

CNR No.- MHK013-000232-2015

Order below Exh.5 in R.C.S. No.49/2015.

(Passed on 08/01/2018)

1. The present application is filed by the plaintiff for granting temporary injunction against the defendant Nos.2 to 9 to restrain them from creating third party interest over the suit properties.

2. **Relevant facts of the plaintiff's claim is as under : -**

The claim of the plaintiff is that the suit properties prescribed in Para No.1 are ancestral properties of plaintiff and defendant No.1. During the lifetime of father of defendant No.1, there was no partition of the suit properties. The affairs of the joint family were taken care by the ancestor of the defendant No.1 and he did not let understood any business issue to the plaintiff. The plaintiff being simple and decent in nature was suffering from mental sickness and was unaware of his loss and profits. Even, his wife and son used to reside at their maternal grandfather's house. Shripati took disadvantage of such situation and nature of the plaintiff and did not get done the partition of the suit properties. Even, the LR's of defendant No.1 did not let happen the partition.

It is further specifically claimed that the ancestor of defendant No.1 without partition being carried out have transferred the suit properties as prescribed in Para No.4 to 12 respectively of the plaint.

It is further specific claim of the plaintiff that defendant Nos.2 to 9 have no nexus with the family of plaintiff and defendant No.1. They have

no title and interest in the suit properties. They are stranger purchaser of the suit properties. Now, it is specific claim of the plaintiff that the defendant Nos.2 to 9 are trying to convey the suit properties by doing illegal registered sale deed and thus, by way of present application the plaintiff prayed for granting temporary injunction thereby restraining the defendant Nos.2 to 9 from creating any third party interest by way of sale, transfer or mortgage. There is a *prima facie* case and the balance of convenience also lies in favour of plaintiff. If the injunction is not granted, irreparable loss would be caused to the plaintiff. Therefore, the present application.

3. The defendant Nos.4 to 6 and 9 have appeared vide suit summons and filed their written statement cum say at Exh.20. They denied the claim of the plaintiff in toto. They have specifically contended that Shripati Gopala Mang was the manager of joint Hindu family. For legal necessity, he conveyed the suit properties to the respective defendants. The defendants have inquired about the legal necessities prior to conveyance and thereafter, got conveyed the suit properties by way of registered sale deeds. Since then, the respective defendants are having possession over the suit properties. As the defendants are having possession, the plaintiff has no right for temporary injunction in his favour. The defendants are owners and possessors of the respective suit properties. The defendants are not trying to convey the suit properties. They themselves need suit properties for cultivation. The plaintiff has till

date unchallenged the entries of the 7x12 extracts and those entries are binding upon the plaintiff. There is no prima facie case and balance of convenience in favour of plaintiff. No irreparable injuries will be caused to the plaintiff if the application is rejected. Therefore, defendants prayed that present application is liable to be rejected with costs.

4. The defendant No.3 and 8 have filed their written statement at Exh.31. They too contended in the form of defendant Nos.4 to 7 and 9 and adopted their written statement. They have further specifically contended that the sale deeds are since year 1996 and relief claimed by the plaintiff is time barred. The defendants have specifically contended that they have raised a RCC construction over the suit property and the plaintiff is aware of this fact. Ultimately, they prayed that the application is liable to be rejected.

5. The defendant No.7 has moved a pursis below Exh.22 and adopted written statement filed by the defendant Nos.4 to 6 and 9.

6. Heard learned Advocate Shri. A.P. Patil for the plaintiff and Advocate Shri. S.S. Kestikar for the defendants. Perused the documents and affidavits.

7. Following points arise for determination to which findings are recorded against each of it with reasons thereto as under :-

No.	Points	Findings.
1.	Whether the plaintiff has made out a <i>prima facie</i> case in his favour ?	In the negative.
2.	Whether the balance of convenience tilts in favour of plaintiff ?	In the negative.
3.	Does the plaintiff prove that he would suffer an irreparable loss, if injunction is not granted ?	In the negative.
4.	What order ?	As per final order.

REASONS

As to points No.1 to 3 :

8. The plaintiff to substantiate his claim has relied upon documents vizly 1) the 7x12 extracts of Gat No.22A and 22B, 805/22, 805/50, 590 and 806 3) mutation entry No.1 of village Mouje Kasari, 4) the sale deeds bearing Nos.1696/1996, 1107/1999, 1549/2011, 592/2001, 597/2001, 3132/2002, 1356/2000, 87/2013 and 88/2013, 5) death certificate of Nakushi Shivaji Parabkar, 6) xerox copy of general power of attorney.

