

MHKO050033912021



ORDER BELOW EXH. 5 IN SPECIAL CIVIL SUIT NO. 39/2023
(Nilam Vhatkar V/s. Sarita Maske and others)

This is an application filed by plaintiffs under Order 39 Rule 1 and 2 of Code of Civil Procedure is seeking interim temporary injunction restraining defendant No.1 and 2 from creating any third party interest in respect of the suit property.

2. According to the plaintiffs, landed property bearing Block No.1700 and house properties bearing C.T.S.No.2279, 2286, 1622, 1617 and 1632 situated within the limits of village Hupri, Tal. Hatkanangale, Dist.Kolhapur are the disputed properties (hereinafter referred as "suit properties").

3. The suit properties are ancestral properties of parties. . The plaintiffs are coparcener in the suit property. Plaintiff No.1 is wife of defendant No.4 whereas plaintiff No. 2 and 3 are children of defendant No.4. Defendant Nos. 4 to 6 are siblings. Defendant No. 3 to 6 are legal heirs of deceased Appaso. Defendant No. 8 is wife of Jindatta who was brother of deceased Appaso. Defendant No. 1 and 7 are daughters of deceased Dattatray and Putalabai. They are predecessors of both plaintiffs and defendants. Defendant No.2 is purchaser of the suit properties bearing City Survey No. 2279 and 2280. He had purchased said properties from defendant No.1. Defendant No.1 got executed mortgage deed in her favour from defendant No. 3 to 7. Said mortgage deed was executed without payment of any consideration amount. Subsequently defendant

No.1 has purchased City Survey No. 2279 and 2280 by virtue of sale deed dtd. 21.06.2010 and 22.06.2010. The mortgage deeds and sale deeds executed in favour of defendant No.1 are not binding on the share of plaintiffs. Thereafter defendant No.1 executed sale deed dtd. 30.11.2015 of City Survey No. 2279 and 2280 in favour of defendant No.2. The subsequent purchaser is obstructing peaceful possession of the plaintiffs. They are trying to create third party interest in the suit property. The plaintiffs have filed present suit for partition and separate possession of the suit properties. Therefore, it is necessary to preserve status of the suit properties. Hence, the plaintiffs have filed present application.

4. Defendant No.1 has resisted the application and filed say at Exh. 30. According to her, the plaintiffs have filed present application by suppressing material facts. One of the suit property bearing Block No. 1700 discloses that name of one Namdev Shirole is entered in the 7/12 extract. However, he is not party to the present suit. On 22.10.2008 defendant Nos. 3 to 7 handed over the area admeasuring 0-76.50 out of Block No.1700 in favour of defendant No.1. She has also given consideration amount to defendant Nos. 3 to 7. Thereafter, on 22.06.2010 defendant Nos. 3 to 7 executed sale deed in favour of defendant No.1 of above area. Defendant No.1 has made development in the purchased portion. Now she is taking sugarcane crop in the said area. She had also constructed house in it. The plaintiffs are well aware about the said facts. Similarly defendant Nos. 3 to 7 also transferred C.T.S.No.2279 and 2280 in favour of defendant No.1. She was in possession of the said property. Subsequently defendant No.1 executed sale deed dtd. 30.11.2015 in favour of defendant No.4 and possession of C.T.S.No.2279 and 2280 transferred in favour of defendant No.2 which she got from defendant No. 3 to 7. Therefore, application is liable to be rejected.

5. Heard learned advocate for both the sides. Following points arise for my determination to which I have recorded my findings thereon along with detail reasons given below.

Sr.No	Points	Findings
1.	Whether plaintiffs have made out prima facie case in their favour ?	.. Yes
2.	Whether balance of convenience lies in favour of plaintiffs ?	... Yes
3.	Whether plaintiff will suffer irreparable loss, if injunction is not granted in their favour ?	.. Yes
4.	What order?	As per final order.

REASONS

AS TO POINT NOS. 1 TO 3

6. In order to establish their case to both the parties filed various documents on record. The documents which are necessary for deciding the application are to be taken into consideration as and when required.

7. The learned Advocate for the plaintiff submitted that, the suit properties are ancestral properties. Defendant No.1 is aunt of defendant No.4 who is father of plaintiff No. 2 and 3. Firstly, she has got executed mortgage deeds in her favour and subsequently on 21.06.2010 and 22.06.2010 get executed to different sale deeds of suit property bearing C.T.S.No. 2279 and 2280. Both the deeds are executed without payment of consideration amount to defendant No. 3 to 8. The mortgage deeds and sale deeds are not binding on the rights of plaintiff. Plaintiff Nos. 2 to 3 are coparcener in the suit property. All the transaction executed behind and back of the plaintiffs. If, the application is rejected then there will be complications in the suit property.

