

ORDER BELOW EXH.05 IN R. C. S. NO.473/2023

(Shivaji Vs. Meghsham)

(Passed on this 11th *Day of October, 2024*)

CNRNO.MHLA170010422023

Plaintiffs have filed application for interim injunction against the defendant as per Order XXXIX Rule 1 and 2 of the Civil Procedure Code submitting that, they have filed suit against defendant for partition and separate possession of the land ad-measuring 0H 62R situated at Wanvada Tq. Ausa having four boundaries as follows:-

Towards eastern side - Nallha.

Towards western side - Tungi road and Gavthan.

Towards southern side - Land of plaintiffs in Gat No.238.

Towards northern side - Land of Annarao Somwanshi in Gat No.236.

Above said disputed suit land is the ancestral property of joint Hindu family of plaintiffs and defendant. Said disputed property is not divided between plaintiffs and defendant. Defendant is the son of this brother. Plaintiffs and defendant are the members of Hindu family and belongs to Mitakshra school. Father of deceased plaintiff No.1 and defendant was having ancestral property at Wanwada bearing Gat No.237 ad-measuring 0H 62R, Gat No.369 ad-measuring 0H 88R and Gat No.267 ad-measuring 1H 55R. The partition deed was executed in between them on 20.09.2004. It is bearing R.No.2840/2004. Govind Patil received land ad-measuring 0H 78R in Gat No.369 to his share, Shivaji Patil (Somwanshi) received 0H 77R land out of 1H 55R land in Gat

No.367 and 44R land out of 0H 88R land in Gat No.369 to his share. Brother of plaintiff told that he would partition the suit property. However, it could not be done as he died. Taking disadvantage of old age of deceased plaintiff No.1 without informing plaintiff, defendant transferred his fathers property in his name. When deceased plaintiff No.1 asked for his share in the disputed suit land, the defendant No.1 denied for the same. Again on 15.02.2023 in presence of reputed persons from the village the deceased plaintiff asked for his share to defendant. However, defendant clearly denied for the same. Therefore, cause of action accrued to deceased plaintiff No.1 to file this suit. Plaintiffs have filed application alongwith suit against defendant for grant of interim injunction not to obstruct and interfere in the disputed suit land till the disposal of suit.

The defendant failed to file say though granted sufficient opportunity. The learned counsel for defendant failed to appear since long time. Plaintiffs have filed 7/12 extract of Gat No.237 at Sr. No.1 to 4 with list Exh.35. Death certificate of plaintiff No.1 with list Exh.19. The contention of plaintiff is not denied by defendant by filing his say. Therefore, plaintiffs have proved their *prima-facie* case. Balance of convenience lies in favour of plaintiffs. Irreparable loss will be caused to plaintiffs if the application is reject. Therefore, the application is liable to be allowed. Hence, I pass following order:-

ORDER

1. The application is allowed.
2. The defendant is restrained from causing obstruction in the disputed suit land ad-measuring 0H 62R situated in Gat No.237 more specifically described in para No.3 of the application.

Date:-11.10.2024.
Place:- Ausa.

(P. I. Mokashi)
Civil Judge, Senior Division.
Ausa.