9. While deciding the present application, the plaintiff has to satisfy this Court on the following factors i) whether the plaintiff has a *prima facie* case, ii) whether the plaintiff would suffer an irreparable injury if his prayers for temporary injunction is not granted and iii) whether the balance of convenience is in favour of the plaintiff.

10. The first rule is that the plaintiff must make out a prima facie case in support of the right claimed by him. It is a condition precedent that there is existence of a prima facie right and that there is infraction of such a right. In the instant suit, it is claim of the plaintiff that the suit properties are ancestral properties of him and defendant No.1. The plaintiff in his pleading has claimed that he has a equivalent half share with the defendant No.1. The suit properties being ancestral properties and being unpartitioned, the plaintiff has asked for declaration that the transactions carried out by the defendant No.1 in favour of defendant Nos.2 to 9 are null and void and not binding upon him.

Now, it is evident from pleading that the transactions are from year 1996 to year 2013 respectively. It is further pleaded that the transactions is carried out by ancestor of the defendant No.1 vizly Shripati Mang in favour of the defendant Nos.2 to 9 respectively, while properties were unpartitioned. However, this facts are denied by the defendants and in counter they have pleaded that Shripati was the manager of joint family, and, in such capacity, he has registered the sale deed. Thus, those sale deeds are binding upon the plaintiff thereby creating right, interest and title in favour of the defendants.

The 7x12 extracts filed on record goes to show that the name of the defendants appear on them. The plaintiff has till date unchallenged these 7x12 extract entries. It is further contended that the registered sale deeds were executed by Shripati under a capacity as a manager of a joint

Hindu family and for legal necessity. No doubt, as far as suit for partition and declaration is concerned, the convincing evidence would require to be adduced by the either side to establish their respective claims. Now, at present the interim injunction application is required to be decided. For same, the Court is not require to go much into the evidentiary part. By way of present application the plaintiff wants an injunction against the defendants that they should not create a third party interest in respect of the suit properties. Certainly, there are pleadings about it only in the para No. 15 and 16 of the present application. The said Paras provides that defendant Nos.2 to 9 are trying to alienate the suit properties by way of sale deed and thus prayed that till disposal of the suit the defendant Nos.2 to 9 be restrained from doing such alienation. The plaintiff has legal right in the suit property. Certain time would require for the disposal of the suit and in between as the names of defendant Nos.1 to 9 appears over the 7x12 extract, they might take disadvantage of it and sell the suit property.

No doubt, the plaintiff has raised such pleadings but there is no mention about as to who are the proposed purchaser to whom the defendant Nos.2 to 9 are likely to sell the properties. Further, there is no mention of name of any independent witness who whispered about the such sell by the defendants. More particularly, there is no public sale notice prior to the sale deed on record, which would help the Court to gather that there is likelihood of transfer of ownership by way of sale deed. Importantly, the sale deeds about whom declaration for cancellation is to be sought are

since year 1996 upto year 2013 respectively. The plaintiff has filed the suit in the year 2015. Till date respective defendants have not conveyed the suit property to anybody. gather Thus, in the absence of such apprehension, it would be difficult to held that there is a prima facie case in favour of the plaintiff. Thus,there seems no prima facie case of the plaintiff.

As there is no apprehension attributed from the pleadings or by way of documentary evidence on record, the Court finds that the plaintiff failed to satisfy the Court that he would suffer an irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. Further, there is no satisfactory grounds to calculate the comparative mischief, hardship or inconvenience which would be caused to the plaintiff on the refusal of the injunction which would be greater then that which would be likely to be caused to the defendants by granting it.

11. To sum up, there is no prima facie case in favour of the plaintiff. With these reasons, the balance of convenience also does not tilt in favour of the plaintiff. Again, if such injunction is granted it would be the defendants and not the plaintiff who would suffer an irreparable loss. Therefore, this Court do not find any exceptional reason to grant such injunction. Accordingly, the Court answers point Nos.1 to 3 in the negative. In result, the following order is passed.

ORDER

- 1] The application stands rejected.
- 2] C.O.A.
- 3] Matter be proceeded further as per law.

Sd/-

Place:- Kagal.

(A.A.K. Shaikh)

Date:-08/01/2018.

Jt. Civil Judge 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	Shri. Sandip Maruti Patil (L.G.)
Name of Court	Jt. Civil Court & J.M.F.C. Kagal.
Date of Dictation	08/01/2018.
Judgment signed by the P.O. on	08/01/2018.
Judgment uploaded on	11/01/2018.