

R.C.S.No.107/2018**Yogesh & Oths. Vs. Vishnu & Oths.****ORDER BELOW EX. 07****(.... Passed on 16th November, 2018)**

01. This is an application [Exhibit 07] moved by plaintiffs for restraining defendant No.1 from alienating suit property in any manner by any one else till final conclusion of present suit.

02. **Facts of the plaintiff's case is as under:-**

The plaintiff has submitted that, plaintiff no.1 is grand son of defendant no.1 & plaintiff no.2 is daughter in law of defendant no.1. Plaintiff has filed this suit for land G.No.69 admeasuring 00 H. 60 R. situated at village Bamni Tq. Hadgaon, Dist. Nanded, more specifically mentioned with its four boundaries in this application in para No.1 of this application and, (which hereinafter will be referred to as the "suit property" for sake of brevity). Further, it is submitted by the plaintiff that, when there was joint Hindu family of defendants & deceased Suryabhan Vishnu Ambhore, marriage of plaintiff No.2 took place with Suryabhan Vishnu Ambhore in the year 2003. There is joint Hindu family. Plaintiff no.1 is son of plaintiff No.2. Plaintiffs, defendants and deceased Suryabhan Vishnu Ambhore all are co-parceners of suit property. Suit property is received to defendant No.1 by way of partition and suit property is joint Hindu family property. Due to family dispute, Suryabhan Vishnu Ambhore committed suicide

and died on 17.01.2017. Since then there is joint Hindu family of plaintiffs and defendants and no partition took place of ancestral suit property till today. There is share of plaintiffs in the suit property. Plaintiffs demanded their share, but defendant No.1 refused the same and he is in haste to alienate the suit property by taking benefit of entry of his name in the revenue record. Plaintiff has therefore submitted that, defendant Nos.1 be restrained from alienating suit property in any manner by any one else, till final conclusion of present suit. With this plaintiff has contended that, she is having prima facie case. Balance of convenience tilts in favour of plaintiff. She further submitted that, if application is disallowed then irreparable loss would cause to the plaintiffs. With this she prayer to allow application with costs as claimed.

03. Suit summons are duly served to defendant Nos.1 to 3 and they appeared in this suit. They have filed their W.S. at (Exh.17) and they have filed pursis (Exh.19) by stating that, said W.S. be treated as their say to present application. They have denied all adverse contents against them of plaint and present application. Defendant Nos.1 to 3 submitted that, Defendant No.1 was having one daughter namely Vidya born to his wife Shashikalabai i.e. defendant No.2, but she died at the age of five years. As per compromise decree dated 14.08.1996 passed by this court in R.C.S.No.68/1996 defendant No.1 is sole owner and possessor of the suit property. There is no joint Hindu family of

plaintiffs and defendants. Defendants contended that, if Hon'ble court comes to the conclusion that, plaintiffs are having share, then plaintiffs, defendants, deceased Suryabhan, deceased Vidy will get their each share respectively. Plaintiffs have no share in the suit property. Plaintiffs have filed false & vexatious suit, therefore, defendants prayed to dismiss present application with costs. No cause of action arose to the plaintiffs to file present suit and this application. Therefore, defendants prayed to dismiss present application with costs.

04. Heard Shri V.M. Mane, Ld. Advocate for the plaintiffs and U.G. Tikore, Ld. Advocate for defendant Nos.1 to 3.

05. In view of pleadings and material produced on record and arguments advanced at bar, on the material ingredients of O. 39 Rule 1 & 2 of the Code of Civil Procedure, 1908, following points arise for my determination. I have recorded my findings thereon for the reasons given herein below. Heard the respective Ld. Advocates of both sides at length.

Points

Findings

[i]	Whether the plaintiffs have made-out prima-facie case?	Yes.
[ii]	Whether balance of convenience tilts in favour of the plaintiffs ?	Yes.

[iii]	Whether the plaintiffs will suffer irreparable loss, if injunction is refused?	Yes.
[iv]	What Order?	Application is allowed.

REASONS

AS TO POINT NOS. 1 to 3 :-

06. Before going to discuss as regards with these point, it would be necessary to state here that it is not disputed by both the parties that one RCS.No.68/96 was filed for partition and separate possession, which was compromised on 14.08.1996 and in the compromise defendant No.1 got suit property in partition, which is part & parcel of present matter and since then he becomes owner and possessor of the suit property by virtue of compromise decree dated 14.8.1996. So it is very clear that suit property is ancestral property of both the parties. Defendants have not produced any documents to show that suit property was previously partitioned amongst defendants & deceased Suryabhan Ambhore or deceased Suryabhan Ambhore did not take birth at the time of open of partition. Therefore, husband of plaintiff No.2 who is son of defendant No.1 is having undivided share in the suit property.

07. From relation between the parties is also further prima facie appears that defendants are co-sharer of suit property and therefore they cannot be restrained to enjoy suit property as of right. At the same time, it is necessary to keep safe share of plaintiffs, which is now undivided, therefore, I am of the view that, if defendants are not restrained from alienating the suit property, they will create third party interest over the suit property. Ultimately, inconvenience would cause to the plaintiffs, if defendants are not restrained. Even there is possibility of alienating the property by defendants to any other, which create multiplicity of the suit. Therefore, if injunction is granted in respect of not alienating property, there would not be any loss to the defendants. Contrary, they will cultivate their share without any obstruction. Hence, until to get separate share out of the suit property, it would be just to restrain the defendants. Thus, from the documents as well as undisputed fact, prima face case is made out in favour of plaintiffs. Balance of convenience is lies in favour of plaintiffs. If present application is not allowed certainly possibility to alienate property by defendants to any other cannot be ruled out. Therefore, as usual irreparable loss would be caused to the plaintiffs so far as regards to the alienation. Hence, point Nos. 1 to 3 are answered in the affirmative.

AS TO POINT NO.4:-

08. In view of my findings recorded to point no. 1 to 3, the application Ex.7 deserves to be allowed. The costs of this application may leave to be considered at the time of adjudication of the costs of entire litigation. In the conclusion, in answer to point no. 4, I pass the following order.

ORDER

- A. The application [Exhibit-7] is allowed.
- B. The defendants or any other person on their behalf are hereby temporarily restrained from alienating the suit property or to create third party interest, till final decision of this suit.
- C. Both the parties is at liberty to adopt remedy available under Section 89 of the Code of Civil Procedure.
- D. Costs in main cause.

Date : 16.11.2018

(Sunita P. Paithankar),
Civil Judge J. D., Hadgaon,
Tal. Hadgaon Dist. Nanded.

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 : S. D. Jadhav

Court Name : J.M.F.C. & C.J.J.D., Court,
Hadgaon.

Date : 16.11.2018

Order signed by the Presiding Officer on : 16.11.2018

Order uploaded on : 16.11.2018