

Order below Ex.5 in Spl.C.S.No. 31/2015

1. This is an application moved by plaintiff under Order 39 Rule 1 and 2 of C.P.C. restraining defendants from alienating suit property and creating encumbrances on the same, so also sought injunction restraining defendant Nos.1 and 4 from withdrawing amount from the saving account in the credit society.

2. It is contended that, the suit properties are ancestral and joint family properties of plaintiff and defendant Nos. 1 to 5. It is contended that, plaintiff is in service, therefore, till date he has not demanded his share in the suit property. However, defendant Nos. 1 to 4 have joined hands together and executed agreement of sale in respect of suit Gat No. 703 and 702. At that time plaintiff has objected for sale of said Gat numbers. However, defendants have assured that, plaintiff will be paid amount equal to his share. However, out of earnest amount property is purchased only in the name of defendant Nos. 4. It is further contended that, plaintiff has purchased some properties out of his own income, so also plaintiff has sold some of his self acquired properties and about Rs.4,00,000/- amount out of sale proceeds was kept in the name of defendant No. 1 being the father of plaintiff. However, defendant No. 4 is trying to withdraw the said amount by taking undue advantage of the fact that defendant No.1 is 80 years old, so also defendants have not given any amount to plaintiff out of sale proceeds of some suit properties to defendants Nos. 16 to 19. In the circumstances, plaintiff has constrained to file suit for partition and separate possession of his share, so also he is constrained to seek injunction against the defendants.

3. The defendant Nos. 1, 2 and 4 have filed say below Exh. 21 and strongly opposed this application. It is contended that, the four

boundaries of the suit property are not mentioned, therefore, suit is not maintainable. The all the ancestral properties are not brought in the common hotchpotch, so also suit property is partitioned by oral partition in January-2013. Therefore, plaintiff's claim for partition is not maintainable. It is contended that, the amount lying in the credit society is allotted to defendant No. 2 in lieu of her share. Therefore, plaintiff has not right to claim any interest in the said amount. It is further contended that, plaintiff has not come with clean hands, therefore, he is not entitled to seek equitable relief of injunction.

4. The defendant Nos. 16 to 19 have filed say below Exh. 25 and strongly objected this application. They have objected this application on similar line of objections raised by defendant Nos. 1, 2 and 4, so also they have contended that, they are bonafide purchasers of Gat No. 702 and 703. As such, plaintiff has not right to seek injunction as prayed by him.

5. On the basis of rival pleadings of both the parties, following points arise for my determination and my findings against them are as under for the reasons to follow.

Points.

Findings.

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| 1. Whether plaintiff proves prima facie case ? | Partly in the affirmative. |
| 2. Whether balance of convenience lies in favour of plaintiff ? | Partly in the affirmative. |
| 3. Whether plaintiff will suffer irreparable loss in case the injunction as prayed should not be granted ? | Partly in the affirmative. |
| 4. What order ? | As per final order. |

Reasons

Point Nos. 1 to 3 :

6. All these points are interlinked, therefore, they are discussed together.

7. The learned Advocate for the applicant has submitted that, after perusal of 7x12 extract of the suit property, it becomes clear that, said properties are ancestral properties of parties. He further submitted that, Gat Nos. 702 and 703 are also ancestral properties as 7x12 extracts shows name of brother of defendant No.1 also. He further submitted that, some properties are purchased in the name of defendant No. 4, however, defendant No. 4 has no source of income, therefore, the properties purchased in the name of defendant No. 4 cannot termed as his self acquired properties. He further submitted that, some of the properties are purchased out of income of plaintiff. Therefore, said properties are self acquired properties of plaintiff. He further submitted that, from the documentary evidence on record, it becomes clear that, the amount kept in credit society in the name of defendant No.1 belongs to plaintiff. Therefore, in such situation, if defendants are not restrained from alienating the suit property, then irreparable loss will be caused to plaintiff, so also if amount is withdrawn from the credit society then irreparable loss will be caused to plaintiff. Therefore, he prayed that, injunction may be granted as prayed by applicant. He has relied on the rulings between the parties Maharwal Khewaji Trust (Regd.) Faridkot Vs. Bldev Dass, 2005(1) Mh.L.J. 1043 and Kisan Madhu Naoghare Vs. Sau. Indubai Jaganrao Bajade, 1996 AIHC 1114.

8. The learned Advocate for defendants has submitted that, the four boundaries of suit properties are not given. Therefore, suit properties

cannot be properly identified. Therefore, injunction application deserves to be rejected. He further submitted that, already oral partition took place between the parties which is evident from documentary evidence on record. Therefore, application is not maintainable. He further submitted that, all the ancestral properties are not brought in common hotchpotch. Therefore, application is not maintainable. He further submitted that, the amount lying in the credit society belongs to defendant No.2 and same is kept in the name of defendant No.1. As they are age old, they required said amount for their livelihood and medical expenses. Therefore, plaintiff has no right in said amount. Therefore, injunction restraining defendant No.1 from withdrawing the said amount may not be granted. Lastly, he prayed that, plaintiff has not come with clean hands, therefore, application deserves to be rejected. In support of his arguments he relied on ruling between the parties Capt. Harchanranjit Singh Thind Vs. Deeksha Thind, reported in 2008(3) AIR Bom. R. 560.

