



CNR:MHLA01-000654-2021.
Reg.C.Appeal No.8/2021.
Balika Versus Kamalbai.

ORDER BELOW EXH.12.

1. Respondent No.1 and 2 filed present application under Order XXXIX Rule 1 and 2 of C.P.C. It is contended that respondent No.1 and 2/plaintiffs challenged alienation in favour of appellant of some portion of undivided suit property and pleaded that sale-deed bearing Day-Book No.150/2014 by respondent No.3/defendant No.1 in favour of appellant/defendant No.2 is illegal, null and void. Plaintiffs, defendant No.1, 3 and 4 are brothers and sisters inter-se. However, defendant No.2/appellant is illegal purchaser of portion of suit property.

2. It is further contended that appellant is neither in possession nor having valid title of portion of suit property to the extent of 11 R. The sale-deed is apparently illegal and irregular, since its four boundaries are fabricated and erroneous. Pending the present appeal, appellant is likely to create third party interest in respect of portion of suit property, purportedly purchased by appellant, by way of alienation or otherwise. It will cause irreparable loss to plaintiffs/respondent No.1 and 2. Thus, by way of present application, it is prayed on behalf of respondent No.1 and 2 that by granting injunction, appellant is required to be restrained from creating third party interest in

respect of portion of suit property purportedly to be purchased by appellant.

3. Appellant failed to file say on the application. Hence, no say order passed against appellant on 18.11.2022.

4. It is argued by Advocate for respondent No.1 and 2 that undivided share in the joint family property to the extent of 11 R. has been sold by respondent No.3 to appellant and has shown four boundaries of entire property in the said sale-deed. Factually, demarcated share/partitioned share has not been alienated. Therefore, appellant is necessary to be restrained from creating third party interest in respect of portion of suit property, which is purchased by appellant. If appellant is not restrained from doing so, there will be multiplicity of litigation and there will be complexity in respect of subject mater.

5. Advocate for appellant has not turned up to submit arguments on the present application.

6. Present application has been filed under Order XXXIX Rule 1 and 2 of C.P.C., which specify that the subject matter is required to be protected from being alienated. The relief claimed in the present matter is partition and separate possession. In the present appeal, judgment and decree passed by learned Trial Court, holding that appellant is bonafide purchaser of portion of suit property by virtue of sale-deed, has been challenged. Obviously, there is apprehension to the respondent No.1 and 2 that by taking advantage of finding of learned Trial

Court appellant may create third party interest in respect of portion of suit property. Definitely, if third party interest will be created in the suit property, it will give rise to multiple litigation. It is also pertinent to note that as per the contention of respondent No.1 and 2, in the sale-deed executed in favour of appellant, four boundaries of entire suit property have been mentioned and not the boundaries to the extent of portion of suit property, which purportedly purchased by appellant. In such circumstances, it is necessary that appellant shall be restrained from creating third party interest in respect of portion of suit property. If appellant will be restrained from doing so, there will not be any prejudice to the appellant. Hence, I pass following order :-

ORDER

1. Application (Exh.12) is allowed.
2. Appellant is hereby restrained from creating third party interest in respect of portion of suit property purportedly purchased by appellant by virtue of sale-deed Day-Book No.150/2014, till the final disposal of present appeal.

Date : 22.02.2023.

(Ragini M. Kadam)
District Judge - 5, Latur.

CERTIFICATE

I affirm that the contents of this Judgment/Order are same, word to word as per the original Judgment/Order.

Name of the Stenographer	:	V.S. Patil
Name of the Court	:	R.M. Kadam, District Judge-5 & Assistant Sessions Judge, Latur
Judgment/order dictated, declared and typed on	:	22.02.2023.
Judgment/order signed by P.O. on	:	22.02.2023.
Judgment/order uploaded on	:	22.02.2023.
