

Order below Exh. 5

1) Plaintiff has invoked the jurisdiction of this Court vide Order XXXIX, Rule 1 of the Code of Civil Procedure (for short 'CPC') for restraining the defendant and everybody on his behalf from alienating C.T.S. No. 2836, 2832, 2839, 2843 AND 1844 situated within the local limits of area Karveer come under Kolhapur Municipal Corporation. (hereinafter referred to as 'the suit properties').

2) Briefly stated, plaintiff's pleadings relevant to the decision of this application are that suit properties are his ancestral properties. His grandfather was owner of the suit properties. After his death the name of plaintiff's mother has been mutated on revenue record of the suit properties. The mother of plaintiff was alone in Kolhapur and he was outside station for service. Defendant has no any concern with his family. He misused the situation and prepared bogus adoption deed as he is adopted son of plaintiff's mother. According to him at the time of alleged adoption deed the age of defendant is 41 years. He was married, his mother had two issues. And therefore defendant was not capable to take in adoption. His further contention is that defendant mutated his name on revenue record of the suit properties. So he may alienate the suit property. Therefore, he prayed to restrain the defendant from alienating the suit property.

3) Defendant filed his written statement at Exh. 13. Defendant denied entire claim of the plaintiff. According to him plaintiff has no any concern with late Sushila Hanmant Kulkarni. His mother had a good relation with Sushila Hunmant Kulkarni. The son of Sushila Hanmant Kulkarni was missing since the year 1970 and could not trace and therefore said Sushila Hanmant Kulkarni adopted the defendant as her son on 27/05/1993 by way of registered adoption deed. His further contention is that there is a custom and usage in Kolhapur Region that married person is also capable to take in adoption and therefore said adoption deed is valid. Defendant also raised a dispute on power of attorney deed of plaintiff and contended that plaintiff is not the son of Sushila Hanmant Kulkarni and on these basis defendant pray to reject the application.

4) From the foregoing pleadings and after hearing the submissions advanced by the parties, following points arise for determination. My findings are mentioned against each point for the reasons given further.

Points	Findings
1) Whether the plaintiff has made out <i>prima-facie</i> case for grant of temporary injunction ? Yes
2) Whether the plaintiff would suffer irreparable loss if temporary injunction as prayed is refused ? Yes

- 3) Whether the balance of convenience lies in favour of the plaintiff ? Yes
- 4) What order ? Application is allowed

Submissions :-

5) Mr. A.. G. Rendale, learned advocate for the plaintiffs submitted that plaintiff is having prima-facie case, he is son of late Sushila Hanumant Kulkarni. The alleged adoption deed is not valid and not created any right in favour of the defendant. But even though defendant mutated his name on the basis of said adoption deed on revenue record of the suit properties. So there is a possibility that defendant may alienate the suit properties which may result in his irreparable loss.

6) Mr. Ravi Shiralkar, learned counsel for the defendant submitted that plaintiff has no *prima-facie* case, he has no any concern with suit properties. The adoption deed is registered and valid and on that basis defendant became owner of suit properties. Balance of convenience is lies in favour of the defendant. Therefore, if injunction granted in favour of plaintiff it would be resulted in irreparable injury to defendant.

REASONS

As To Point No. 1 :-

7) In present suit plaintiff raised a doubt on the validity of the registered adopted deed. However, defendant claimed ownership on the suit properties on the basis of adoption deed. So before touching to the merit of the application, it would be just and proper to reproduce relevant provisions of Hindu Adoptions and Maintenance Act, 1956, which is as under;

Section 5 :- Adoption to be regulated by this chapter - (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provision contained in this chapter, and any adoption made in contravention of said provisions shall be void.

(2) Any adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy, the rights of any person in the family of his or her birth.

Section 6 : Requisites of valid adoption :- No adoption shall be valid unless -
(i) the person adopting has the capacity, and also the right, to take in adoption;
(ii) the person giving in adoption has capacity to do so;
(iii) the person adopted is capable of being taken in adoption; and
(iv) the adoption is made in compliance with other conditions mentioned in this Chapter.

Section 10 : Person who may be adopted -No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely -
(i) he or she is a Hindu;

- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iv) he or she not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

Section 11 : Other conditions for a valid adoption - In every adoption, the following conditions must be complied with -

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son living at the time of the adoption;
- (ii) not applicable
- (iii) not applicable
- (iv) if the adoption is by female and the person adopted is a male, the adoptive mother is at least 21 years older than the person to be adopted;
- (v) not applicable
- (vi) not applicable

8) Now, I turn toward the facts in present case. late Sushila Hanmant Kulkarni was wife of Hanmant Kulkarni, she was owner of the suit properties and she has one son namely Arun is not disputed fact. Whether Arun is alive or dead cannot be decide at this juncture. At present only it is necessary to consider that whether the alleged adoption deed is valid and created right in favour of defendant over the suit properties

9) It is not disputed fact that defendant was married at the time of the adoption deed and defendant not produced any document to establish that there was a

custom or usage which had permitted him to be taken in adoption. It is matter of record that late Sushila has one son namely Arun. So she was not capable to take the defendant in adoption, the age of the defendant at the time of adoption was 41 years. So he was also not capable to take in adoption. This over all situation discloses that plaintiff *prima-facie* establish that the adoption deed made in contravention of the provisions of Hindu Adoption and Maintenance Act, 1956. This entire situation compelled the plaintiff to enter in the court. So I am of the view that plaintiff satisfied that there is a serious question to be tried at the hearing, and there is a probability of Plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court Hence, plaintiff successfully established the *prima-facie* case. Hence, I have answered point no. 1 **in the affirmative**.

As to points no. 2 and 3 :

10) These two points are inter linked. Hence, they are taken together for discussion to avoid repetition. Court has to balance and weigh the mischief or inconvenience likely to be caused to the either side before granting or withholding an injunction. This principle is expressed by saying that the Court is to look to the balance of convenience. Admittedly, the name of the defendant has been mutated on revenue record of the suit

property as owner. Needless to mention that owner can alienate/sale his property and any person can purchase from him on the basis of ownership. In present case plaintiff *prima-facie* establishes that the adoption deed is not satisfying he necessary ingredients of the Act. So in these situation if the defendant sale the property then it would be inconvenient to the plaintiff. On the contrary, if suit properties have been kept as it is it would not be inconvenient to the defendant. In short balance of convenience tilt in favour of the plaintiff and if plaintiff has not been protected he may suffer irreparable loss. Hence, it is necessary to prevent defendant from alienating the suit properties. Hence, I have answered both these points **in the partly affirmative**. Resultantly, I pass the following order in answer to point no. 4.

ORDER

- 1) The application is allowed.
- 2) Defendant, his agent, servant or anybody claiming through him are hereby temporary restrained from alienating the suit properties till the decision of the suit.
- 3) Costs in the cause.

Date: 23/07/2018
Ichalkaranji

Sd/-
(P.S. Bhandari)
5th Jt. Civil Judge Junior Division,
Ichalkaranji

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

Name of stenographer	S. A. Patil
Name of Court	P. S. Bhandari 5 th Jt. Civil Judge, Jr. Dn. & Judicial Magistrate F.C. Ichalkarnaji.
Date of Dictation	23/07/2018
Judgment/order signed by P.O. on	23/07/2018
Judgment/order uploaded on	23/07/2018