

Order below Exh. 5 in RCS No. 433/2013( Haoushalyabai V/s Nilawati and others )

By this application plaintiff is seeking temporary injunction restraining defendants from alienating land Gat No. 303 total adm. 9 H. 98 R to the extent of 4 H. 82 R, land Gat No. 160 total adm. 77 R, land Gat No. 244 total adm. 11 H. 62 R to the extent of 40 R, land Gat No. 220 total adm. 13 H. 69 R to the extent of 3 H. 50 R, land Gat No. 320 total adm. 4 H. 31 R to the extent of 1 H. 40 R, land Gat No. 158 total adm. 80 R, land Gat No. 291 total adm. 3 H. 20 R situated at village Baji Umradi, Tal. and District Jalna which are hereinafter mentioned as the 'suit properties'.

2) The brief facts of this litigation are as under :-

Plaintiff got married with one Devidas Dongare prior to 55 years. As the couple was not fortunate to have an issue, Devidas solemnized second marriage with defendant no. 1 prior to 45 years and defendants no. 2 to 5 are born from this wedlock. Devidas was owner of land Gat No. 303 total adm. 9 H. 98 R to the extent of 5 H. 2 R and land Gat No. 291 to the extent of 3 H. 20 R. These lands are his ancestral joint Hindu family properties as he had received the same by partition. Devidas had purchased land Gat No. 160 adm. 77 R in the name of his daughter in law Rukhminbai i.e. defendant no. 5, according to which mutation entry no. 1085 was sanctioned. Devidas had also purchased 40 R land of Gat no. 244 in the name

of his son Vaijinath i.e. defendant no. 2 by a registered sale deed dated 05/03/1993 and also 3 H. 50 R land of Gat No. 220 by registered sale deed dated 31/03/1981. Further according to the plaintiff, Devidas had also purchased 1 H. 40 R land of Gat no. 320 in the name of Devidas. All these properties are purchased by Devidas from the income of his joint family properties, so these all are his joint family properties.

3) Further, according to the plaintiff, due to matrimonial disputes between her and Devidas, she was forced to live separate from Devidas and defendants. Therefore, she had filed maintenance petition against Devidas and accordingly monthly maintenance of Rs. 40/- was granted to her. Subsequently Devidas and plaintiff had entered into a compromise dated 4/11/2004 and Devidas agreed to pay one time maintenance of Rs. 15,000/- to the plaintiff and he had also allotted 4 Acre land of Gat no. 303 as well as 2 Acre land of Gat no. 291 to her. Accordingly mutation entry no. 232 was sanctioned and the name of the plaintiff was mutated as the owner and possessor of these portions of lands. By mutation entry no. 809, Devidas further allotted 1 H. 82 R land in the name of defendant no. 1 and 3 by partition. However, according to the plaintiff, this partition was not a legal one. After the death of Devidas, plaintiff claimed to effect the partition of the suit properties and to deliver her separate possession, but defendants flatly

denied for the same. On the other hand by filing another suit dated 25/04/2013, defendants denied the share of the plaintiff in the suit properties and they also threatened her to alienate the suit properties in order to deprive her from claiming the share therein. Hence this suit as well as this application praying for grant of temporary injunction restraining defendants from alienating the suit properties till final disposal of this suit.

4) Defendants contested the suit as well as this application by filing their say-cum-written statement below Exh.12 and denied the contention of the plaintiff that the suit properties are the joint Hindu family properties of Devidas. According to them defendant no. 1 is legally wedded wife of Devidas and defendants no. 2 to 5 are their legitimate children. Further, defendants contended that out of suit properties, only land Gat no. 303 to the extent of 5 H. 2 R is the ancestral property of Devidas and after the demise of Devidas on 11/08/2012, defendants no. 1 to 3 are cultivating the said land. Plaintiff without having any concern, got mutated 1 H. portion of land Gat no. 303 and 81 R portion of land Gat No. 291 in her name in conspiracy with the revenue authorities. Defendants have filed the appeal before Sub-Divisional Magistrate, Jalna, challenging these mutation entries as well as RCS No. 221/2013 in the Court. After being served with the suit summons of RCS No. 221/2013, in order to cause harassment to defendants, plaintiff

executed registered sale deed of 1 H. 60 R land of Gat no. 303 in favor of one Gorakhnath Damodar Kolhe. On this, defendants have added Gorakhnath Kolhe in the array of defendants in RCS No. 221/2013 and have also claimed relief of injunction against him. But all these material facts are concealed by the plaintiffs and as she has not come with clean hands before the Court, she is not entitled to the relief of perpetual injunction.

5) Further according to defendants, 81 R land of Gat no. 291 was purchased by Devidas on 18/05/1993 from Mahadu @ Madhavao Laxman Dongare by registered sale deed no. 1659/1993, however subsequently, Devidas again transferred this property in favor of Murlidhar Ramrao Dongare. Hence, this property is not joint family property of the parties.