9. After having heard both the sides and after going through the record, it appears that, both the parties have rival stand in respect of nature of suit properties. Plaintiff alleged that, all the suit properties are ancestral and joint family properties. Whereas defendants have claimed that, already partition of suit properties is effected, therefore, plaintiff's suit for partition is not maintainable. They have also claimed that, all the properties are not brought in common hotchpotch, so also properties are not described properly.

10. However, it appears that, suit is for partition and separate possession of plaintiff's share in suit properties, so also for declaration that, amount lying in the account of credit society belongs to plaintiff. However, defendants claim is that, said amount belongs to defendant No.2

and kept in the name of defendant No.1. As such, plaintiff has no right and interest in the said amount.

11. In the back ground of rival pleadings of the parties, at this stage of injunction we have to see prima facie case and balance of convenience, so also irreparable loss. If we go through the record, it appears that, some transactions are effected by plaintiff and it is alleged that, it is his self acquired property. However, defendants have denied said fact and claimed that, said properties are joint family properties. It also appears that, defendants have also executed some transactions. According to them as partition is effected they have right to execute said transactions and plaintiff has no right with said transactions. However, considering the facts and circumstances of this case and considering the totality of circumstances emerged from the record, it will be difficult at this stage to accept claim of either party without there being full fledged evidence. However, considering the documentary evidence on record, prima facie, it appears that, landed properties are ancestral properties of plaintiff and defendants. However, if they are sold then there will be complication in the matter. However, if injunction is granted not to sale the suit properties till disposal of suit, no immediate loss would be caused to other side. The defendants have pleaded about the oral partition, however, to prove oral partition full fledged evidence is necessary. Therefore, at this stage, theory of oral partition cannot be accepted without there being full fledged evidence. Therefore, considering the totality of circumstances, it appears that, plaintiff has prima facie interest in the suit properties. Therefore, balance of convenience lies in favour of plaintiff.

12. Therefore, at this stage, if defendants are restrained from alienating suit properties and creating third party interest till disposal of

suit no immediate loss would be caused to defendants. However, if injunction is not granted, then loss would be caused to plaintiff which will not be compensated in terms of money. Therefore, in respect of landed properties plaintiff is entitled for injunction as prayed.

13. The plaintiff has claimed that, amount lying in the credit society belongs to him and he has kept said amount in the name of defendant. However, defendants have claimed that, said amount belongs to defendant No.2 as same is allotted to her in lieu of her share.

14. Therefore, considering the rival stands of parties, it will be difficult to draw conclusion at this stage. The plaintiff has sought injunction against defendant Nos. 1 and 4 that, they should not withdraw the said amount.

15. However, defendants have claimed that, the defendant No.1 is age old person and money needs for livelihood of defendant Nos. 1 and 2 and so also for their medical expenses.

16. Only on the basis of pleadings and documentary evidence, prima facie, opinion in favour of either party cannot drawn without there being sufficient evidence. It requires full fledged evidence of both the parties, so that final conclusion can be drawn. Therefore, as on today no conclusion can be drawn. Therefore, prima facie, it will be difficult to accept the plaintiff's statement that, money in question belongs to him. Therefore, in such circumstances, it is not desirable to restrain defendants from withdrawing the amount from the credit society. It appears from record that, defendants have shown willingness to give under taking that, if it is declared that, money belongs to plaintiff then they will deposit the said amount as per directions of the Court. Therefore, considering the totality of circumstances, instead of granting injunction in favour of

plaintiff thereby restraining defendant Nos.1 and 4 from withdrawing the amount from the credit society, the purpose will be served if conditional permission is granted to withdraw the said amount subject to undertaking that they will deposit the said amount as and when directed.

17. From the above discussed reasons, it becomes clear that, plaintiff has partly proved above points. The facts in the present case in hand and facts in the rulings relied by parties are not similar. Therefore, those rulings are not helpful for them. Therefore, for the above discussed reasons the arguments of both the parties are acceptable to the above extent. Hence, for the above discussed reasons point Nos. 1 to 3 are answered partly in affirmative. Hence, the following order.

Order

1. The application (Exh.5) is partly allowed .
2. The defendants or anybody on their behalf are hereby temporarily restrained from alienating suit property or creating third party interest, till disposal of suit.
3. The prayer for injunction restraining defendant Nos. 1 and 4 from withdrawing amount from credit society is rejected. However, defendant Nos. 1 is permitted to withdraw the amount subject to under taking that he would deposit the amount in court as and when directed.

Sd/-

(N.R.Talekar)
Civil Judge Sr.Dn.,
Jaysingpur.

Date : 15-7-2016.

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	S.R. Ladekhan
Name of Court	Civil Court, Sr.Dn. Jaysingpur.
Date of order	15/07/16
Order signed by the P.O. on	15/07/16
Order uploaded on	16/07/16