

MHND140022362020

ORDER BELOW EXH.06(passed on 05th December 2024)

01. This is an application for temporary injunction under Order 39, Rule 1 and 2 read with section 151 of the Code of Civil Procedure, restraining defendant from alienating or creating any third party interest, restraining defendants from interfering in the possession of plaintiff and to demolish four shops constructed by defendants on the property admeasuring 10 Sq.Mtr in city survey no.1164, 68.07 Sq.Mtr in city survey no.1166, 47.10 Sq.Mtr in city survey no.1165, 48.07 Sq. Mtr in city survey no.1168 and 61.08 Sq.Mtr in city survey no.1167 within the limits of village Markel, Ta.Degloor. (Hereinafter referred as **suit properties.**)

02. Case of the plaintiff:

The plaintiffs submitted that, plaintiff no.1 and 2 are real brothers of each other and defendant no.1, 2 and 4 are cousin brothers of plaintiff no.1 and 2. Defendant no.3 is brothers wife of plaintiffs. Defendant no.5 is cousin sister of plaintiffs whereas, defendant no.6 to 8 are proposed tenants. The suit property is ancestral property of plaintiffs and defendant no.1 to 5 and plaintiff no.1 and 2 in the possession of half of the portion of the suit property from North side. The suit properties are in the name of fathers of plaintiffs and defendants no.1 to 5 and for family arrangement North

side of suit property was allotted to plaintiffs and since then plaintiffs are in possession of the half portion of the suit property by constructing tin shed house. However, defendant no.1 to 4 has forcefully constructed four tin shed shops on the suit property in the possession of plaintiffs without permission of Grampanchyat. The suit property is not yet partitioned . Moreover, defendant no.1 to 4 trying to alienate the suit property by any means. Hence, this application.

03. The defendant no.1, 2 and 4 filed their say at Exh-20 and admitted relationship with plaintiffs. The defendants further submitted that, their father has been in possession of the suit property since last 40 years and therefore, plaintiffs have no concern with the suit property admeasuring 6.9 Sq.Mtr, 110.4 Sq.Mtr, 94.2 Sq.Mtr and 10 Sq.Mtr in city survey no.1172, 1171, 1169 and 1164 respectively. They further submitted that, partition in respect of the suit property has already been done and the above properties were allotted to plaintiffs. The suit properties are in the name of defendants in Grampanchayat records. The material facts were suppressed by the plaintiffs. Hence, they prayed to reject the application.

04. Considering the application, following points arise for my determination, to which I have recorded my findings and reasons as under:

| Sr. No. | Points | Findings |
|----------------|----------------------------------------------------------------------|-----------------|
| 1 | Whether plaintiffs have made out a prima facie case in their favour? | Yes. |

| | | |
|---|-------------------------------------------------------------------------------------------------|--------------------------------------|
| 2 | Whether balance of convenience rests in favour of plaintiffs for grant of temporary injunction? | Yes. |
| 3 | Whether plaintiffs will suffer irreparable loss if order of temporary injunction is not passed? | Yes. |
| 4 | What order? | Application is partly allowed |

REASONS

As to point No. 01 :

05. The sum and substance of the plaintiff's claim is that, plaintiff no.1 and 2 are real brothers of each other and defendant no.1, 2 and 4 are cousin brothers of plaintiff no.1 and 2. Defendant no.3 is brothers wife of plaintiffs. Defendant no.5 is cousin sister of plaintiffs whereas, defendant no.6 to 8 are proposed tenants. The suit property is ancestral property of plaintiffs and defendant no.1 to 5. The partition of the suit property is not taken place till date. However, for the family arrangement Northern side of the suit property was put in the possession of plaintiff. Therefore, plaintiffs are in possession of the Northern side of the suit property by constructing tin shed house. Defendant no.1 to 5 are interfering in the possession of plaintiffs and constructed four tin shed shops in the suit property.

06. In support of their claim plaintiffs have adduced certified copy of "Sanad" issued by Special District Inspector, TILR, Parbhani, certified copy of inquiry register issued by TILR, Degloor, certified copy of measurement of survey no.1164, 1166, 1167, village map of village Markhel, photo copy of Namuna no.9 of property no.471 and 473 of village Markhel, photo copy of Namuna no.8 of property

no.475. On the other hand the defendants have denied the claim of plaintiffs and submitted that, since last 40 years father's of defendant no.1 to 5 were in possession of the suit property and plaintiffs have no concern with it.

