

MHND060009622022



**R.C.S. No.230/2022,**

**Yadavrao Vs. Sudhakar & Ors.**

**ORDER BELOW EXH-05**

( Date 22.01.2024 )

Present application filed by the plaintiff for temporary injunction restraining the defendant No.01 from alienating or creating third party interest in the suit land.

02. **Brief facts stated by the plaintiff is as under :**

The plaintiff has become owner and possessor of suit land bearing B. No.09 admeasuring 01 H. 05 R. of village Pokharni (Kd), as declared by Hon'ble District Judge-1, Biloli in R.C.A. No.07/2013, dated 15.11.2019. It is specifically claimed that during pendency of the said Appeal, the defendant Nos.02 and 03 and one Sanjay i.e. father of defendant Nos.04 and 05 as well as husband of defendant No.06 have sold the suit land involved in the Appeal admeasuring 60 R. out of 01 H. 06 R. from the B. No.09 to the defendant No.01 vide sale deed bearing No.1340/2013 dated 04.09.2013. Only the 7x12 extract was consisting their names at that time and so in the pending Appeal without ownership and delivery of possession the land was sold out for consideration of Rs.2,16,000/-. It is further contended that in the present suit this 60 R. area out of B. No.09, which is presently standing in the name of defendant No.01 is intended to be alienated to other persons and, thereby, to grab the suit land of the plaintiff. So, the present application along with the main suit challenging the said sale deed No.1340/2013 is filed for passing a temporary injunction order restraining the defendant No.01

from alienating or creating third party interest over the suit land. It is claimed that plaintiff is having prima-facie case, balance of convenience and if injunction is not granted, the plaintiff shall suffer irreparable loss.

03. The defendant No.01 appeared and filed his written statement at Exh-29 and even submitted pursis at Exh-31 intimating that his such written statement be treated as his say below Exh-05. The defendant Nos.02 and 04 to 06 though appeared but failed to submit their respective written statements. The defendant No.03 though served vide Exh-14 failed to mark her presence, therefore, suit proceeded ex-parte against her.

04. 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 plaintiff ?	In Affirmative
02.	Whether balance of convenience lies in favour of the plaintiff ?	In Affirmative
03.	Whether plaintiff will 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 :

05. Heard learned Advocate for the plaintiff. Perused the

written notes of argument filed by him at Exh-44. He submitted that suit land is presently owned by him vide order of Hon'ble District Judge-1, Biloli in R.C.A. No.07/2013 dated 15.11.2019. He specifically submitted that by order in that Appeal the plaintiff has become owners of 01 H. 05 R. land out of B. No.09. From amongst the total area 02 H. 11 R. in B. No.09, the plaintiff is the owner of 01 H. 05 R. whereas the defendant Nos.02 to 06 were owner of 01 H. 06 R. He further submitted the defendants have in all sold 01 H. 59 R. and, thereby, exceeded in selling 53 R. more land than which belongs to them. He submitted that there is further likelihood of alienation of the suit land and so, defendant No.01 be restrained from creating third party interest.

06. On the contrary, the learned Advocate Shri Kuncholikar for defendant No.01 filed his written notes of argument at Exh-43. He submitted that the plaintiff is only owner to the extent of 52 R. land in B. No.09. The plaintiff has already partitioned his 52 R. land amongst his sons. The defendant No.01 has legally purchased the suit property 60 R. land vide sale deed No.1340/2013 dated 04.09.2013 for consideration of Rs.2,16,000/- from other defendants. The plaintiff has no ownership and possession over the suit land and so, application be rejected with costs.

07. Perused the application, the say filed and the documents produced on record, particularly, the R.C.S. No.49/2011, the R.C.A. No.07/2013 and the sale deeds bearing Nos.1016/2010, 1340/2013, 397/2015, the 7x12 extracts, etc., produced by either side.

08. While deciding present application the plaintiff has to

satisfy on three golden principles i.e. prima-facie case, balance of convenience and irreparable loss.

09. It is pertinent to note that the present application Exh-05 is limited to the extent of not to alienate or create third party interest. The written statement produced on record by the defendant No.01 at Exh-29 itself in its Para-07, 09 and 10 goes to show that plaintiff is the owner of 01 H. 05 R. land in B. No.09. The R.C.A. No.07/2013 produced by the plaintiff on record even declares that the present plaintiff is owner of 01 H. 05 R. land in B. No.09. There are observations in Para-15 of the said Appeal that - *“It appears that plaintiff specifically pleaded and deposed that defendants without any right or concerned are trying to interfere and obstruct into his peaceful possession over the suit property. Defendants by way of filing written statement and cross-examination of plaintiff, denied his ownership and possession over the suit property. So, the deny of right of plaintiff over the suit property itself goes to show that defendants are interfering and obstructing into peaceful possession of the plaintiff over the suit property... and on the basis of false mutation entry, 54 R. land excess is shown in the name of defendants and they are trying to alienate the said land to somebody else. Under such circumstances, the plaintiff is entitled to relief as he claimed.”* With these observation of Hon'ble District Judge-1, Biloli and perusing the present written statement-cum-say of the defendant No.01, it is easy to arrive that there is apprehension that defendant No.01 may alienate the suit land. Thus, Court finds that there is a prima-facie case in favour of the present plaintiff. The balance of convenience also lies in the favour of the plaintiff. More importantly, if the injunction is not granted then there is

possibility of alienation which may cause hindrance in the trial and the plaintiff shall be the sufferer. On the other hand, if injunction is granted there shall be no loss to the plaintiff defendants comparatively. In result, the Court answers point Nos.01 to 03 in the affirmative.

**AS TO POINT No.04 :**

10. In view of findings on point Nos.01 to 03, the application deserves to be allowed by restraining the defendants 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 No.01 is temporarily restrained from alienating or creating third party interest over the suit land till the decision of this suit.
03. Costs in cause.
04. Pronounced in open Court.

Sd/-

**( A.A.K. Shaikh )**

Civil Judge Sr. Division  
Biloli.

Date : 22. 01. 2024.

**C E R T I F I C A T E**

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 Iftexharuddin Arifuddin  
Court Name : Court of Civil Judge S.D. Biloli  
Date : 22. 01. 2024  
Judgment signed by the Presiding Officer on : 22. 01. 2024  
Judgment/Order uploaded on : 22.01.2024