

MHLA110005192021



**ORDER BELOW EXHIBIT NO.5 IN  
REGULAR CIVIL SUIT NO.570/2021  
AFSANABI VS. MOHAMMED & ORS.**

1. Plaintiff has filed this application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 in respect of 3 Hector 64 R land out of Gat No.150 situated at village Bewnal, Tal. Shirur Anantpal, Dist. Latur (Hereinafter for the sake of brevity referred to as the “**the suit property**”) for restraining defendants from creating third party interest over the suit property.
2. Defendant Nos.1 to 3 and 6 resisted the application by filing say cum written statement at Exh.61. Defendant Nos.7 and 8 resisted the application by filing say cum written statement at Exh.29. Suit proceeded without written statement of defendant Nos.4 & 5 and exparte against defendant No.9.
3. Heard Learned Advocates for both sides.
4. Considering the rival submissions, following points arise for determination, to which my findings for the reasons thereon as under :-

	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1.	Who established prima-facie case ?	<b>Plaintiff.</b>
2.	In whose favour balance of convenience lies ?	<b>Plaintiff.</b>
3.	Who will suffer irreparable loss?	<b>Plaintiff.</b>
4.	What order ?	<b>As per final order</b>

**: REASONS :**

**AS TO POINT NOS.1 TO 3 :-**

5. The discussion and appreciation of evidence for point Nos.1 to 3 is common, hence they are clubbed and answered by me in consonance for the sake of brevity and foreclosing the repetition of the facts.

6. Tersely, case of the plaintiff is that, plaintiff is sister of defendant No.1 to 5 and daughter of defendant No.6. Defendant No.7 is wife of defendant No.2 and defendant No.8 is wife of defendant No.1 and defendant No.9 is illegal purchaser of the suit property. Deceased Chandsaheb, father of plaintiff and defendant No.1 to 5 was the original and possessor of the suit property. After his demise, defendant No.1 to 6 without effecting legal partition mutated their names in the revenue record behind the back of plaintiff. Thereafter, defendant No.1 transferred 20R land illegally in favour of defendant No.9 and defendant No.1 and 2 transferred 1 Hector 82R land and 1 Hector 62R land in the name of defendant No.7 and 8 respectively through compromise decree in RCS No.381/2020 and RCS No.380/2020. The said decrees are fraudulently obtained by defendant No.1, 2, 7 and 8 in collusion with each other with intention to grab the suit property. The compromise decrees, alleged sale-deeds, unregistered memorandum of hiba and unregistered relinquishment-deed are false and fabricated documents. The decrees were obtained by playing fraud and misrepresenting the Court. Father of plaintiff died intestate leaving behind the suit property and plaintiff is having her share in the suit property as per the rules of inheritance

of Mohammedan law. However, defendants by depriving the right of plaintiff illegally alienated the suit properties and also trying to create third party interest over the suit property. Therefore, plaintiff by way of filing this application sought to restrain the defendants from creating third party interest over the suit property.

7. In rebuttal, defendant Nos.1 to 3 and 6 to 8 contended that, plaintiff has no relation with defendants and she has no right to seek partition, as per Mohammedan law. There was no marriage of deceased Chandsaheb with mother of plaintiff, therefore, plaintiff is having no relation with defendants or family of defendants. The transfer of land by defendant No.1 and 2 and decree passed in RCS No.381/2020 and RCS No.380/2020 is legal and valid. As plaintiff is not family member of defendants, she has no right to raise any objection regarding the legality and validity of the aforesaid decrees. It is further contention of defendants that, father-in-law of defendant No.7 and 8 has bequeathed 1 Hectore 62R land and 1 Hectore 82R land out of Survey No.150 in their favour by way of oral Hibanama and aforesaid lands are in their possession. Thereafter, the Court decree passed and accordingly defendant No.7 and 8 are the legal owners of the aforesaid property. Hence, defendants sought to reject the application.

8. Before advertng to the factual discussion, it would be just to notice the legal position with regard to temporary injunction. The law of injunction is well settled that, granting or refusing the temporary injunction is governed by three well established principals (a) Whether *prima-facie* case has been made out, (b) Whether balance of convenience is in their favour, (c)

Whether petitioner will suffer irreparable injury, if temporary injunction is not granted the party who seeks aid of injunction must show that the act complained of is in violation his rights and whether there is fair and substantial question to be decided by the parties and there is bonafide contention between parties. If such contentions are available, then relief needs to be granted. It then becomes the duty of the court to consider material placed before granting or refusing grant injunction and consider the documents if any, before an interim relief can be passed. The *prima-facie* case does not mean a case to succeed but which fairly needs an enquiry. At the time, while granting relief the court has also to take into account whether the interim relief claimed is in aid of final relief so as to maintain the status-quo ante or preserve the status of parties (Ref. Deshmukh & Company V/s. Avinash 2005(3)MLJ. 387).

