

ORDER BELOW EXH.61

(Passed on this 20th day of June, 2017)

By the instant application, plaintiffs have prayed for to appoint receiver for management of the suit property vide Order XL Rule 1 of the Code of Civil Procedure, 1908.

2. Read the the instant application and say filed by defendant no.1 below Exh.64. Defendant no.2 failed to file his say and therefore instant application is proceeded without his say. Perused record and proceeding of the instant suit. Heard the learned Advocates of the respective parties.

3. According to plaintiffs, the present suit is filed for partition and separate possession of the suit property which is a joint family property of the family to which they have interest being coparcenar and thereby they have prayed for to open partition which defendants were denied. The suit is pending for evidence and it requires time to dispose off and also to determine the shares of the parties and therefore pending the suit, they have prayed for to appoint receiver in respect to management of suit property. On the contrary, defendants have denied the relief asked under the instant application and contended that the suit property is self acquired property of defendants being purchased from own income and thereby plaintiffs have no interest therein. Despite, they filed suit and instant application merely to grab the land and give him harassment. If, the receiver is appointed as prayed for, defendants suffered from starvation as whole family depends upon the

income thereof. Thus, he has prayed for to reject the instant application.

4. Upon rival pleadings of the parties, following points arises for my determination to which, I have recorded my findings with reasons thereupon as follows;

Sr.No.	<u>POINTS</u>	<u>FINDINGS;</u>
1]	Whether plaintiffs have made out their case to appoint receiver for the management of suit property?	In the Negative.
2]	What order ?	As per final order.

REASONS

AS TO POINT NO. 1 :

5. The present suit is for partition and separate possession wherein defendants denying the claim and accordingly issues were framed below Exh.42 on 12-01-2015 and additional issue on 09-12-2016. In the present suit, plaintiffs alleging the status of suit property as an undivided joint family property of defendants and themselves stating that they were purchased from the income of their joint family and thus they have interest therein being coparcenar. Said contention are denied by defendants stating that the suit property was purchased from own income and thereby it is self acquired property wherein plaintiffs have no interest despite they filed the suit merely to grab the land.

6. From the pleading of the parties and documents files on record, it appears that the suit property is in the name of defendant no.1 and alleged to be purchased on the basis of sale-deed Sr.no.718/1970 on 13-04-1970 merely for family arrangement. From this

contention, it appears that the suit property is prima facie acquired by defendant no.1 under the sale agreement in his names. A perusal of copy of said sale transaction which is filed on record below list Exh.4 sr.no.4, it appears that there is no averment as to paying of consideration amount from the income of joint family as contended by plaintiffs. No such recital are find place therein. Plaintiffs contending that the consideration amount were paid from the income of joint family property which is denied by defendants. Therefore, the said question is required to be adjudicated upon the evidence of the parties and it requires time to adjudicate.

7. From the perusal of pleading of the parties and documents filed on record, it prima facie appears that the suit property is in the name of defendant no.1 and there is nothing in the sale transaction as to the paying of consideration amount from joint family income. In absence of such material, it is unjust to appoint receiver for the management of the suit property which is prima facie appears to be hold by defendant no.1 alone in pursuance of sale transaction in his sale name, pending the suit as prayed for by plaintiffs.

8. Thus, I have no hesitation to hold that plaintiffs have failed to made out their case to appoint receiver for management of the suit property as prayed for pending the suit. In the result, I answer point no.1 in the negative and in answer to point no.2, I pass the following order.

ORDER

- 1) Application Exh.61 is hereby rejected.
- 2) Both the parties to note.
- 3) Cost in cause.

Dtd. 20-06-2017

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(K. K. Chafale)
Civil Judge, (Junior Division),
Wadwani, District-Beed.