

:: ORDER BELOW EXH. 5 ::

The instant application is filed by the plaintiffs under Order 39, Rules 1 and 2 of Code of the Civil Procedure, seeking injunction against the defendants from alienating the suit property, creating any third party interest or charge over the suit property and for changing the nature of the suit property.

Factual background of the case and facts giving rise to file the present application in brief are as follows :

2) The present suit is for possession, declaration, compensation and permanent injunction. As per the plaintiff, the suit property is ancestral property of plaintiff no. 2 and allowed to him in partition and accordingly the name of plaintiff no. 2 is mutated to the suit property. Thereafter, plaintiff no. 2 recorded the suit property in the name of plaintiff no. 1 towards the Grampanchayat record for convenience. As per the plaintiffs, the defendants approached to them in the year 2000 and suit property is given to them for residential purpose as per their request. It is the contention of the plaintiffs that when they asked possession of suit property in the year 2012, the defendants refused. At the relevant time, defendants stated that they have recorded the suit property in their name. As per plaintiffs, when they approached the Grampanchayat for enquiry, on 23/08/2012, Grampanchayat intimated to them that their name is not appearing to the suit property since the year 2007 to 2012. As per plaintiffs, they have not executed any registered deed relating to the suit property in favour of defendants and suit property is given to the defendants on the basis of permissive

possession. As per plaintiffs, they have issued notice to the defendants on 15/11/2012 and claimed possession and compensation. However, defendants not acted upon. As per plaintiffs, the defendants are willing to alienate the suit property. As per plaintiffs, due to illegal acts of defendants, they have no alternative but to file the present suit for restraining the defendants from alienating, creating third party interest or changing nature of suit property. Hence, the application.

3) The defendants resisted the application by filing written statement and say at Exh. 16 categorically denying all the allegation in the plaint and application. As per defendants, they have spent Rs. 3,00,000/- for the renovation of the suit property and residing therein. As per defendants, therefore, the question of alienation, destruction does not survive. As per the defendants, the suit property was originally part and parcel of Grampanchayat property no. 98 and was recorded in the name of defendant no. 1. At the relevant time, the plaintiffs were in need of money and trying to sold out the suit property. As per defendants, when the plaintiffs approached to the defendant no. 2, it is agreed between both parties to sell out suit property for the consideration of Rs. 37,000/- and accordingly the said amount is received by the plaintiffs. When the defendants asked for registered deed, the plaintiffs convinced them and submitted that they have worked as a member and Sarpanch of Grampanchayat and as per the procedure of Grampanchayat and by giving application, they will record the defendant's name to the record of Grampanchayat. As per defendants, the defendant no. 2 is nephew of plaintiff no. 2 and hence he kept reliance on him. As per defendants, accordingly the plaintiff no. 1 has filed the application towards

Grampanchayat and on that basis by resolution no. 23 dated 24/11/2000, the name of defendant no. 1 is mutated to the suit property in the Grampanchayat record. As per defendants, the plaintiffs have suppressed these material facts and therefore, not entitled for discretionary relief of injunction. As per defendants, on 09/01/2000, they have taken electricity supply and spent Rs. 3,00,000/- for renovation over suit property. As well as they have raised loan of Rs. 1,30,000/- from Bank of Maharashtra, Kadgaon. As per the defendants, the present suit is filed due to domestic dispute over saw-mill and lastly defendants prayed for rejection of Exh. 5 application.

4) On the pleadings of both the parties and submissions made by Adv. S. D. Bhosale, learned advocate for plaintiffs and Adv. G. T. Thakur, learned advocate for defendants, following points arise for determination and my findings are against each point for the reasons given below.

<u>Points</u>	<u>Findings</u>
1] Whether the plaintiffs have prima-facie case for grant of temporary injunction as prayed for ?	: No
2] Whether the plaintiffs would suffer irreparable loss, if temporary injunction is refused ?	: No
3] Whether the balance of convenience lies in favour of plaintiffs ?	: No
4] What order ?	: Application is rejected with costs

REASONS

As to point nos. 1 to 4 :

5) In order to sustain an order of temporary injunction under Order 39, Rule (1)(c) of the Code of Civil Procedure, it is for the plaintiffs to establish that they have prima-facie case for grant of temporary injunction as prayed for, that they would suffer irreparable loss, if temporary injunction as prayed is refused ; and that balance of convenience lies in their favour. All these three aspects are based on law of equity. The relief of temporary injunction is the discretionary one.

6) At the outset, reference is required to be made to the letter issued by Grampanchayat. From perusal of letter and copy of meeting no. 8 dated 24/11/2000, it reveals that the name of defendant no. 1 is mutated to the suit property on the application given by plaintiff no. 1. Therefore, prima-facie, at this juncture, it is clear that name of defendant no. 1 is recorded to suit property vide application given by plaintiff no. 1. The plaintiffs have suppressed this material facts and from this, falsity of plaintiffs is appearing on the record.

7) Admittedly, the suit property is in possession of defendants and standing in the name of defendant no. 1. The plaintiffs contended that the suit property is not transferred by way of registered deed and defendants have mutated their name to the suit property behind back. However, from the pleadings of plaintiffs, it is clear that the plaintiff no. 2 himself got mutated the suit property in the name of plaintiff no. 1 for convenience. At that time,

whether the plaintiff no. 2 has executed any registered deed in favour of plaintiff no. 1 or not ? is not clarified by plaintiffs. Further on this point, plaintiffs remained silent. Now, the plaintiffs are taking the plea of registered deed. Therefore, the principle "he who seeks equity, must do equity" is applicable to plaintiffs' case also. This shows that the plaintiffs are not coming with clean hands before the Court and suppressing the material facts. Admittedly, the Grampanchayat is a public body and not in cross term with both the parties. Therefore, the certificates, letters issued by them are reliable one and can't be disbelieved.

8) The theory put by the defendants appears to be more probable than the case of plaintiffs and it is supported by the documents i.e. Grampanchayat letter, resolution etc. i.e. in form of cogent and convincing evidence. Furthermore, it appears that the plaintiffs have suppressed material facts and not came to Court with clean hands. Therefore, they are not entitled for injunction as prayed.

9) As far as apprehension of alienation is concerned, the defendants have specifically denied it and if it happens, then it will be bound by the principle of *lis-pendence*. Therefore, there will be no loss or prejudice would occasion to the plaintiff. Furthermore, the plaintiffs failed to establish on record the apprehension of alienation of suit property, its destruction or creating any third party change over suit property. As well as plaintiffs failed to prove the three basic ingredients as required for temporary injunction. Hence, the plaintiffs are not entitled for discretionary relief of injunction as prayed.

10) Having considered all the aspects, it is seen that if the injunction is granted, then the defendants will suffer more comparative hardship and irreparable loss than that of the plaintiffs. Further it would not lead any damage of loss to the plaintiffs. Thus, the law of equity does not favour the plaintiffs. Since the plaintiffs failed to show three basic ingredients as required for temporary injunction, there is no question of irreparable loss being caused to them, if injunction is refused and as such there is no balance of convenience lying in their favour.

11) Hence, having considered all the aspects and in the light of above discussion, I am of the considered view that plaintiffs are not entitled to the relief of temporary injunction. Hence, all the points are answered accordingly in the negative. In the result, following order is passed,

:: ORDER ::

Application is rejected with costs.

Sd/-

Civil Judge Junior Division,
Gargoti

Date : 02/05/2014