9. It is not in dispute that, defendant No.1 to 5 are the sons and daughters and defendant No.6 is the wife of deceased Chandsaheb. It is also not in dispute that, defendant No.7 and 8 are the wives of defendant No.2 and 1 respectively. It is further not in dispute that the suit properties were originally owned by deceased Chandsaheb Khajasab Mule. It is further not in dispute that, RCS No.380/2020 filed by Amjadbee Khajasab Mule (defendant No.7) against her husband i.e. Khajasab Mule (defendant No.2) and RCS No.381/2020 filed by Tanujaha Md. Rafi Mule (defendant No.8) against her husband (defendant No.1) for declaration of ownership and perpetual injunction was decreed in terms of compromise arrived between the parties. It is further

not in dispute that, names of defendant No.7 and 8 are entered in the revenue records on the basis of M.E. No.677 and M.E. No.676.

10. It is pertinent to note that defendants have denied their relationship with plaintiff and also denied marriage of deceased Chandsaheb with mother of plaintiff. However, on perusal of mutation extract No.241 it appears that, the same was allowed in the name of plaintiff and defendant No.1 to 6 as successors of deceased Chandsaheb. It is pertinent to note that defendant No.6 Hafizabi herself had applied for the grant of said mutation. Therefore, it is clear that, plaintiff is the daughter of deceased Chandsaheb and sister of defendant No.1 to 5.

11. Further, as per contention of defendants, father-in-law of defendant No.7 and 8 had bequeathed 1 Hectore 62R land and 1 Hectore 82R land out of suit property in their favour by way of oral Hibanama and aforesaid lands are in their possession since the transfer of aforesaid properties. However, defendants neither mentioned the date and year of execution of oral Hiba nor produced on record mutation regarding the same. Admittedly, Chansaheb died in the year 2007. Therefore, if he would have executed Hiba, he might have handed over possession of the suit property to defendant No.7 and 8 before year 2007. However, there is no prima-facie evidence on record showing possession of defendant No.7 and 8 over suit property before death of deceased Chandsaheb or after his death till passing of compromise decrees in year 2021. Besides this, mutation No.241 was allowed in the year 2009 showing the plaintiff and defendant No.1 to 6 as successors of suit property.

12. Further, it reflects from mutation No.243 that defendant No.3 to 5, plaintiff and mother of defendants have relinquished their share in favour of defendant No.1 and 2. However, it is important to note here that the said document is produced by plaintiff denying the execution of any relinquishment deed in favour of defendant No.1 and 2. It is also necessary to mention defendants have not come with the case that the property of deceased Chandsaheb was inherited by plaintiff and defendant No.1 to 6, however, plaintiff and defendant No.3 to 6 relinquished their share in the suit property in favour of defendant No.1 and 2. Besides this, defendants totally denied their relationship with plaintiff.

13. It appears from the documents that plaintiff is the daughter of deceased Chandsaheb. It is needless to mention here that Muslim daughters entitled to certain share in the property of deceased and Muslim law recognizes two types of heirs i.e. Sharers and Residuaries. Therefore, plaintiff appears to be one of the sharers of the deceased. Hence, I find prima-facie case in favour of plaintiff.

14. As per the contention of plaintiff, defendants to deprive the share of plaintiff in the suit property, are denying her relationship with them. Admittedly, defendant Nos.1 and 2 have transferred suit property in favour of defendant No.7 and 8 and they alienated the suit property in favour of defendant No.9. Therefore, apprehension of plaintiff that defendants again would create third party interest in the suit property seems plausible. Therefore, if the injunction is not granted in favour of

plaintiff, it will create multiplicity of proceedings and the very purpose of the suit will be frustrated.

15. Therefore, since the *prima-facie* case is in favour of plaintiff, she is entitled for protection by way of injunction order. As plaintiff has made out *prima-facie* case, balance of convenience also tilts in her favour and in view of discussion in aforesaid para, she will suffer loss if the relief of interim is not granted in her favour. Hence, I answer Point Nos.1 to 3 'in the negative'.

**AS TO POINT NO.4 :-**

16. In view of my aforesaid findings as to Point Nos.1 to 3, the application is liable to be allowed. The costs of application be given as per final decision of the suit. In result, I proceed to pass the following order:-

**ORDER**

- 1) Application is hereby allowed.
- 2) Defendants, their servants, agents or claiming anybody through them are hereby restrained from creating third party interest over the suit property till the final decision of the suit.

Nilanga.  
Dt.:- 21/08/2024

(Smt. V. D. Bhosale)  
Jt. Civil Judge Sr. Dn., Nilanga.