021