

ORDER PASSED BELOW EXH. 5

01. Present application is filed Under Order 39 Rule 1 and 2 of the C.P.C., to restrain the defendant No. 1 & 4 from causing obstruction to the construction of the plaintiff over the suit property bearing land survey No. 45 admeasuring 85 R situated at village Rapaka Tq. Shirur Anantpal and from alienating the suit property till disposal of the suit.

02. In short, it is contention of the plaintiff that defendant No. 1 & 2 are his parents, defendant No.3 is his sister. Suit property is the ancestral property of them. No partition took place in the family. The plaintiff has started construction on 2 Guntha land of the suit property which is completed upto basement. At that time, defendant No. 4, on the basis of sale-deed executed by defendant No. 1 in her favour is obstructing to the construction work. Defendant No.1 by mentioning wrong boundaries and without any legal necessity executed sale-deed in favour of defendant No. 4. The sale-deed is executed without any consideration and possession is also not handed over. Sale-deed is also void under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act(here-in-after referred as 'the Act'). When the plaintiff demanded the partition, defendants denied the same. Defendant is trying to alienate the suit property. Hence, prayed to grant the injunction.

03. Suit proceeds ex-parte against defendant No.1.

04. Written statement of defendant No. 4 is at Exh. 21 and same is adopted as say on Exh. 5. This defendant denied the relationship between the plaintiff and defendant No.1 for want of knowledge. Rest of the contents are denied by her. It is her contention that 2 R. land is different than the suit property. She is constructing on the 2 R land which is purchased by her. Only to harass her and to extract the money suit is filed. Hence, prayed to reject the application.

05. The points for determination along with my findings thereon are as under :

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether the plaintiff has prima-facie case ?	...	<u>...In partly affirmative.</u>
2.	Whether balance of convenience lies in favour of plaintiff ?	...	<u>...In partly affirmative.</u>
3.	Whether the plaintiff will suffer an irreparable loss, if an injunction as prayed is not granted in his favour ?	...	<u>...In partly affirmative.</u>
4.	What order ?	...	<u>...As per final order.</u>

REASONS

06. The plaintiff has filed on record Namuna No. 8-A of

land Gat No. 45, 7/12 extract, copy of mutation entry No. 101, house property extract and copy of sale-deed.

07. Defendant No.4 filed on record photographs of the suit property.

As to point No. 1 to 3 :

08. Heard both the parties. It is argued by Adv. Pethe for the plaintiff that suit property received to defendant No.1 property in the partition effected between defendant No.1 and his brothers. It is ancestral property. There is no partition between the plaintiff and defendant No.1 to 3. In spite of that without any legal necessity and consideration defendant No.1 alienated 2 R. land to defendant No.4. The sale-deed is also void under the Act. Defendant No.4 admitted that she is not constructing on the suit property. Therefore, it is necessary to grant the injunction against defendant No.1 & 4.

09. On the contrary, it is argued by Adv. Salunke for defendant No.4 that, defendant No. 4 has purchased the suit property. Defendant No. 2 who is the mother of plaintiff is a witness on the sale-deed. Towards Northern side of the purchased land, other land of the purchaser is mentioned. Therefore, sale-deed is not void. Defendant No.4 is constructing on the property purchased by her. Hence, prayed to reject the application.

10. Upon hearing both the parties and considering their pleadings, it is not disputed that 85 R. land in survey No. 45 is the ancestral property of plaintiff and defendant No. 1 to 3. Mutation entry No. 101 shows that defendant No.1 received the said property in the partition effected between him, his brothers and mother. Therefore, the nature of suit property is not disputed. So far as, sale-deed executed by defendant No.1 is concerned, it appears that defendant No.2 has signed on the sale-deed as witness. Therefore, she is having knowledge about the same, from the date of execution of the sale-deed. In spite of that she has filed the consenting written statement.

11. Further, there is no evidence about the partition in the family but defendant No.1 is the Karta of the family. Therefore, he is having right to alienate the ancestral property for the benefit of the family. On perusing the sale-deed, it is mentioned that so as to purchase another land defendant No.1 has sold out the suit property. Prima facie registered document is on record to show the legal necessity. Therefore, mere contention of the plaintiff that there was no legal necessity cannot be considered at this stage.

12. Further, so far as, bar under the provisions of the Act is concerned, it appears that in the sale-deed towards the Northern side another land of defendant No.4 is mentioned. So also, in the recitals of the sale-deeds, it is mentioned that the land is adjacent to the other land of defendant No. 4. Therefore, at this stage, it

cannot be said that sale-deed is hit by the provisions of the Act. Moreover, if there is any breach of provisions of the Act, then, the Competent Authority prescribed under the Act is having power to deal with the same. Therefore, I do not found any substance in the said contention.

13. So far as, statement made in para No. 3 of the written statement that, 'In fact the defendant No.4 has not constructed on the suit property' is concerned, it appears that defendant No. 4 in the same line further explained that she is constructing on the property which is purchased by her. Therefore, the plaintiff cannot get any benefit of that sentences.

14. Further, the plaintiff is asking temporary injunction against defendant No. 1 & 4. As per the contention of the plaintiff, no partition is effected in the family. In this situation, injunction about not to obstruct cannot be granted against defendant No.1. So also, defendant No. 4 is the co-owner. Therefore, considering the above discussion not to obstruct relief cannot be granted in favour of the plaintiff. So far as, not to alienate is concerned, as the plaintiff has filed the suit for partition alleging the alienation made by defendant No. 1, so as to preserve the property and avoid the complication, it is necessary to restrain defendant No. 1 & 4 from alienating the suit property till disposal of the suit. If the injunction to that extant came to be allowed, no loss will cause to defendant No. 1 & 4. Therefore, the plaintiff has

partly proved prima facie case and balance of convenience lies in his favour to the extent of not to alienate. Hence, I record my findings on point No.1 to 3 in partly affirmative.

As to point No. 4 :

15. In view of above discussion and my findings on point No. 1 to 3, application deserves to be partly allowed to the extent of not to alienate the suit property. But the prayer of not to obstruct is liable to be rejected. Hence, I pass the following order,

ORDER

1. Application is partly allowed.
2. Defendant No. 1 & 4 are temporarily restrained from alienating the suit property, till disposal of the suit.
3. The prayer of not to obstruct is rejected.
4. Costs in cause.

Nilanga.
Dated : 31.07.2019.

Sd/-
(R. P. Kulkarni)
Civil Judge Senior Division,
Nilanga.