07. Perusing the documents produced by the plaintiffs, prima facie it seen that, Sanand of city survey no.1164 is in the name of Venkanna Narsanna, perusing inquiry register issued by Dy.S.L.R it seen that, city survey no.1165 is in the name of Hanmantu Narsanna to the extent of 47.10 Sq.Mtr, city survey no.1166 is in the name of Hanmantu Narsanna and Venkanna Narsanna to the extent of 68.7 Sq.Mtr., city survey no.1167 is in the name of Hanmantu Narsanna to the extent of 61.8 Sq.Mtr. And city survey no.1168 is in the name of Makanna Narsanna and Hanmantu Narsanna jointly. Moreover, perusing measurement certificate issued by TILR Degloor of city survey no.1168 is in the name of Venkanna Narsanna and Hanmantu Narsanna to the extent of 48.7 Sq.Mtr., measurement certificate of city survey no.1167 is is the name of Hanmantu Narsanna to the extent of 61.8 Sq.Mtr., measurement certificate of city survey no.1166 is is the name of Hanmantu Narsanna and Venkanna Narsanna to the extent of 68.7 Sq.Mtr. Perusing record of the case it seen that, Venkanna Narsanna is father of plaintiff no.1 and 2 whereas, Hanmantu Narsanna is father of defendant no.1 to 6. The documents on record reveals that, still the suit property is in the name of plaintiff and defendant no.1 to 5's father jointly and some properties are separately. The documents on record prima-facie shows that, partition in respect of suit property is not yet to be affected. Therefore,

perusing the application, say and documents on record I am of the view that, plaintiff has prima-facie proved his case.

08. The suit property is ancestral property of plaintiffs and defendant no. 1 to 5 and being coparcener defendants no.1 to 5 have right in the suit property by birth. Therefore, injunction to restrain their possession can not be granted against respondent no.1 to 5. Moreover, plaintiffs have admitted that, defendants are in possession of the suit property by constructing four tin shed shops. Therefore, injunction restraining them from interfering the possession of the plaintiffs can not be granted. However, possibility can not be ruled out that, defendants may sale out or alienate the suit property by any means. Therefore, in the interest of justice it is required to restrain the defendants from alienating the suit property or creating any third party interest in it. Hence, in the light of above discussion I answer point No. 1 in Affirmative.

As to point No. 02 and 03:

09. As discussed above plaintiffs have *prima facie* proved case in their favour. Therefore, if defendants alienate the suit property it will cause irreparable loss to plaintiffs. Therefore, till further order it is necessary to protect the suit property in the interest of both the parties. Moreover, if injunction is granted in favour of plaintiffs, no hardship will be caused to the defendants. On the contrary, if injunction is not passed in favour of plaintiffs, plaintiffs may cause irreparable loss. Therefore, apparently it seen that balance of convenience is also in favour of plaintiffs. As the points of irreparable loss and balance of convenience are *prima-facie* seen in favour of

plaintiffs, resultantly, in answer to point number 02 and 03, I answer in affirmative.

As to point No. 04:

10. In view of the above discussion, plaintiffs have prima-facie proved case in their favour, balance of convenience and irreparable loss as well. Therefore, they are entitled to get the temporary injunction in their favour. Hence, in answer to point number 04, I proceed to pass the following order.

ORDER

1. The application Exh.6 is partly allowed.
2. The defendants are temporarily restrained from alienating or creating any third party interest in the suit property till disposal of the case.
3. Cost in cause.

Date: 05.12.2024

(Raghavendra N. Dev)
Civil Judge Jr. Division,
Degloor, Dist. Nanded

CERTIFICATE

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

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|--------------------------------|---------------------------------------------------------------|
| Name of the Stenographer | Shri. A.K. Mohammad |
| Name of Court | Shri. Raghvendra N.Dev, C.J.J.D. and J.M.F.C., Degloor. |
| Date of Dictation | 05/12/2024 |
| Judgment signed by the P.O. on | 05/12/2024 |
| Judgment/Order uploaded on | 06/12/2024 |