

MHKO150002502014



R.C.S.No. 63/2014
Janabai V.s. Prakash

ORDER BELOW EXH. 5

This is an application filed by plaintiff under order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908.

2. Suit property – Suit property mentioned in starting paragraph of present application. (In short "suit property")

3. In short case of the plaintiff is as under.

According to plaintiff, the suit property is Hindu joint family property of plaintiff and defendant. The suit property is jointly possessed by plaintiff along with defendant. The plaintiff no. 1 is wife of Dhondiba Kokitkar. The plaintiff no. 2 and defendants are the childrens of Dhondiba Kokitkar. The Dhondiba Kokitkar has previously having one wife Kamalabai. The defendants have childrens begotten from the wedlock of Kamalabai and Dhondiba. After demise of Kamalabai, Dhondiba has solemnized his marriage with plaintiff no. 1. The plaintiff no. 2 begotten to the plaintiff no. 1 and Dhondiba. The Dhondiba Kokitkar died in the year 2001. After demise of Dhondiba, the suit property is owned by plaintiff and defendants jointly. The undivided share of plaintiff is involved in suit property. The plaintiffs have requested defendants for partition and separate their share. But defendants have refused request of plaintiff. Therefore, they have filed present suit for partition and separate possession. During pendency plaintiff's have amended plaint and pleaded that, by

committing fraud, defendants have taken their signature on relinquish deed. The relinquish deed is void. They prayed declaration that, relinquish deed is void.

4. By way of present application, plaintiff prayed relief of temporary injunction. That is restraining defendants from obstructing their joint possession and not to oust them from joint possession. They lastly prayed for allowing application.

5. The defendants have appeared and filed their written statement at Exh. 19. They denied all allegation, pleading and prayer of plaintiff. They denied that, plaintiff no. 1 is wife of Dhondiba. They denied that, plaintiff no. 2 is daughter of Dhondiba. They denied relationship of Dhondiba with plaintiffs. According to them, the marriage of plaintiff no. 1 solemnized with Pandurang Masanu Rane residential of Bhavewadi, Tal. Ajara, Dist. Kolhapur. The plaintiff no. 2 be gotten form the wedlock of plaintiff no. 1 and Pandurnag Rane. Therefore, plaintiffs are not concern with Hindu joint family of defendants. In this circumstances, there is no any right title interest of plaintiffs involved in suit property. The defendants filed their additional written statement and pleaded that, plaintiffs have executed relinquish deed. They lastly prayed for rejection of application.

6. Heard learned Advocate Shri. A. S. Farakte for plaintiff and Shri. G. T. Thakur for defendants.

7. The following points are arises for my determination and I have given my findings thereon are as follows-

Sr.No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether plaintiff has prima facie case for grant of temporary injunction as prayed for?	No

- | | | |
|----|--|---------------------|
| 2. | Whether balance of convenience lies in favour of plaintiff? | No |
| 3. | Whether the plaintiff would suffer irreparable loss, if temporary injunction is refused? | No |
| 4. | What order ? | As per Final order. |

8. Prima facie case, balance of convenience, and irreparable loss are the three ingredients for temporary injunction.

REASONS

As to point No. 1 to 3.

9. The advocate for plaintiff Shri. A.S.Farakte submitted that, undivided share of plaintiff is involved in suit property. The defendant no. 1 has committed fraud with plaintiffs and taken their signature by committing false representation on relinquish deed. The relinquish deed was pleaded by plaintiff and prayed relief that is the relinquish deed is void. The mutation entries was recorded in the name of plaintiff no. 1. The plaintiff no. 1 is wife of Dhondiba and plaintiff no. 2 is daughter of Dhondiba. Therefore, their undivided share is involved in suit property. He lastly prayed for allowing application.

