

**:: ORDER BELOW EXH. 05 IN REG. CIVIL SUIT NO.02/2016 ::**  
**( Saberabegum..Vs..Amir Hussen & oths. )**

01. This is an application under Order-39 Rule- 1 and 2 of the Code of Civil Procedure.

02. In short, the contention of the plaintiff is that, defendant No. 1 is her father and defendant Nos. 2 to 4 are her brothers and sister. The suit lands are purchased by her mother Mahetab Bee in the name of defendant No. 1 nominally. Thereafter, the dispute arose between them. The said dispute was settled by the village panchas and thereafter, defendant No. 1 had given the suit lands to the deceased Mahetab Bee. Accordingly, the name of deceased Mahetab Bee was mutated in the revenue record. As such, deceased Mahetab Bee alone was in possession of the entire suit lands and defendant No. 1 was having no concern with it. Said Mahetab Bee died on 24-09-2015. Even after her death, the defendant No. 1 was giving share to the plaintiff. However, by taking undue advantage of the illiteracy of the plaintiff, the defendant No. 1, though not an owner of the suit land, executed partition deed in favour of defendant No. 2. Thereafter, the defendant No. 2 again partitioned the suit land out of survey No. 202/214/3 in favour of defendant No. 3. All these transactions took place behind the back of plaintiff. Now, the defendant Nos. 1 to 3 by taking disadvantage of their name in the revenue record, are trying to alienate the suit lands. In fact, the plaintiff and defendant Nos. 1 to 4 being tenants in common, are having joint possession over the suit lands and yet the suit lands are not partitioned between them. The plaintiff is having 1/6th legal share therein. However,

the defendants refused to give her share and are trying to alienate the suit lands. Accordingly, by contending prima-facie case and balance of convenience in her favour, she has prayed for restraining the defendants from alienating or creating encumbrances over the suit property, by way of order of temporary injunction.

03. During the pendency of the suit, the defendant No. 1 died and his name came to be deleted as per pursis Exh. 37. The defendant No. 3 failed to file his say and written statement.

04. The defendant No. 4 by virtue of pursis Exh. 46 adopted the written statement and say filed by defendant No. 2. So also, the defendant No. 2 by filing pursis at Exh. 45 submitted that, his written statement at Exh. 43 be treated as his say to this application. The say of these defendants relevant for this application is that, the suit properties are not described by the plaintiff properly. As per their contention, deceased defendant No. 1 purchased the land out of his own income and at that time, the plaintiff was married and was residing at Ahmedpur along with her husband and children. The plaintiff is having no concern with the suit lands. After purchasing the suit lands, as an adjustment defendant No. 1 mutated 81 R. land out of survey No. 200/212/K/13 in the name of his wife Mahetab Bee and thereafter allotted some portion to defendant Nos. 2 and 3. 81 R. land out of survey No. 202/214/3 was allotted to defendant No. 2 and 40 R. land from the same survey number was allotted to defendant No. 3 in the year, 1995. Thereafter, the remaining land admeasuring 1 H. 31 R. remained in the name of defendant

No.1. Thereafter, the 81 R. land allotted to Mahetab Bee was partitioned in her life time and 41 R. each land was given to defendant Nos. 2 and 3. So also, defendant No. 1 during his life time again partitioned the 1 H. 31 R. land and allotted 65.5 R. each to the defendant Nos. 2 and 3. So also, the 80 R. land out of survey No. 200/212/K/3 was allotted by defendant No. 1 to defendant Nos. 2 and 3. Even prior to his death, the defendant No. 1 has executed a will-deed in favour of defendant Nos. 2 and 3, which is a registered will-deed dated 18-01-2016. On all these counts, by contending that, the defendant Nos. 2 and 3 have become absolute owners of the suit lands, prayed for rejection of the application.

