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| MHND120001042023<br> | <b><u>Spl.C.S. NO.3/2023</u></b><br>Madhav Pandurang Lohagave Vs.<br>Pandurang Sambhaji Lohagave and<br>other 3 |
|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|

**Order below Exh.5 in Spl.C.S.NO. 3/2023.**

1. The plaintiff has filed present application under order 39 Rule 1 and 2 of Code of Civil Procedure for temporary injunction. Perused application and say filed by the defendant no.1 & 2 below **Exh. 25** and defendant no. 3 & 4 below **Exh.26**. Heard both the sides.

02. Following points arise for my determination and I have recorded my findings with reasons there in as on as under.

|    | <u>POINTS</u>                                                                         | <u>FINDINGS</u>     |
|----|---------------------------------------------------------------------------------------|---------------------|
| 1. | Whether plaintiff having prima-facie case ?                                           | NO                  |
| 2. | Whether balance of convenience lies in favour of the plaintiff ?                      | NO                  |
| 3. | Whether plaintiff will suffer irreparable loss if the interim injunction is refused ? | NO                  |
| 4. | What order ?                                                                          | As per final order. |

**REASONS**

**As to point no.1 to 3 :-**

03. As point nos. 1 to 3 are inter linked each other therefore I have decided these points together. The plaintiff has come with the case that, plaintiff is having equal share with that defendant no.2 in the land survey no. 8/B to the extent of 60R situated at Bhalegaon

Tq.Umri Dist. Nanded, which is purchased in the name of defendant no.1 from one Gopal Sawant by way of Registered sale deed no.597/1998 dated 01.04.19998. The plaintiff has also claimed that, he having equal share with defendant no.2 in the land survey no.8/B to the extend of 61R land situated at village Bhalegaon, plaintiff has also claiming his preferential right over the defendant no.3 a right of pre emption, to acquire the interest in land survey no. 8/B to the extent of 40R which is transferred to the defendant no.3 by way of register sale deed no. 122/2022 dated 04.03.2022. Plaintiff sought declaration that, sale deed no.64/2020 and 122/2022 are not buying upon the plaintiff. All suit properties are specifically described in claim clause of the plaint. (Here in after referred as '**Suit property**' for sake brevity).

**04.** According to plaintiff, the plaintiff, defendant no.1 & 2 were having ancestral and joint family property in land Gut no.11/B to the extent 3H 16R and in land Gut No.11/C to the extent of 20R both situated at Balegaon Tq. Umri. The defendant no.1 being a handicapped person and unable to do agricultural work. Therefore, plaintiff and defendant no.2 agreed that, the plaintiff and the defendant no.2 each would get 1H 58R land in Survey No.11/B and the defendant no.1 would get 20R land in Survey No.11/C. It was further decided between them that, as in partition both plaintiff and the defendant no.2 is getting more share in the ancestral land therefore, they would take responsibility of maintaining and taking care of their age old father i.e defendant no.1.

**05.** It is further contention of plaintiff that, after partition in the year 1996, the plaintiff and defendant no.2 cultivating their respective lands which are got in partition and also cultivating the

land allotted to the defendant no.1. As on 01.04.1998 plaintiff and defendant no.2 purchased the land situated in survey no.8 B to the extent of 60R from Gopal Sawant. The sale deed executed in the name of defendant no.1 and the consideration amount is equally paid by the plaintiff and defendant no.2. Similarly, plaintiff and defendant no.2 purchased the land in survey no.8/B in the name of defendant no.1 and consideration amount is also equally paid by the plaintiff and defendant no.2 as on 26.05.2005. At the relevant time defendant no.1 having no any source of income to purchase the said land.

**06.** It is submitted by the plaintiff that, In the year 2017 plaintiff appointed as a teacher is in government aided private school, on that count continuously quarrel going on between wives of plaintiff and defendant no.2 and defendant no.2 started instigating defendant no.1 against the plaintiff. The defendant no.1 always abusing the plaintiff. All the suit properties are purchased by plaintiff and defendant no.2 jointly in the name of defendant no.1 and defendant no.1 having no any right or title in the same. The defendant no.1 in collusion with defendant no.2 has unlawfully executed sale deed bearing no. 64/2020 in favour of the defendant no.4 and defendant no.1 further executed the another sale deed in favour of defendant no.3 bearing no.122/2022 and defendant no.2 illegally given his consent in writing to such illegal transfer.

**07.** In the contention of plaintiff that, in the year 1998 and 2005 the total purchased land in survey no. 8/B is 1H 21R and the defendant no.1 illegally sold out 80R land to the defendant no.3 and 4 and now there remains 41R land in survey no.8/B. The 41R land remaining in the Survey no.8/B which is in the name of defendant

no.1 in the revenue record, he might being hand in glove with defendant no.2 try to sale out this land or create third party interest in it. Even on 08.01.2023 the plaintiff had been to the defendant no.1 and 2 and requested them not to sale out the land in Gut no. 8/B admeasuring 41R standing in the name of defendant no.1 in the revenue record. However, the defendant no.1 flatly refused the plaintiff's request and per contra abused him in filthy language. The plaintiff was aware of the evil plan of the defendant no.1 and 2 to sale out the land in survey no. 8/B again, hence he on 18.11.2021 and 22.11.2021 made requisition to the Tahsildar and Talathi respectively to not to carry out any mutation in the revenue record if at all the defendant no.1 sale out the land. Notably, the plaintiff has given proclamation in newspaper 'Godateer Samachar' dated 12.11.2021 calling upon public at large to not to enter into any transaction with the defendant no.1 in respect of the land in Gut no. 8/B. Even the plaintiff moved objection with the Tahsildar Umri to not to mutate name of the defendant no.3 in the revenue record as owner and possessor on the basis of illegal registered sale deed dated 04.03.2022. The plaintiff has prima-facie case and having every hope to succeed in the suit. Hence, if the defendant no.1, 3 and 4 creates the third party interest in the suit property and plaintiff's right is not protected then definitely it will be a great loss to him. Hence, plaintiff prayed to allow the application.