10. Advocate Shri. G. T. Thakur submitted that, the defendants have filed their written statement. The written statement filed in the year 2016. They have pleaded about the relinquish deed. The marriage of plaintiff no. 1 solemnized with Pandurang Masanu Rane. The plaintiff no. 1 is not wife of Dhondiba. The defendants are only legal heirs of Dhondiba. The plaintiffs are not concern with Dhondiba. The plaintiffs are not members of Hindu joint family. The defendants are Hindu joint family members and co-owners. The injunction can not be granted against co-owners. The various sale

deeds are executed by defendant in favour of third party. The plaintiff has not added third parties as party and not pleaded fact about that sale deeds. The plaintiff has suppressed material fact. He lastly prayed for rejection of application.

11. On perusing record it appears that, the plaintiff pleaded that, plaintiff no. 1 is wife of Dhondiba and plaintiff no. 2 is daughter of Dhondiba. The defendant pleaded that, the relinquish deed was executed by plaintiffs during pendency of suit in favour of defendants. On perusing the mutation entry no. 1154 and 1148, it appears that, one relinquish deed executed by plaintiffs on 01.11.2014. The relinquish deed is registered deed. It registered at serial no. 1307. The mutation entry of relinquish deed is recorded on 27.02.2015. Thus, from the evidence of mutation entry no. 1148 and 1154 and pleading of parties on affidavit, it prima-facie appears that, the plaintiffs have relinquished their right in favour of defendant no. 1. It means, prima-facie the plaintiffs are not in possession or there is no right involved in suit property.

12. The advocate for plaintiff submitted that, fraud committed by defendant no. 1 with plaintiff and the relinquish deed is false document. They have pleaded about the relinquish deed and prayed relief about the relinquish deed. At this stage, the suit is not for hearing. For deciding the legality of relinquish deed, it is necessary to give opportunity to both the parties for adducing evidence. At this stage, prima-facie it appears that, the relinquish deed is registered deed and the plaintiffs have relinquished their right. Further, the record shows that, the relinquish deed was executed on 01.11.2014. The mutation entry about the relinquish deed recorded on 27.02.2015. The plaintiff filed amendment application for inserting pleading and prayer about the relinquish deed on 23.07.2018. It means, after laps of

three years the plaintiff filed application for amendment of plaint and inserted pleading about the relinquish deed. That application was allowed and the pleading was inserted. These circumstances shows that, the plaintiff prayed relief about the relinquish deed after laps of three to four years. Thus, prima-facie I conclude that, the relinquish deed is executed and at this stage, there is no any evidence on record which shows that, the plaintiff's are in possession of suit property. Therefore, plaintiffs have fails to establish prima-facie case.

13. The advocate for defendant submitted that, the plaintiff no. 1 is not legally wedded wife of Dhondiba and plaintiff no. 2 is not daughter of Dhondiba. For deciding legality of these points, it is necessary to give opportunity to both the parties for adducing evidence. These points are necessary to decide at the time of final hearing. In this application, it is not needed to decide legality of relationship of plaintiffs with Dhondiba. Therefore, I am not found any substance in the submission of advocate for defendant.

14. Considering all above discussion, I am coming to the conclusion that, the plaintiff has fails to establish prima-facie case. Further, the mutation entry no. 1257, 1278, 1154, 1155 shows that, the various portion of suit property was sold out by defendant and the purchasers are in possession of that purchased property. This circumstances also shows that, the plaintiff has not in possession of that sold out property. The plaintiffs not added these persons or not pleaded about the sale deeds in pleading. It means, the plaintiff has suppressed material facts.

15. Considering all above discussion, I am coming to conclusion that, the plaintiff fails to establish prima-facie case. The balance of convenience not lies in favour of plaintiff. Therefore, I

answer point No. 1 to 3 in negative. If application rejected then no irreparable loss would be caused to the plaintiff. The application needs to be rejected. Hence, in answer to point no. 4. I pass following order,

Order

1. The application is rejected.
2. Considering peculiar circumstances, no order as to cost.

Place - Ajara.
Date - 14/03/2022.

(S. P. Jadhav)
Civil Judge J.D., Ajara.

Certificate

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	Mrs. Y.S.Chavan.
Name of Court	C.J.J.D. Ajara
Judgment/order Dictated on	14-03-2022
Judgment/order typed on	14-03-2022
Judgment/order signed by the P. O. on	14-03-2022
Judgment/order uploaded on	16-03-2022