05. While looking at these rival contentions of the parties, following points arise for determination to which findings are recorded followed by reasons thereunder:

<u>Sr. No.</u>	<u>P o i n t s</u>	<u>F i n d i n g s.</u>
1}	Whether the prima-facie case lies in favour of the plaintiff ?	<u>Yes.</u>
2}	Whether the balance of convenience lies in favour of the plaintiff ?	<u>Yes.</u>
3}	Whether irreparable loss or injury will be caused to the plaintiff in the event of refusal of the injunction order ?	<u>Yes.</u>
4}	What order ?	<u>As per final order</u>

**:: Reasons ::**

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

06. In support of her claim, the plaintiff has placed on record documents along with list Exh. 07. On the other hand, the

defendant Nos. 2 and 4 have not placed any documents on record at this juncture. However, the defendant No. 3 has filed documents along with list Exh. 33.

07. Heard learned advocate Shri. A.Y. Bagmaru appearing on behalf of plaintiff. Nobody appeared and argued the matter for defendants.

08. The learned advocate of plaintiff submitted that, being the daughter of defendant No.1 and deceased Mahetab Bee, the plaintiff is having share in the suit lands. However, without allotting any share to her, the defendants behind her back have mutated their names in the revenue record and with an intention to deprive her from getting her legal share, are intending to dispose off the suit lands. Accordingly, he has prayed for restraining the defendants from alienating the suit lands.

09. In this background, at the outset, it is essential to have a glance towards the documentary evidence placed on record by the parties, at this juncture. A glance towards the 7/12 extracts filed by the plaintiff shows that, the suit lands are standing in the name of deceased Mahetab Bee and deceased defendant No. 1, out of survey No. 200/292/K/3. Whereas, the land out of survey No. 202/214/3 is standing in the names of defendant Nos. 1 to 3. Further perusal of the mutation entry No. 2100 shows that, this mutation is sanctioned in the year, 1995 and by this mutation the 81 R. land out of survey No. 202/214/3 is mutated in the name of defendant No. 2 and 40 R. land is

mutated in the name of defendant No. 3, by way of partition.

10. Further, perusal of the documents filed by the defendant No. 3 show that, the defendant No. 1 has purchased the suit lands in the year, 1975 and 1965 by virtue of distinct sale-deeds. So also, it appears from these documents that, on 19-01-2016 a will-deed is registered, which shows that, the defendant No. 1 has allotted his remaining land to the defendant Nos. 2 and 3.

11. However, from these documents, nothing can be clarified about the succession and inheritance of the property standing in the name of deceased Mahetab Bee. So also, it is essential to mention here that, by virtue of amendment in the plaint, the plaintiff has challenged the will-deed of defendant No. 1 dated 19-01-2016. This circumstance prima-facie shows that, the succession and inheritance in respect of the properties left behind by deceased Mahetab Bee and deceased defendant No. 1 are under challenge. Needless to mention here that, being the daughter of the deceased Mahetab Bee and deceased defendant No.1, the plaintiff is having share in the properties standing in their names. As such, prima-facie it appears that, the plaintiff is having share in the suit properties.

12. Therefore, in the event if, the defendant Nos. 2 to 4 would succeed in alienating the suit properties or creating third party interest therein, it will cause further complications and multiplicity of litigation, which will definitely cause irreparable loss to the plaintiff. Therefore, definitely the prima-facie case

and balance of convenience lies in favour of the plaintiff. Accordingly, by answering the points under determination in the affirmative, following order is passed.:

**:: Order ::**

- 1} Application is allowed.
- 2} The defendants are hereby restrained from alienating the suit properties or creating third party interest or encumbrances thereon, by way of order of temporary injunction, till final disposal of the suit.
- 3} Cost in main cause.

Date : 18-12-2017.

Sd/-  
{ D.P. Kasat }  
Civil Judge Jr. Division,  
**Deoni.**

I affirm, the contents of P.D.F. file Order are correct word for word as per the original Order.

Name of the stenographer : M.Y. Wadiwale.  
Name of Court : Civil Court, Jr. Divn., Deoni.  
Date : 18-12-2017.