**08.** Defendant no. 1 & 2 by filing their say below **Exh.25** and defendant no.3 & 4 by filing their say below **Exh.26** have strongly opposed the application and submits that, application filed by the plaintiff is not tenable in eye of law. The plaintiff has not come to the court with clean hand. He has suppressed material facts from the

court. The plaintiff has not disclosed that he has got land in survey no.11/B in village Bhalegaon admeasuring 1H 58R from defendant no.1 before 20 years back and same is in possession in plaintiff. The suit property is self acquired property of the defendant no.1. Same is purchased by him by way of register sale deed. Defendant no.1 and 2 are residing together and defendant no.2 is taking care of defendant no.1. The plaintiff having no any right and interest in the suit property. He has never paid any consideration amount at the time of purchasing the suit property. The defendant no.1 has sold the suit property to the defendant no.3 and 4 by adopting due procedure of law. The plaintiff already got his share in the ancestral joint family property. The dates mentioned for cause of action are totally false. Hence defendant no.1 and 2 reject the application.

**09.** Defendant no.3 and 4 submits that, they have purchased the suit property from the defendant no.1 by executing the sale deed. They have perusing the revenue record of the suit property. At that time suit property was in the possession of the defendant no.1 as a owner. Therefore, there is no any question arises for declaration of sale deed executed in their favour as null and void. They are the bonafide purchasor. Hence, they are prayed to reject the application.

**10.** Considering the rival contention of both the sides. So also I have peruse the documents filed on the record. The plaintiff has placed on record the documents as per list **Exh.7** i.e in form sale deed executed between Gopal Sawant and defendant no.1 Pandurang Lohogave as on 26.05.2005. After perusal of recital of sale deed it is no where mentioned that, the consideration amount is paid by the plaintiff or defendant no.2. The plaintiff has also placed

on record the sale deed executed between defendant no.1 and defendant no.4 dated 11.02.2020 in respect of suit property bearing gut no.8/B admeasuring 0H 40R. After perusal of the documents attached with the sale deed in form of 7/12 extract goes to show that the defendant no.1 Pandurang Lohogave has sold 40R land out of 1H 21R land in Gut no.8/B. In the said 7/12 extract it is nowhere mentioned that, plaintiff and defendant no.2 are having any interest in the said property.

**11.** The plaintiff has also relied upon the sale deed executed between defendant no.1 and defendant no.3 dated 04.03.2022. After perusal of sale deed it prima-facie appears that, the defendant no.1 by accepting consideration amount of Rs.7,00,000/- has sold the property situated in Gut no.8/B to the extent of 40R out of 0H 81R. The 7/12 extract attached with the sale deed goes to show that, the defendant no.1 is the absolute owner and possessor the land sold by him to the defendant no.3. The plaintiff has filed the copies of applications filed with Tahsildar Umri and Handicapped certificate of defendant no.1. After perusing the entire documents on record it prima-facie goes to show that, the defendant no.1 has sold the suit property to the defendant no.3 and 4 is prima-facie appears to be his self acquired property. The plaintiff himself come with the case that, there is partition effected between the plaintiff , defendant no.1 and 2. They are cultivating their respective shares. Once partition effected between the parties that time there is no question arises for claiming the preferential right in the property during life time of defendant no.1. So also, the plaintiff come with the case that, at the time of purchasing the suit property in the name of defendant no.1 , the plaintiff and defendant no.2 have paid consideration of amount

equally. But, the plaintiff has not produced any documentary evidence on record to prima-facie shows that, how and what manner he has paid the consideration of amount at the time of execution of sale deeds in favour of defendant no.1.

**12.** The documents in form of sale deeds dated 11.02.2020 executed between defendant no.1 and defendant no.4, the sale deed executed on 04.03.2022 between defendant no.1 and defendant no.3 it is seen that, these sale deeds are registered documents executed by defendant no.1 in favour of defendant no.3 and 4 respectively. In both the sale deeds it is mentioned that, suit property was delivered in possession of defendant no.3 and 4 at the time of execution of sale deeds. These sale deeds reveals that, consideration amount was duly received by defendant no.1. As such it appears that, there was out and out sale transactions between defendant no.1 and defendant no.3 and 4. Both these sale deeds are registered title deeds and carry presumptive value in eye of law. So also the sale deed executed by one Gopal Sawant in favour of defendant no.1 as on 30.05.2005 is also the registered sale deed and from the said documents it appears that, the suit property is owned by defendant no.1.

**13.** It is settled law that, injunction should not be granted against the true owner. Even otherwise the plaintiff has not placed on record any documents to prima-facie shows that, plaintiff having interest in the suit property and defendant no.1 is trying to alienate the same to the third person. The plaintiff has not mentioned name of alleged purchasor in the present application. Therefore, considering the above facts and circumstances this court came to the conclusion that, Plaintiff having no prima-facie case, no balance of

convenience lies in favour of plaintiff and there is no any irreparable loss will be caused to the plaintiff if interim injunction is not granted. Hence, I answer point no. 1 to 3 in the negative and proceed to pass following order.

**::ORDER::**

1. Application **Exh.5** stands rejected.
2. Costs in cause.

Dt. 21/02/2025.

(A.P. Karad)  
Civil Judge, Senior Division,  
Bhokar.