

Order Below Exh.5 in Regular Civil Suit No.43/2015.

1. The plaintiff has filed the present application under Order 39 Rule I of the Code of Civil Procedure praying the relief of the temporary injunction against the defendants.

2. **The plaintiff's contention in the present application is as under :-**

The plaintiff has filed this present suit praying the relief of partition, declaration and perpetual injunction against the defendants. At village Malage Budruk, Tal. Kagal, Dist. Kolhapur A] farm lands Gat Nos.60 having area 0-04.66 Are, Gat No.172 having area 0-11.60 Are, Gat No.414 having area 0-08.90 Are, Gat No.441 having area 0-01 Are, Gat No.516 having area 0-01.40 Are, Gat No.63 having area 0-05.25 Are, B] in the same village Grampanchayat Assessment No.403/1's house property are the subject matter of the dispute. Hereinafter, called as a suit property A and B.

Suit properties are originally owned and possessed properties of Kedari Kamalkar. After his demise the defendant No. 1 to 5's name got mutated on the property extract of the suit properties. The defendant Nos.1 to 5 are the owners and possessors of the suit properties. Deceased defendant No.1 Chandrakant Kamalkar was the husband of present plaintiff. He demised on 01/05/2014 at Ichalkaranji. Chandrakant Kamalkar firstly married with one Anjana Kamalkar. Through the said wedlock present defendant No.1A to 1C begotten. Anjana demised

on 11/01/1998. Thereafter, Chandrakant married with the plaintiff on 09/05/1998. Chandrakant was suffering from the lungs disease and due to which he demised. After the demise of Chandrakant, present plaintiff has $\frac{1}{2}$ share into the suit properties. Present defendant No.2 to 4 are the brother-in-laws of the plaintiff and defendant No.5 is the sister-in-law of the plaintiff. Suit properties are Hindu ancestral joint family properties. There is no partition of the suit properties by metes and bounds. Present plaintiff as one of the heir has $\frac{1}{2}$ right into the suit properties. Having such a position, the defendant No.1 Chandrakant during his lifetime made the illegal, bogus sale deed of the suit properties on 14/12/2011 through a registered sale deed in favour of defendant No.1A and 1B. Present plaintiff has a right and share into the suit properties, having such a position, deceased Chandrakant made the illegal sale deed of the suit properties. The same is not binding on the present plaintiff. When the plaintiff approached to the defendants for the partition, the defendants avoided to separate the share of the plaintiff and therefore, the present suit for partition and declaration is been filed. Defendant No.1A and 1B on the basis of presence of their name on the property extract of the suit properties, may create third party interest into the suit properties. Therefore, the defendant No.1A and 1B needs to be restrained from creating third party interest into the suit properties. Hence, on these ground plaintiff prayed that an temporary injunction be granted against the defendants restraining them from creating third party interest into the suit properties till the decision into the suit.

The plaintiff in support of her pleading has filed the following documents :-

1. The 7x12 extracts of suit properties Gat No.60, 172, 414. 441, 516, 63,
2. Mutation No.2007 and 1911's extracts.
3. Grampanchayat Assessment No.403/1's extract.
4. Death certificate of Anjana Kamalkar.
5. Marriage certificate.
6. Sale deed executed in favour of the defendant No.1A and 1B.

3. On the other hand, the defendants have filed their say at Exh.14 denied contents into the application and objected the same. The defendants submission are as under :-

The plaintiff has not given four boundaries of the suit properties and therefore, suit properties cannot be identified. Present plaintiff is not the wife of deceased Chandrakant. She has no share and right into the suit properties. Therefore, she has no right to file the suit for partition against the defendants. Deceased Chandrakant since year 1997 was residing separately from the defendants. He was an addicted person and due to which suffering from various illness. For the treatment of his illness he decided to sell out the suit properties. Present defendants purchased the suit properties from him by paying the consideration of Rs.2,75,000/- through a registered sale deed bearing No.2094/2011 on 14/12/2011. Since the date of sale deed, present defendant No.1A

and 1B became the owner and possessor of the suit properties. Present plaintiff is not the wife of Chandrakant, but the wife of one Vijay Tipugade. She has made an affidavit in that respect on 15/09/2008. Deceased Chandrakant during his lifetime made the sale deed of the suit properties in favour of present defendants and therefore, now, present plaintiff has no right in that respect. Present suit is bad for the reason of non joinder of necessary party. Present defendants are not intending to sell the suit properties. Thus, on these ground, prayed to reject the application.

4. After going through the material available on the Court record, following points arises for my consideration with its findings and reasons given below.

