

MHND060005022021



R.C.S. No. 57/2021,
Supriya & Anr. Vs. Nagorao

ORDER BELOW EXH-05

(Date 24.09.2024)

Present application filed by the plaintiffs for temporary injunction restraining the defendant from alienating or creating third party interest in the suit property.

02. **Brief facts stated by the plaintiffs are as under :**

The plaintiffs have filed the main suit against the defendant claiming partition, separate possession and perpetual injunction. The plaintiff No.01 is daughter and plaintiff No.02 is legally wedded wife of defendant, the marriage tie between plaintiff No.02 and defendant is still in existence. The suit land originally owned and possessed by Rama Bakkawad, who is father of the defendant and during his life time partition took place vide partition decree in R.C.S. No.36/2007 passed by Civil Judge Junior Division, Biloli, and separated their shares and mutated their names as per Mutation entry No.782. The defendant got his separate share in suit property.

03. The plaintiffs further claimed that the defendant went to reside at Degloor alongwith another woman illegally, after the birth of plaintiff No.01 and due to it they are suffering from starvation. From the wedlock of plaintiff No.02 and defendant, only plaintiff No.01 has begotten and she is recognized as coparcener by birth in the property of her father and entitled to get 1/3rd share in it.

04. The plaintiffs further claimed that they requested to the defendant and demanded 1/3rd share to each, in the suit property but the defendant flatly refused to allot the same. Thereafter, the plaintiffs waited for some time and again requested for partition but the defendant avoided doing same. The defendant at present is deliberately keeping away the plaintiffs from valuable property right and trying to dispose entire suit property. So, the plaintiffs constrained to file present suit alongwith present temporary injunction application. The plaintiffs state that prima-facie case and balance of convenience lies in their favour, if the injunction is not granted then they would suffer heavy irreparable loss. Therefore, the defendant be temporarily restrained from alienating the suit property till disposal of the suit.

05. The defendant appeared and submit his written statement below Exh-36. The defendant filed pursis Exh-38 stating that written statement be treated as say of T.I. application. It is contended by the defendant that the plaintiffs have no right to claim the partition in the suit property as suit property is self acquired property. He further contended that the plaintiffs falsely stated as the marriage tie between plaintiff No.02 and defendant is still in existence. The plaintiff No.02 and defendant has voluntarily took divorce before panchas and relatives on dated 01.11.2010 and the plaintiff No.02 had obtained amount of Rs.1,75,000/- from the defendant and relinquished her all rights against the defendant. This material fact have been suppressed by the plaintiffs. He further contended that the plaintiff No.01 is not entitled to get share in suit property as it is not joint family or ancestral property of plaintiff No.01. The suit property is self acquired property of defendant. Therefore, plaintiff No.02 has no right to claim

any partition in the life time of defendant. Ultimately, it is prayed that application be rejected.

06. In view of pleadings, following points arise for my consideration and the Court has recorded its findings thereon as under :

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
01.	Whether there is a prima-facie case in favour of the plaintiffs ?	In Affirmative
02.	Whether balance of convenience lies in favour of the plaintiffs ?	In Affirmative
03.	Whether plaintiffs would suffer irreparable loss, if application came to be rejected ?	In Affirmative
04.	What order ?	As per final order

REASONS

AS TO POINT Nos.01 to 03 :

07. Heard learned Advocate for the plaintiffs. Perused the written notes of argument filed by him at Exh-39. Perused the application, the say filed and the record of the suit. Perused the documents produced on record i.e. 7x12 extract, copy of Namuna No.8-A etc.

08. The perusal of the record reveals that basically the suit is filed for partition, recovery of separate possession and perpetual injunction. The suit is filed in the year 2021. It is claim of the plaintiffs that plaintiff No.01 is daughter and plaintiff No.02 is legally wedded

wife of defendant, the marriage tie between plaintiff No.02 and defendant is still in existence. The suit property is joint family ancestral property. Therefore, they are coparcener and entitled to get 1/3rd share each, in the suit property.

09. A crucial aspect of the matter is that the plaintiffs claims suit property as ancestral joint family property whereas, the defendant claims it to be self acquired property. Another aspect is that the plaintiffs claims marriage of plaintiff No.02 with defendant is still in existence whereas, the defendant claims their marriage is not in existence. Certainly, there would be need of evidence to determine if the suit property is ancestral joint family property or self acquired one and their marriage is in existence or not. However, the suit will require its own time for its conclusion. If the written statement of defendant is perused minutely at its Para-02 in the para-wise reply, it has been admitted by the defendant during life time of his father there took partition amongst them in the joint family and ancestral property by way of decree in R.C.S. No.36/2007 and defendant was allotted his legal share to the extent of 0 H. 51 R. land and so, is his self acquired and separate property. Now, if at once upon a time the property was ancestral joint family property then how it became a self acquired one, too needs a clarification.

10. On the other hand, the defendant i.e. leaving company of plaintiffs and residing with another woman illegally at another place goes to show that there is possibility of creation of third party interest causing multiplicity of the proceeding. Therefore, there seems a prima-facie case in favour of the plaintiffs. If the suit property gets alienated then certainly there shall be multiplicity of proceedings creating

hindrances in the right of the plaintiffs. So, too Court finds that balance of convenience is lies in favour of the plaintiffs. If injunction is granted and suit is dismissed, the defendant will not be great sufferer as he shall get his share of portion, but, if injunction is rejected and suit is decreed, the plaintiffs shall certainly be a great sufferer. In result, the Court answers point Nos.01 to 03 in affirmative.

AS TO POINT No.04 :

11. In view of findings on point Nos.01 to 03, the application deserves to be allowed by restraining the defendant from alienating or creating third party interest over the suit property. In result, the Court proceed to pass the following order :

ORDER

01. Application is allowed.
02. The defendant is temporarily restrained from alienating or creating third party interest over the suit property till the decision of this suit.
03. Costs in cause.

Pronounced in open Court.

Date : 24. 09. 2024.

(A.A.K. Shaikh)
Civil Judge Sr. Division
Biloli.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : Syed Iftekharuddin Syed Arifuddin

Court Name : Court of Civil Judge S.D. Biloli

Date : 24. 09. 2024

Judgment signed by the Presiding Officer on : 24. 09. 2024

Judgment/Order uploaded on : 24.09.2024