

MHND100013692022



ORDER BELOW EXH-05

(Passed on this 4th day of October, 2024)

The plaintiffs have filed this application for seeking relief of temporary injunction in respect of Gut no. 473 and 477, situated at mauja Halda, Tal.Kandhar, Dist. Nanded described in plaint (here-in-after referred as '*the suit property*').

2) The plaintiffs aver that, the suit property is their joint family property. On 02-06-2022 they asked the defendant for partition and separate possession of their share in the suit property. However, the defendant denied and threatened them. So, they are constrained to file the present suit for partition and separate possession of their share in the suit property. They are jointly cultivating the suit property. However, the defendant has been trying to obstruct their possession over the suit property. The defendant had threatened them that, he will not allow them to come over the suit property. So the defendant is required to be restrained from causing obstruction to their possession over the suit property till disposal of the suit. Thus, the present application is liable to be allowed.

3) The defendant filed his written statement (Exh.15). He filed pursis (Exh. 17) stating that, his written statement be treated as reply below this application. He has denied entire adverse averments of the

plaint. He contends that, he has been co-owner and is also in possession of the suit property. The application is also not maintainable against the co-owner. The plaintiffs filed present suit by preparing false and imaginary story. So the application is liable to be rejected.

4) Heard learned Advocate for the plaintiffs Shri. Sayyad has submitted that, the suit property is their joint family property. On 02-06-2022 they asked the defendant for partition and separate possession of their share in the suit property. However, the defendant denied and threatened them. They are jointly cultivating the suit property. However, the defendant has been trying to obstruct their possession over the suit property. The defendant had threatened them that, he will not allow them to come over the suit property. As prima-facie case is made out and balance of convenience lies in favor of the plaintiffs, so the defendant is required to be restrained from causing obstruction to their possession over the suit property till disposal of the suit.

5) Learned Advocate for the defendant Shri.Fuke has submitted that, he has been co-owner and is also in possession of the suit property. The application is also not maintainable against the co-owner. The plaintiffs filed present suit by preparing false and imaginary story. thus, the present application is liable to be rejected having no prima-facie case made out and balance of convenience is also not lying in favor of the counter claimants. If the present application is rejected, no prejudice would cause to the counter claimants. So, this application may kindly be rejected.

6) On the rival contention of both the parties following points arose for my determination. I have recorded my findings against each as follows.

| Points | | Findings |
|---------------|--|---|
| 1 | Whether the plaintiffs have made out prima-facie case in their favor ? | ...No. |
| 2 | Whether balance of convenience lies in favor of the plaintiffs ? | ...No. |
| 3 | Whether the plaintiffs will suffer irreparable loss, if the injunction as prayed is not granted in their favor ? | ...No. |
| 4 | What order ? | As per final order application is Rejected. |

REASONS

As to Point No.1 to 3 :-

7) In order to adjudicate this application, it is necessary to see whether only the plaintiffs are in possession of the suit property or not.

8) On perusal of pleading of the plaintiff, it appears that, the defendant did not dispute nature of the suit property as a joint family property. So, it reveals from the pleading of plaintiff and written statement that, both the parties are co-owners of the suit property. In case of joint family property, possession of one co-owner is always possession of all co-owners. If the suit property is in joint possession of both the parties or of all co-owners, no injunction can be granted against interference into possession of one co-owner by another co-owner. For aforesaid reason and discussion, no injunction can be granted against

the defendant as claimed being one of the co-owner of the suit property. So, I do not find substance in the argument of learned Advocate for the plaintiffs. Hence, I answer point No.1 to 3 in negative.

As to Point No. 4 :-

9) In view of my above findings and discussion the application is liable to be rejected. Hence, I pass the following order.

ORDER

- 1) The application is rejected.
- 2) Cost would be the cost in cause.

Date. 04-10-2024

(K.S. Khandare)
2nd Jt.Civil Judge Junior Division,
Kandhar.

CERTIFICATE

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

Name of the Stenographer/ Clerk :- Ku. A.V.Kounsale
Court Name :- In the Court of Judicial
Magistrate F.C,(Court No.2), Kandhar
Date :- 04/10/2024
Order signed by the
Presiding officer on :- 04/10/2024
Order uploaded on :- 04/10/2024