

**ORDER BELOW EXH. 5**

(Passed on : 27.02.2019)

01. Present application is filed by the plaintiff under Order 39 Rule 1 & 2 of the Code of Civil Procedure to restrain defendant No. 1, 4 to 9 from alienating the suit properties as described in the plaint, till disposal of the suit.

02. In short, it is the contention of the plaintiff that suit properties are the ancestral properties of plaintiff and defendant No.1 to 3. They are the members of joint family. Their father namely Maruti was the owner of the suit property. Defendant No.1 without consent of the plaintiff alienated the suit properties to defendant No. 4, 5 & 6. Thereafter, defendant No. 5 & 6 transferred the suit properties by way of partition. After the death of Maruti, defendant No.1 got recorded his name on the suit properties. Defendants are trying to alienate the suit properties. If they succeed in their attempt, the plaintiff will suffer irreparable loss. Hence, prayed to allow the application.

03. Defendant No.1 & 4 to 9 filed written statement at Exh. 22 and adopted the same as set out in Exh. 5 by filing a reply at Exh. 24. They admitted that father of plaintiff and defendant No.1 was the owner of the suit properties. But rest of the contents are denied by them. They specifically denied that defendant No.1 alienated the suit properties to defendant No. 4 to 6. It is their contention that suit properties are the self acquired properties of Maruti and during the lifetime Maruti sold lands to defendant No. 4 to 6. Therefore the plaintiff is not having right

to say anything about the alienation made by Maruti. Only 1 Acre 8 Guntha land is mutated in the name of defendant No. 1 on the basis of succession. Therefore, the plaintiff is not having any prima facie case. Hence, prayed to reject the application.

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

	<b><u>POINTS</u></b>		<b><u>FINDINGS</u></b>
1.	Whether the plaintiff has prima-facie case ?	...	... <u>In partly affirmative.</u>
2.	Whether balance of convenience lies in favour of the 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**

05. The plaintiff has filed on record 7/12 extracts of the suit properties, Toch Map, copies of the mutation entries and copies of sale-deeds. The defendants have also filed the copies of sale-deeds, mutation entries and 7/12 extracts.

#### **As to point No. 1 to 3 :**

06. Heard the parties. It is argued by Advocate Gade for the plaintiff that father of plaintiff namely Maruti was the owner of the suit

properties. After the death of Maruti, defendant No. 1 without the consent of plaintiff and defendant No. 2 & 3 alienated the suit properties to defendant No. 4 to 9. Mutation entry No. 300 shows that name of defendant No.1 is recorded as a Karta of the family. Name of plaintiff, defendant No. 2 and 3 are mentioned in other rights column. The plaintiff was driven out from the family. Therefore, he was not having knowledge of alienation. Defendant No.2 & 3 have filed consent written statement. As the suit properties are the ancestral properties, the plaintiff is having share in it. Therefore, to protect the rights of the plaintiff it is necessary to restrain defendant No. 1 & 4 to 9 from alienating the suit properties. Hence, prayed to allow the application.

07. On the contrary, it is argued by the Advocate Salunke for defendant No. 1 & 4 to 9 that suit properties are not the ancestral properties. Maruti was the sole owner of the suit properties and during lifetime he alienated the land to defendant No. 4 to 6. Only 1 Acre 8 Guntha land is in the name of defendant No.1. The alienation made by the father is not challenged by the plaintiff till today. Therefore plaintiff is not having any right in the suit properties. Hence, prayed to reject the application.

08. Upon hearing both the parties and perusing their respective pleadings and the documents filed on record, it appears that, Maruti purchased the land in survey No. 33 admeasuring 22 acre 38 Guntha on 4 March 1960 vide sale deed No. 105/1960. It is not the contention of the parties that Maruti purchased the properties from the income of

ancestral properties. In absence of such pleading it goes to show that Maruti was the sole owner of that property and it was his self acquired property. It appears that vied sale-deed No. 1380/1975, Maruti has alienated 2 H. 2 R land to Karimsaheb on 02.06.1975. Maruti also alienated 2 H. 80 R land on 21.01.1976 vied sale-deed No. 66/1976 to Tukaram. Maruti also alienated 3 H. 85 R land to Sukumarbai Takekar on 04.04.1977 vied sale-deed No. 614/1977. It means, during lifetime, Maruti has sold out approximately 8 H. 65 R land. As defendant No. 4 to 6 purchased the land from Maruti. The plaintiff is not having any right to challenge those sale-deeds which are of the self acquired properties of Maruti. Therefore, to that extent the plaintiff is not having prima facie case.

09. So far as, mutation entry No. 300 is concerned, it appears that after the death of Maruti, 1 Acre 8 Guntha land in survey No. 33 came to be recorded on the basis of Succession. It appears that defendant No. 1's name has been mentioned as a Karta of the family and name of plaintiff and defendant No. 2 & 3 is mentioned in other rights column. Therefore, to the extent of 1 acre 8 Guntha land, it can be said that it is the ancestral property of plaintiff and defendant No. 1 to 3. Therefore to that extent the plaintiff is having prima facie case.

10. As plaintiff is not having prima facie case against defendant No. 4 to 9 and the alienation is not challenged on the ground of legal necessity, the plaintiff is not entitled for injunction against defendant No. 4 to 9. So far as, land in the name of defendant No. 1 is concerned, so as

to prevent the alienation and multiplicity of the litigation, it is necessary to restrain defendant No.1 from alienating 1 Acre 08 Guntha land otherwise, the plaintiff will suffer irreparable loss. Therefore, to the extent of defendant No. 1 balance of convenience lies in favour of the plaintiff. Accordingly, I record my findings on point No.1 to 3 in the partly affirmative.

**As to point No. 4 :**

11. In view of above discussion, the plaintiff proved prima facie case only against defendant No.1. Therefore, to the extent of defendant No. 1, the plaintiff is entitled for temporary injunction. To the extent of defendant No. 4 to 9, the application deserves to be rejected. Hence, I pass the following order,

**ORDER**

1. Application is partly allowed.
2. Defendant No. 1 is restrained by the order of temporary injunction from alienating 49 R land shown in his name in the 7/12 extract of survey No. 33 and creating any third party interest over it till disposal of the suit.
3. Application is rejected to the extent of defendant No. 4 to 9.
4. Costs in cause.

Nilanga.  
Dated : 27.02.2019.

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