No.	Points	Findings
1.	Whether there is <i>prima facie</i> case in favour of the plaintiff ?	No.
2.	Whether the plaintiff proves that, the balance of convenience lies in her favour ?	No.
3.	Whether the plaintiff proves that, the irreparable loss will cause to her, if the temporary injunction is not granted in her favour and against the defendants ?	No.
4.	Whether the plaintiff is entitled to relief of the temporary injunction as prayed ?	No.
5.	What order ?	As per final order.

Reasons :-

5. Heard the learned Advocate for the plaintiff and the defendants at length.

As to the Points No.1 to 5 :-

6. Prior to dealing with this application, I will like to prefer the relevant provision relating to the temporary injunction contained in the Order 39, Rule I of the Civil Procedure Code.

“Order 39 Rule I of Civil Procedure Code :- Cases in which temporary injunction may be granted :— Where in any suit it is proved by affidavit or otherwise

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.”

7. The learned Advocate for the plaintiff argued that present plaintiff is the wife of deceased Chandrakant. She has $\frac{1}{2}$ share and right into the suit properties. Having such a position, deceased Chandrakant during his lifetime sold the suit properties to the present defendant No.1A and 1B. The said sale deed is illegal. The defendant be restrained from creating third party interest into the suit properties. On the other hand, the learned Advocate for the defendants argued that plaintiff is not wife of deceased Chandrakant. She has no right into the suit properties.

8. Gone through the documents produced on the Court record. The 7x12 extract of the suit properties mentions defendants name into the ownership and cultivation column. The death certificate of Chandrakant is produced by the plaintiff. The plaintiff also produced the marriage certificate on the Court record. The registered sale deed of the suit properties executed by deceased Chandrakant in favour of defendant No.1A and 1B is also produced on the Court record. Perused the same. The same mentions sale of the suit properties in favour of defendants for the consideration of Rs.2,75,000/-. The said sale deed is executed by deceased Chandrakant. The same is dated 14/12/2011. As per the sale deed, Mutation No.2007 and 1911 been passed and defendant No.1A and 1B's name got mutated on the property extract of the suit properties. At present defendant No.1A and 1B are the owners and possessors of the suit properties is not disputed by the plaintiff. The plaintiff's submission is that she is the wife of

deceased Chandrakant. Chandrakant illegally made the sale deed of the suit properties, even though she has $\frac{1}{2}$ share into it. Whether the plaintiff is legally wedded wife of deceased Chandrakant, whether she has $\frac{1}{2}$ share into the suit properties and entitled for the partition of the same, these issues cannot be gone into at this primary stage. These issues needs to be dealt with on the evidence of both the sides at the time of trial. At this *prima facie* position, no conclusion can be arrived in regard of plaintiff's right and share into the suit properties. The plaintiff has relied on the marriage certificate which is disputed by the defendants. Merely production of marriage certificate is itself not sufficient enough unless the same is corroborated by other cogent and sufficient evidence. The sale deed of the suit properties executed in favour of defendants in the year 2011. The question arises why the plaintiff kept mum after the execution of sale deed to file the present suit in the year 2015 itself. No explanation is offered by the plaintiff in that respect.

9. The plaintiff has nowhere pleaded that the defendants are trying to create third party interest into the suit properties. No evidence is adduced by the plaintiff in that respect. Only because the defendants name are present over the property extracts of the suit properties, this itself does not entitled plaintiff the relief of temporary injunction. Barely having names on the property extracts, its inference cannot be taken that the defendants are trying to create third party interest into the suit properties. The

defendants cannot be restrained from doing such acts which they are actually not trying to do. Considering all these aspects the plaintiff failed to show that she has prima facie case, balance of convenience does not lie in favour of plaintiff and irreparable loss will not cause to the plaintiff if the defendants are not restrained. More also, the defendants have specifically pleaded that they are not intending to create third party interest into the suit properties.

10. The plaintiff is failed to satisfy the ingredients of Order 39 Rule I of the Civil Procedure Code. After considering all above discussion, at this primary stage, there is no material evidence on the record to support the plaintiff's pleading. Thus, I answer point No.1 to 4 in the negative. Hence, the plaintiff is not entitled to the relief of the temporary injunction as prayed. Hence, in order to point No.5, I pass the following order :-

ORDER

Application is rejected.

Sd/-

Date :-06/08/2016.

(Chetan Jagtap)

Place :- Kagal.

Joint C.J.J.D.Kagal.

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 the Stenographer	Sandip Maruti Patil (L.G.)
Name of Court	Jt. Civil Court & J.M.F.C. Kagal.
Date of Dictation	06/08/2016.
Judgment signed by the P.O. on	09/08/2016.
Judgment uploaded on	09/08/2016.