

Order below Exh.05

The plaintiffs have filed this application for temporary injunction as per order 39 Rule 1 of the Civil Procedure code.

Brief facts of the application are as under:

02. The plaintiffs have filed this suit for partition and separate possession against the defendants and said application for temporary injunction against them for not to alienate suit property till the final disposal of the suit. Plaintiff no.1 is first wife and plaintiff no.8 is second wife of deceased Sidharth Salve. Defendant no.1 is mother-in-law and defendant no.2 is sister-in-law of plaintiff no.1. Deceased Sidharth Sable has daughters i.e. defendant no.2 to 7. Plaintiff no.9 is the daughter of plaintiff no.8 and plaintiff nos.10 and 11 are her sons. The suit property is joint family property of plaintiffs and defendants family which is not partitioned till date. The names of defendant no.1 and 2 have registered in 7/12 extract of the suit property. By taking disadvantage of their names defendant no.1 has executed sale-deed in favour of defendant no.3 on 30.06.2023 and defendant no.2 has executed sale-deed in favour of defendant no.4 and 5 on 18.04.2023. Therefore, both the sale-deeds are not binding on plaintiffs share. The plaintiffs have undivided share in the suit property. Therefore, the plaintiffs have filed this suit against the defendants for partition and separate possession vis-a-vis this application for temporary injunction for not to alienate suit property till the final disposal of the suit.

03. The defendant no.1 and 2 have filed their say at Exh.19 and 22. They denied all the averments made by the plaintiffs. It is contended that, the suit property is self acquired property of defendant no.1 and she has purchased out of her Shridhan. Therefore, the defendant no.1 has absolute right to enjoy, to dispose off said property. The plaintiffs have no right to file this suit against the said defendants. The suit property is already disposed off by way of registered sale-deed, therefore, this application became infructuous. The plaintiffs suit is barred by principle of non-joinder of necessary properties. Hence, they prayed to reject this application.

04. Following points arose for my determination. I record my findings in respect of each point for the reasons given below.

	Points	Findings
1]	Whether the plaintiffs have prima-facie case?	In the affirmative.
2]	Whether the plaintiffs have balance of convenience in their favour?	In the affirmative.
3]	Whether the plaintiffs would suffer irreparable loss if temporary Injunction is refused to them ?	In the affirmative.
4]	What order ?	Application is allowed.

REASONS

As to point Nos. 1 to 4:-

05. These points are co-related to each other, therefore I have taken them together for common discussion.

06. The advocate for the plaintiffs submitted that,

deceased Sidharth Salve and his father Kaduba Salve were working at MTNL. Therefore, they have purchased suit property out of income derived from service in the name of defendant no.1. Therefore, said property is joint family property of plaintiffs and defendants family. It is admitted that, defendant no.1 and 2 have alienated suit property in the name of defendant no.3 to 5. Therefore, there is possibility that, the defendant no.3 to 5 will alienate suit property in the name of third party purchaser. If this court will allow temporary injunction it will not cause irreparable loss to the defendants. But, this application will be rejected, there is possibility that the defendant nos. 3 to 5 will alienate suit property, which will be caused complications in the suit. Therefore, he prayed to allow the application.

07. On the contrary advocate for the defendants submitted that, the defendant no.1 was exclusive owner of suit property by way of sale-deed. Therefore, she has alienated suit property for her legal necessity. If the temporary injunction application will allow, she will not get benefits of the said sale-deeds. The defendant no.1 is old age person, to fulfill her needs of livelihood she required consideration amount. Hence, they prayed to reject the application.

08. After considering pleadings, documents and submissions placed on record. It is clear that, suit property was registered in the name of defendant no.1, 2 and they have alienated the same in the names of defendant nos.3 to 5. The defendant nos.1 and 2 have admitted relation with plaintiffs in

their say. But, it is contended that, the suit property is self acquired property of defendant no.1 and she has absolute right to alienate the same. Therefore, to prove the fact of joint family property and self acquired property, it is necessary to cast burden on plaintiffs and defendants shoulders respectively and for this purpose comprehensive evidence of both the parties need to be recorded. The plaintiffs have sufficiently prima-facie proved that, the plaintiffs and defendant nos.1 and are members of joint family and the suit property previously owned by defendant no.1. In this situation, plaintiffs have right to file suit for partition against defendants. As per this the plaintiffs have proved their prima-facie case. Balance of convenience lies in their favour. If this application will be rejected, there is possibility of alienation of the suit property, which will cause complications in this suit. Hence, I answer point nos. 1 to 3 in the affirmative and to answer point no. 4, I pass following order.

ORDER

01. Application is allowed.
02. The defendants hereby temporarily restrained from alienating suit property through themselves or their power of attorney holders or employees, servants, agents or anybody claiming through them till the final disposal of the suit.
03. Cost in main cause.

Date: 05.03.2024.

Sd/-
(Smt. R. V. Patil)
Civil Judge (J.D.),
Bhokardan.

5 R.C.S.163/2023
Ranjana & oth. Vs. Sarubai & oth.

CERTIFICATE

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

Name of Steno :- U.R. Dasare,

Name of Court :- Civil & Criminal Court, Bhokardan.

Date :- 05.03.2024.

Sd/-

Signature of Steno