

MHKO100010142022

**ORDER BELOW EXH.5.**

This is an application under Order XXXIX Rule 1, 2 of the code of civil procedure, for the grant of temporary injunction restraining the defendant from alienating the suit properties.

2. Land gat no. 447 admeasuring 3 Hector 23 R out of that 1/2th share and CTS No. 1314 admeasuring 384 sq. meter out of that 1/2th share at village Halkarni are the subject matter of this suit. Read the plaint and application Exh.5. I have also gone through the written statement filed at Exh. 20. Perused the record. Hence, contents of the application and reply need not be reiterated.

3. Following points have arisen for my consideration and I have given findings thereon for the reasons stated thereunder :-

Sr No	Points	Findings
1	Whether the plaintiff has made out prima facie case?	No
2	Whether the balance of convenience lies in favor of the plaintiff ?	No
3	Whether the plaintiff will suffer irreparable loss, if T.I is not granted ?	No

4	What order?	The application is rejected.
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REASONS FOR FINDINGS

4. I have heard Ld. Adv. Shri. M. L. Shaikh for the plaintiff and Ld. Adv. Shri. V. B. Kadukar for the defendants. I have perused entire documents and record which includes 7/12 extracts of land, property card and assessment extract of CTS No. 1314, death certificate of Ibrahim Gajbar Parit (died on 18/12/1977), death certificate of Meerasab Gajbar Parit (died on 17/08/1992), copy of will deed dtd. 19/07/1996 executed by Smt. Biyama Meeraso Parit (present defendant), copy of relinquish deed dtd. 15/09/1998 as well as its translated copy (executed by Smt. Biyama Meeraso Parit) etc. I have minutely gone through said record.

AS TO POINT NOS 1 to 3

5. In order to avoid repetition of discussion all the points are considered under one head. At the outset, it would be relevant to mention that, in this application, the plaintiffs are claiming the interim reliefs such as prohibiting the defendants from alienating the suit properties and prohibiting her from causing any obstruction to plaintiffs possession over the suit property. In this case, identification of suit properties is not in much dispute but the defendant has throughout denied the basic averments of the plaint and application Exh.5. Plaintiffs are claiming right on the basis of will deed dtd. 19/07/1996 as well as on the basis of relinquish deed dtd.

15/09/1998. However, the executor of the will i.e. the defendant herself has denied the fact of execution of these documents. Needless to mention that, there will be no effect to the Will during the lifetime of the executant. Hence, plaintiffs claim on the basis of will dtd. 19/07/1996 would not be considered as a genuine claim. However, he has also relied upon the copy of relinquish deed dtd. 15/09/1998 alleged to had been executed by the defendant. This fact is specifically denied in the written statement. Therefore, the plaintiff is required to prove the legality of relinquish deed dtd. 15/09/1998. It is well settled that, relinquish deed creates right to another in the property therefore, its registration is required. The document i.e. relinquish deed dtd. 15/09/1998 and its transcription shows that, it is not registered document. Therefore, legality and enforce-ability of said document is in doubt. The plaintiffs have been claiming ownership and possession on the basis of unregistered document and on the basis of revenue entries as pointed out. However, it is well settled that, revenue entries are basically made for fiscal purposes and it does not create, affect or extinguish legal rights in the property. Therefore, merely because all entries are there in the names of plaintiffs no conclusion about there ownership and legal possession can be drawn at this stage of proceeding. Ld. Adv. Shri. Shaikh has been relied upon on the decision in case of ***Maruti Jayram Kadam V/s. Mhadu Govind Kadam 2011(1) BCJ 688*** wherein Honourable His Lordship of Bombay High Court has inter-alia held that, *a person who is in settled possession of suit property legally or otherwise is entitle for decree of injunction and cannot be forcibly erected without following due process of law.* However, the plaintiff has not specifically shown any circumstances which can show that the old age lady i.e. defendant is either trying to sale the

property or evict plaintiffs from suit property. Therefore, with due respect it may be mentioned here that, the ratio of decision in case of **Maruti Kadam** (cited supra) would not be made applicable here. Ld. Adv. Shri. Shaikh has been pointed out the provisions of Sunni Law regarding the concept of shares. It reveals that, wife would get 1/4th share when she has no child. However, this aspect will be considered at the stage of trial. Therefore, considering entire record, it reveals that, the plaintiff has no prima-facie case, entire balance of convenience is not in favour of the plaintiffs. Similarly, there are no circumstances which can lead to cause irreparable loss of plaintiff. Thus, the plaintiff has failed to show three basic ingredients to grant relief of temporary injunction with respect to suit properties. Ultimately, point No.1 to 3 are answered in the negative and in answer to point No.4 I pass following order

ORDER

- 1) **Application Exh. 5 is rejected.**
- 2) **C.O.A.**

Order dictated and pronounced in open Court.)

Place : Gadhinglaj.
Date : 30/11/2022

(M. T. Kharade)
Jt. Civil Judge Jr. Dn., Gadhinglaj