8. On the other hand, learned Advocate for defendant No.1 submitted that, the plaintiffs have filed present suit by suppressing material facts. They are well aware about the mortgage and sale deeds regarding the suit property. The mortgage deeds are of the year 2008 and sale deeds are of the year 2010. All the deeds under consideration cannot be challenged by way of this suit. Furthermore, sale deed executed by defendant No.1 in favour of defendant No.2 is of the year 2015. The plaintiffs have challenged beyond the period of limitation. The plaintiffs have no right to challenge the sale deeds and mortgage deeds inwith respect to suit properties. He relied on *Ishwarbhai V/s. Bhanushali, AIR 2002 Gujarat 328.*

9. The plaintiffs have filed 7/12 extract and property card extract of C.T.S.No. 2279, 2280, 1622, 1617, 1632 at Exh.3/1 to 3/6. The 7/12 extract at Exh. 3/1 shows that, defendant No.1 is having land ad-measuring 1H.02R. and Namdev Ramchandra Shirole is having land ad-measuring 0-31R. land in Block No.1700. The plaintiff has not made Namdev Shirole as a party to the present suit. The plaintiffs have also filed sale deed dtd. 30.11.2015 at Exh.3/12 which shows that, defendant No.1 has executed sale deed in favour of defendant No.2 of the suit properties bearing C.T.S.No. 2279 and 2280. The property card extract of said C.T.S.No. 2279 and 2280 clearly shows that, name of defendant No.2 is also entered in the revenue record. Other C.T.S. No. 1622, 1617 and 1632 are still in the name of Putalabai Dattatray Vhatkar who is wife of deceased Dattatray.

10. The plaintiffs have also filed mortgage deeds at Exh. 3/7 and 3/8 and sale deeds between defendant No. 1 and 2 at Exh.3/10 and 3/11. After going through these documents, it reveals that, out of the suit

property only C.T.S.No. 2279 and 2280 are transferred in favour of defendant No.2 by defendant No.1. As mentioned above, other properties except Block No. 1700 are in the name of Putalabai. Defendant No.1 is from genealogy of plaintiffs and defendants whereas defendant No.2 is third party purchaser having no relation with the parties in the present suit.

11. The plaintiffs are claiming that, defendant No.1 and 2 would not create third party interest in the suit properties. The documents filed on record shows that, defendant No.1 has already created third party interest in favour of defendant No.2. Now Block No.1700 is in the name of defendant No.1. The plaintiffs are coparcener in the suit property. They have filed partition and separate possession in the suit property. Defendant No.2 appeared in the suit however, he has not filed say or written statement in the present proceeding. There is no evidence on record to show that, he is trying to create third party interest in the suit properties. Due to the conduct of defendant No.1, it may be possible that if injunction is not granted in favour of plaintiffs, she may transfer her share in Block No. 1700. In such circumstances, if, injunction in favour of plaintiffs is not granted there may be complications in the suit property.

12. Considering all above aspects, in my opinion though there is no any apprehension of alienation by defendant is brought on record by plaintiff, in order to avoid further complications, multiplicity of proceedings and for preserving status of suit property, as it is till decision of suit, injunction is needed to be granted in favour of plaintiff. If it will be granted, no any loss or injury will be caused to defendants. The plaintiffs have established prima facie case in their favour. The balance of convenience and irreparable loss also tilts in favour of plaintiffs. Hence, I

answer Point No.1 to 3 in the affirmative.

AS TO POINT NO.4

13. It is made clear that the observations made are prima facie. The suit will be decided on its own merits after recording evidence of the parties without getting influenced with the observations made herein. In view of my aforesaid findings to points No.1 to 3, the application deserves to be allowed. The cost of the application be decided as per the final decision of the suit. In the result, in answer to point No.4, I pass the following order.

ORDER

- (1) Application Exh. 5 is allowed.
- (2) Defendant No.1 and 2 or anybody acting on their behalf is hereby restrained from creating any third party interest in respect of suit properties by any mode or manner, till final disposal of suit.
- (3) No order as to costs.

Date :- 05.07.2025

(G. M. Nadaf)
Jt. Civil Judge Senior Division,
Ichalkaranji