



ORDER BELOW EXH.5

1) This is an application filed by the plaintiff for restraining the defendants from alienating or creating third party interest in the suit properties mentioned in para no.3-A to E of the plaint till the decision of the suit.

2) It is submitted that the plaintiff has filed the present suit for partition and separate possession. The plaintiff is mother in law of defendant no.1 and grand mother of defendant nos.2 and 3. The son of plaintiff and husband of defendant no.1 namely Mohan Bhaurao Sirsale, R/o. Sindhi Jawalga, Tq. Nilanga died on 20/10/2020 at Aurangabad due to Covid-19. Deceased Mohan Sirsale was working as operator in Varroc Engineering Company Ltd., Waluj MIDC, Tq. And Dist. Aurangabad. He was owner and possessor of suit properties mentioned in para no.3-A to E. The defendant no.4 is the employer of deceased Mohan Sirsale. The amount of provident fund is pending towards the defendant no.4. The plaintiff asked for the payment of her share from the defendant no.4, but the defendant no.4 asked to produce legal heirship certificate from the competent court. The defendant no.5 is a real estate developer and the deceased Mohan executed an agreement to purchase the suit property mentioned in para no.3-E from the defendant no.5. The defendant no.6 is the bank, in which the deceased Mohan has maintained his savings account. The plaintiff asked for the details of the all transactions in the said account, but the defendant no.6 denied to provide the details. So



defendant nos.4 to 6 are made party to the present suit. The deceased Mohan was the real son of plaintiff. So, the plaintiff has filed an application for obtaining heirship certificate in the court of Civil Judge, Senior Division, Nilanga, but the defendant nos.1 to 3 took objection and the said application is pending. The plaintiff has 1/4th share in the suit properties. The plaintiff asked the defendants for her share in the suit properties to which the defendant flatly denied. Now, the defendants are in haste to alienate or transfer the suit properties in favour of third persons in a view to deprive the legal right of the plaintiff. So, the defendants need to be restrained from alienating or creating third party interest in the suit properties. The plaintiff has established prima-facie case and balance of convenience is in her favour. So, temporary injunction be granted.

3) The defendant Nos.1 to 3 filed their written statement cum say to the application for temporary injunction at Exh.26. The defendant no.4 filed his written statement cum say at Exh.33. Suit proceeded ex-parte against defendant no.5 and without written statement against defendant no.6. The defendant nos.1 to 3 admitted their relationship with the plaintiff. The defendants admitted that, the suit properties mentioned in para no.3-A and B are owned and possessed by deceased Mohan while the defendants denied the ownership and possession of deceased Mohan in respect of the suit properties mentioned in para no.3-C to E. According to the defendants the deceased Mohan Bhaurao Sirsale was working as a operator in Varroc Engineering Company Ltd, Waluj since last



20 to 25 years. He has purchased land Gut no.360 admeasuring 20 R by way of registered sale deed day book no.4844 and land Gut no.406 admeasuring 1 Acre 27 R by way of registered sale deed day book no.1765/2013 from his own income. The present suit has been filed by the plaintiff on the instigation of real brothers of deceased Mohan only to deprive the rights of defendant nos.1 to 3 from the self acquired property of deceased Mohan. The plaintiff has not filed on record the documents to show the ownership of the deceased in respect of the suit properties mentioned in para no.3-C to E. So, those properties could not be identified. The plaintiff has no right in the suit properties, so application for temporary injunction be rejected. The defendant no.4 filed written statement at Exh.33 and denied all the adverse allegations. According to the defendant no.4 the company being situated in Aurangabad District, the jurisdiction of the company is limited to Aurangabad District. So, suit against the company needs to be filed in court at Aurangabad. So, application for temporary injunction and suit is not tenable.

4) I have heard learned counsel for the plaintiff and defendants. I have perused the material on record. Following points arise for my determination and I have recorded my findings against each of them as follows.

SR.NO.**POINTS****FINDINGS.**

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| 1) | Does the plaintiff prove that there is prima facie case in her favour? | ..Partly in affirmative. |
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- 2) Whether balance of convenience is in favour of plaintiff? ..Partly in affirmative.
- 3) Whether irreparable loss would be caused to the plaintiff if temporary injunction is rejected? ..Partly in affirmative.
- 4) What Order? ..As per final order.

