

MHKO170002312019



Before the Court of Jt.Civil Judge Junior Division, Panhala.

Presided over by

(Prerana R.Nikam)

Regular Civil Suit No.18 of 2019.

Rangrao Pandurang Patil

V/s.

Bandu Babu Jadhav Patil

Order Below Exh. No.5.

(Passed On 5th day of February , 2021)

Nature of application-

The present application is filed by the plaintiff for temporary injunction under order 39 rule 1 and 2 of Code of Civil Procedure.

2] Grounds of application-

The present suit is instituted for pre-emption and perpetual injunction in respect of the property mentioned in para 1 of the plaint. The suit property is ancestral property of plaintiff, defendant and other shareholders. The suit property has not yet been partitioned. But, all shareholders farms in their own area with mutual understanding. The defendant is trying to alienate his share to another person. The plaintiff is adjacent shareholder of the suit property. The plaintiff is ready to purchase the suit property as per market value. Therefore, the plaintiff has right of pre-emption. Therefore, the plaintiff filed the present application for temporary injunction restraining defendant, from alienating the suit property to third person,

3] Say of the defendant -

Defendant filed his written statement at Exh.15 and denied adverse allegations made against them. But the defendant failed to file say to the present application.

4] Points and findings-

I have heard learned advocate appearing on behalf of the plaintiff. After going through the case of the plaintiff, following points arise for my consideration along with findings based on reasons,

Sr. no.	Points	Findings
1.	Whether prima facie case lies in favour of the plaintiff?	<i>...in Affirmative</i>
2.	Whether balance of convenience lies In favour of plaintiff?	<i>...in Affirmative</i>
3.	Whether irreparable loss will be caused to the plaintiff, if temporary injunction is not granted?	<i>...in Affirmative</i>
4.	What order?	<i>... As per final Order</i>

REASONS

5] In a matter arising under O. 39, Rr. 1 and 2, Code of Civil Procedure, three conditions are to be satisfied; that the applicant has a prima facie case; that in the event of not granting injunction he would be put to an irreparable loss and injury; and that the balance of convenience is in his favour. Admittedly, while dealing with such applications, court has to see in whose favour prima facie case lies. That mean to say plaintiff has some legal right over the subject matter of dispute and intervention by the court is needed in order to protect that right. Here, nature of injunction sought is of importance. The plaintiff sought injunction against the defendant restraining defendant from alienating the suit property till final decision of the suit.

6] It is the case of plaintiff that the defendant is trying to alienate his share and being the adjacent owner, the plaintiff is having right of pre-emption. The plaintiff also published paper notice in daily newspaper dated 07/04/2018. The suit property is ancestral property of plaintiff and defendant and there was no partition by metes and bounds. Ordinarily, the co-owner has equal right and interest in the whole property along with other co-owners. Every owner has right of enjoyment and possession equal to that of the other co-owners. In the other words the title and possession of co-owners is co-extensive with the interest of the other co-owners.

7] On going through present application, it transpires that plaintiff has claimed temporary injunction only to restrain the defendant from alienating the suit property till final decision of the suit. As regards the injunction about the alienation is concerned, at this moment, if injunction as regards the alienation is rejected, it would definitely cause some complications, in that case plaintiff would suffer irreparable loss. Therefore, prima facie case, balance of convenience as regard the alienation is concerned lies in favor of plaintiff. If the defendant will alienate the suit property then irreparable loss will cause to the plaintiff. Hence, point No. 1 to 3 answered in affirmative. In the result following order is passed.

ORDER

- 1] Application is allowed.
- 2] Defendant is restrained from alienating the suit property, described in para first of the plaint till final decision of suit.

Panhala.

Dt.05.02.2021

(Prerana R. Nikam)

Jt. Civil Judge Junior Division,
Panhala, District Kolhapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer :A.S.Patil

Court : J.M.F.C. Court No. 2,
Panhala.

Date : 05.02.2021

Order signed by the presiding
officer on : 05.02.2021

Order uploaded on : 05.02.2021