6) It is the contention of defendants that in the year 1981, the brothers of defendant no. 1 had given her certain amount to purchase gold for her, however she preferred to purchase 8 Acre 10 gunthas land of Gat No. 220 in the name of defendant no. 2 Vaijinath and accordingly mutation entry no. 74 was recorded. Subsequently defendant no. 1 has given this land to defendant no. 2 and rest of defendants no. 3 to 5 have no objection to it. Further defendant no. 2 has purchased from his own income land Gat no. 158 to the extent of 79 R in the name of his wife Gangubai i.e. defendants no. 6 and he has also purchased 40 R land of Gat No. 244 in the year 1993.

Accordingly mutation entries no. 1197 and 896 are recorded. Thus, these properties are the self acquired properties of defendants no. 2 and 6 and plaintiff has no concern with the same.

7) Further defendant no. 3 had purchased 77 R land of Gat no. 107 along with 4 Ana share in the well in the name of his wife Rukhminibai by registered sale deed bearing 2025/1995 from Pralhad Dongare and accordingly mutation entry no. 1085 was mutated in the name of Rukhminibai. Further he has purchased 03 Acres 20 Gunthas land of Gat no. 320 from Pandurang Dongare and accordingly mutation entry no. 1359 is recorded in his name. Thus all these properties are the self acquired properties of defendants no. 2, 3, 6 and 7. However, plaintiff has filed the present suit on the instigation of her nephews Subhash Patekar, Baliram Patekar and Pralhad Dongare. In fact, the nephews of plaintiff had demanded ransom amount of Rs. 5,00,000/- from defendants. But defendants did not pay heed to the threats given by these persons and hence by instigating the plaintiff, these persons are harassing the defendants. According to defendants, when Devidas Dongare had given 08 Acres 21 Gunthas land of Gat no. 36 to the plaintiff for a life time maintenance, she had accepted the said land in her maiden name as Haoushalyabai d/o Vithoba Patekar and accordingly mutation entry no. 55 is recorded. At present Subhash Patekar

and Baliram Patekar are cultivating this land.

8) Further according to defendants on 4/11/2004 plaintiff had relinquished her all rights in the suit properties by executing a release deed and accepting Rs. 15,000/- from Devidas Dongare in lieu of her share in the suit properties. Subsequently as plaintiff get mutated her name wrongfully in the 7/12 extract of land Gat no. 303 and 291, defendants had challenged these entries by filing RCS No. 221/2013. However, during the pendency of the same, plaintiff had sold 01 Hectore 60 R land of Gat no. 303 to Gorakhnath Kolhe to create multiplicities of proceedings. As plaintiff has concealed all these facts it seems that, she has not come before the Court with clean hands and hence is not entitled for an equitable relief of injunction. With these contentions, defendants prayed for dismissal of the suit with cost of Rs. 3000/- to each defendants.

9) Heard learned Advocate Shri. M. R. Deshpande for plaintiff and Shri. P.W. Kulkarni for defendants. Considering the rival contentions of the parties and documents on record, the following points arise for my consideration for the determination of this application and I have recorded my findings thereon with the reasons given there below.

POINTS

FINDINGS

1) Does the plaintiff have a prima facie case to grant temporary injunction as prayed ?

No.

POINTSFINDINGS

- |   |                     |
|---|---------------------|
| 2) Whether the balance of convenience lies in favour of plaintiff ?                                       | No.                 |
| 3) Whether the plaintiff will suffer irreparable loss in the event of not granting temporary injunction ? | No.                 |
| 4) By what order ?  | As per final order. |

REASONS

As to points No.1 to 3 collectively :-

- 10) In order to get the equitable relief of temporary injunction, plaintiff has to prove by affidavit or otherwise that the suit properties are in danger or being wasted damaged or alienated by defendants. Even the necessary documents should be on record to prove it prima-facie that suit properties are the ancestral properties of the parties. In order to prove these contentions plaintiff relies only on the copies of 7/12 extracts of the suit properties. Nothing is on record to consider that these properties are the ancestral properties of both the parties or either they are purchased by Devidas in the name of various defendants. On the other hand, defendants relied on the copies of various sale deeds of the suit properties as well as the documents enlisted in Exh. 15. It seems that nothing is not record to raise an iota that the suit properties are the ancestral properties of both the parties.
- 11) Considering the backdrop of this litigation in my view at this stage

it is not judicious to grant the equitable relief sought specifically because the plaintiff has kept mum regarding alienation of 08 Acres 21 Gunthas land of Gat no. 36 in her name at the time of entering into a compromise on 4/11/2004. Thus, it is clear that plaintiff has not come with clean hands before the Court and therefore she has no prima-facie case to claim equity. Even considering the circumstances, no balance of convenience lies in favour of the plaintiff and there is no possibility of suffering any irreparable loss to her in case of denial of temporary injunction for alienating the suit properties. Hence in my view the plaintiff is not entitled for the equitable relief of injunction and in view of these findings, I answer points No.1 to 3 collectively in the negative and proceed to pass the following order.

ORDER

Application is rejected. Costs in main cause.

Date :- 30/12/2013.

Sd/-  
(J.S. Bhatia)  
Joint Civil Judge (Junior Division)  
Jalna.

Certificate

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	:	G. G. Mitkari
Court	:	J.S. Bhatia, Joint Civil Judge (J.D.), Jalna
Date	:	30/12/2013.
Judgment signed by the P.O.	:	30/12/2013.
Judgment P.D.F. on	:	30/12/2013.
Judgment uploaded on	:	30/12/2013.