REASONS

AS TO POINT NO. 1 TO 4 :-

5) I heard learned counsel for the plaintiff. The present suit is filed by the plaintiff mainly for the partition and separate possession. It is the contention of the plaintiff that she is the class I legal heir of the deceased Mohan Bhaurao Sirsale. The defendant no.1 is the wife and the defendant nos.2 and 3 are the sons of deceased Mohan Bhaurao Sirsale. Mohan Bhaurao Sirsale died on 20/10/2020 at Aurangabad due to Covid-19. So, the plaintiff and defendants being the class I heirs of the deceased are entitled for the equal share in the suit properties. It is further submitted that, the defendant no.1 is trying to alienate the suit properties in favour of third persons. According to the plaintiff the suit properties mentioned in para no.3-C to E are the self acquired properties of the deceased and properties mentioned in para no.3-A and B are the joint family properties as the plaintiff has provided money to purchase those properties. So, the application filed by the plaintiff for temporary injunction may be granted.

6) On the other hand, Ld. Counsel for the defendant nos.1 to 3 submitted that, the description of the suit properties



mentioned in para no.3-C to E is not available. Hence, no injunction in that regard can be granted. Ld. Counsel for the defendant no.4 submitted that, the funds of the deceased which are available with the defendant company can be disbursed in favour of the successors on the basis of the succession certificate issued by the competent court. Ld. Counsel for the defendant no.6 submitted that, the plaintiff has unnecessarily dragged defendant no.6 in the present suit. The defendant no.6 being a co-operative bank does its business as per the banking rules.

7) On perusal of the record and after hearing the both sides at considerable length, it is made clear that, the deceased Mohan Bhaurao Sirsale died intestate leaving behind him the class I legal heirs i.e. plaintiff and defendant nos.1 to 3. The plaintiff has not mentioned the description and the supporting documents in respect of the suit property mentioned in para no.3-E. The plaintiff has filed on record the 7/12 extract of land Gut no.307, 406, Namuna no.8 in respect of plot no.46 and 47 situated Tisgaon, Tq. Aurangabad, Dist. Aurangabad and dated of assignment in respect of plot no.RM-278 of MIDC, Waluj Industrial Area Aurangabad. So, the suit properties mentioned in para no.3-A to D seems in the name of deceased Mohan Bhaurao Sirsale, who died intestate on 20/10/2020 at Aurangabad. There is no document to show that, the suit property mentioned in para no.3-E is/was owned by deceased Mohan Bhaurao Sirsale. Prima facie it can be said that, the plaintiff and defendant nos.1 to 3 are the class I legal heirs of deceased Mohan Bhaurao Sirsale. So, the plaintiff has right in the



suit properties mentioned in para no.3-A to D. The plaintiff further prayed that, the amounts of deceased Mohan Bhaurao Sirsale, which are with the defendant nos. 4 to 6 should not be given to the defendant nos.1 to 3 till the decision of the suit. The plaintiff has not mentioned the amount which is pending with the Varroc Engineering Company Ltd. Waluj and Sarswat Co-operative Bank Ltd., Branch- Waluj. The suit properties mentioned in para no.3-A to D being owned by deceased Mohan Sirsale and the plaintiff having her right as she is class I legal heir of the deceased, needs to be restrained from alienation in favour of third party. According to the plaintiff, the defendants are going to sale the suit properties without getting partition. If, the suit properties are being sold by defendants, plaintiff will have to suffer irreparable loss which can not be compensated in terms of money. If, the defendants succeeded in transferring the suit property in favour of third person then it may result in multiplicity of proceedings. The plaintiff has prima facie shown that she has undivided share in the suit properties mentioned in para no.3-A to D. In respect of the amount, the plaintiff has not mentioned its details. So, no such temporary injunction can be granted in that respect. So far as the creation of third party interest is concerned, the act of the defendants need to be restrained by an order of temporary injunction. Considering the foregoing discussion I answered point Nos.1 to 3 partly in affirmative and in view of point no.4 following order is passed.

ORDER

- a) Application is partly allowed.



- b) Defendant nos.1 to 3 are hereby temporarily restrained from alienating or transferring the suit properties mentioned in plaint para no.3-A to D in favour of any third person till disposal of suit.
- c) Cost in cause.

Place: Nilanga.
Date : 03/12/2022

(Anand S. Munde)
Jt.Civil Judge, S.D.,Nilanga.