

Order below Exh.No.5.

(Passed on 21-09-2018).

1. This is an application filed by plaintiff under Order 39 Rule 1 and 2 Code of Civil Procedure for grant of temporary injunction for restraining defendant from interfering and obstructing over the the land block no. 157 adm. 1H.01R and the land block no.158 adm. 90R situated at village Kaban Sangvi TQ. Chakur (i.e. suit land) till the final disposal of the suit.

2 . The plaintiff is wife of defendant and she is the owner and in possession over the suit land. The suit land out of block no. 157 adm. 1H.01R is transferred by the defendant as she was helped the defendant in his bad days, accordingly mutation was sanctioned. The brother of plaintiff was paid Rs.5,00,000/ as hand loan to the defendant, but the defendant was unable to refund the loan within the agreed period, therefore the defendant has agreed to execute the sale deed to the extent of 90R out of block no.158 in her brother's favour. The brother of the plaintiff has decided to executed the sale deed in favour of the plaintiff on condition that she will cultivate the land and pay the $\frac{1}{2}$ share to her brother. Accordingly the defendant has executed sale deed no.541/2008 on 17.03.2008 in favour of plaintiff. Thus the plaintiff became the owner of the suit land and she is in possession over it. The defendant is causing interfere and obstruction over the suit land. Thus the plaintiff has prayed if defendants are not restrained then she will suffer irreparable loss which can not be

compensated in terms of money.

3. The defendant has filed their written statement along with counter claim at exh.19 and he has denied that the plaintiff is owner and she is in possession over the suit land. According to him the plaintiff was not conceiving pregnancy and she was under the frustration what will happen in future, therefore the defendant has without effecting the partition mutated the suit land adm.1H.01R wide mutation no. 218 in favour of the plaintiff by showing the partition. The alleged mutation entry does not create any title.

4. The defendant had out of fiduciary and cordial relation with the plaintiff executed the nominal sale deed no.541/2008 on 17.03.2008 in favour of the plaintiff out of block no. 158 the land adm. 90R. Thus the sale deed no.541/2008 is void, illegal. Thus the defendant submitted to reject the application.

5. After considering the rival contentions of the parties, following points arise for determination along with my findings thereon for the reasons noted below.

<u>Point</u>	<u>Findings.</u>
(1) Whether plaintiff has made out prima -facie case in her favour ?	Yes
(2) Whether the balance of convenience lies in her favour ?	Yes
(3) Whether Plaintiff will suffer irreparable loss if remedy of	

temporary injunction is not
granted?

Yes

(4) What order ?

The application
is allowed.

REASONS.

As to Point no. 1 to 3:-

6. Heard learned advocate for the defendant. Perused the written argument filed by the plaintiff at exh.27. In support of the application the plaintiff has relied on the documents filed with list at exh. 4. On the contrary defendant has not filed any documents.

7. I have perused the documents filed on record by the plaintiff. According to the the plaintiff she is the owner and in possession over the suit land as the defendant has transferred the suit land adm. 1H. 01R in her favour and the land to the extent 90 R on the basis of sale deed no. 541/2008 on 17.03.2008. Defendant has denied the said fact. In supports of her case plaintiff has filed certified copy of mutation no. 841, certified copy of abstract of 8-A of block no. 157 and 158, certified copy of 7/12 abstract of block no.157, 158, certified copy of sale deed no.541/2008.

8. It appears from the copy of sale deed no.541/2008 that the defendant had executed the sale deed in favour of the plaintiff to the extent of 90R out of block no.158 on 17.03.2008, further it appears that the name of plaintiff is mutated in revenue record wide mutation no. 841. It further appears from the copy of 8-A and 7/12 extract of the

block no.157 and 158 of the year 2010-2011 that the plaintiff shown as owner and in possession over the suit land. The above revenue record shows that plaintiff is in possession over the suit land and the said documents is having presumptive value under the Maharashtra Land Revenue Code unless the contrary proved. The defendant has not disputed that he has mutated the land adm.1H.01R in the name of the plaintiff, further the defendant has contended that he had nominally executed sale deed in favour of the plaintiff. It is pertinent to note here that the said defence of the defendant can not be considered at this stage, it would be decide after evidence of both parties.

9. The plaintiff has contended that the defendant is interfering in her possession, moreover the defendant has denied the ownership and possession of the plaintiff over the suit land which also supports her contention. Thus it appears that there is interference and obstruction of the defendant over the suit land. The learned advocate for defendant has placed reliance on decision of **2010 BHCCO 311 BOMBAY HIGH COURT Ananda Krishna Tate Since deceased By Legal Heirs Vs. Draupadibai Krishna Tate and others**. With due respect I have gone through it, in which Hon'ble High Court observe in para no.10 that in old Hindu law mother did not have right to compel a partition. The facts of the present case and the case law are different, the case in hand there is not case of partition, hence the above case law is not applicable.

10. The learned advocate for defendant has further placed reliance on decision of **2011 STPL(LE-Civil) 48030 MAD HIGH**

COURT OF MADRAS Smt. Govindammal Vs. Murugesan & anr. and S.A. No.1570 of 2005 MADRAS HIGH COURT M. Ramamoorthy and other Vs. R.Thirunavukkarasu. With due respect I have gone through it, in which Hon'ble High Court observed that the bare suit for injunction is not maintainable. The facts of the present case and the case law are different, the case in hand the plaintiff has claiming ownership over the suit land on the basis of sale deed and the defendant has challenged the said sale deed by filing the counter claim, therefore the said fact can not be decide at this stage it would be decide after the evidence of both parties. Hence the above case law is not applicable.

11. Thus in my view the revenue record filed by the plaintiff shows that the plaintiff is in possession over the suit land, therefore the contention of defendant that the plaintiff is not in possession over the suit land is not acceptable. The case in hand the plaintiff has prima facie established her case, the balance of convenience lies in her favor and there is loss to the plaintiff, if the temporary injunction not granted. Thus the application deserves to be allowed. Accordingly, I answer point no. 1 to 3 in affirmative and in the result of point no.4 I pass following order.

ORDER.

1. Application is allowed.

2. Defendant, his agents, servants or any other person on behalf of him hereby restrained from interfering or obstructing in the possession of the plaintiff over the suit land i.e. block No.157 adm. 1H.01R and the land block no.158 adm. 90R situated at Kaban Sangvi Tq. Chakur till the final disposal of the suit.

(Gajanan B. Jankar)

Joint Civil Judge, J.D. Chakur

Date : 21-09-2018.