



ORDER BELOW EXH. 05 IN R.C.S. NO. 62/2021

01- This is an application for temporary injunction under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908 filed by the plaintiffs to restrain the defendant from alienating land bearing Gut No.143 admeasuring 01H. 09R. (80R., land in the name of defendant + 29R., land in the name of deceased Uttam) situated at Kandli (K), Tq. Himayatnagar Dist. Nandad (hereinafter referred as “suit property”), more particularly described in claim clause of the plaint.

02- In short the case of plaintiffs, is as follows:

It is contention of the plaintiffs that, plaintiff nos. 01 to 05 are real sisters inter-se. Defendant is the sister-in-law of the plaintiffs i.e. wife of deceased brother of the plaintiffs namely; Uttam S/o Champati Karle.

03- It is submitted by the plaintiffs that, their father namely; deceased Champati Karle was the original owner of the suit property and land bearing gut no.176 admeasuring 00H. 73R., situated at Kandli (K). In year 1999 due to old age deceased Champati Karle mutated suit property and above

mentioned property in the name of his son i.e. deceased husband of defendant. Deceased Champati Karle died prior to twenty years. After his death the plaintiffs and deceased Uttam Karle became owners and possessors of suit property and land bearing gut no.176 admeasuring 00H. 73R., situated at Kandli (K). During lifetime of deceased Uttam he sold land bearing gut no.176. Hence, only suit property was remained ancestral and joint family property of the plaintiffs and deceased Uttam. During the lifetime of deceased Uttam he also transferred 80 R. land out of suit property to defendant and so far as, remaining 01H. 09R., land is concerned, deceased Uttam sold 80R., land to one Khanduji with the consent of the plaintiffs. Thereafter, only 29R., land was remain in the name of deceased Uttam and 80R., land was remain in the name of defendant. Deceased Uttam died prior to seven years and after his death defendant gave insulting treatment to the plaintiffs. Hence, considering behaviour of the defendant the plaintiffs want their separate share and possession of the suit property. Hence, plaintiffs filed this suit for partition and also requested to restrain defendant from alienating the suit property to third person.

04- Defendant appeared in the suit and file her written-statement and say at Exh. 22. She admitted relations with the plaintiffs. She also admitted that, deceased Champati Karle was the owner of the suit property. She denied rest of all contentions made in the plaint. She submitted that, before the death of deceased Champti, suit property and other property were

mutated in the name of her husband. Hence, after death of deceased Champti, only her husband was became owner of suit property. She further submitted that, she got 40R., land out of the suit property by way of partition which was took place in her parental house and she got remaining suit property from her deceased husband. Hence, now the plaintiffs have no concerned with suit property. The plaintiffs have no right to claim partition in the suit property. On these grounds she sought for rejection of application.

05- On the basis of contentions of the plaintiffs and defendant following points arise for my determination and I have recorded my findings thereon with reasons thereto as under:

No	Points	Findings
1.	Whether the plaintiffs prove that they are having prima facie case in their favour?	In the affirmative.
2.	Whether the plaintiffs prove that balance of convenience lies in their favour?	In the affirmative.
3.	Whether the plaintiffs prove that they will suffer irreparable loss, if injunction is not granted?	In the affirmative.
4.	What order?	Application is allowed.

//REASONS//

As to point Nos. 01 to 03 :

06- In order to avoid repetition, these points are taken up together for discussion. Perused the application, say and documents produced on record.

07- The plaintiffs filed the present application as per Order 39, Rule 1 and 2 of the Code of Civil Procedure for claiming temporary injunction. One cannot go into the details of the merit of the suit, while deciding the temporary injunction application. But, needless to say that, as the plaintiffs knocked the door of the Court and claimed equitable relief, burden lies on them to prove their case. As per law, it is necessary for the plaintiffs to prove that, they are having *prima facie* case, balance of convenience lies in their favour and irreparable loss will cause to them, if injunction is not granted.

08- I have bestowed my thoughtful consideration to submission advanced on behalf of the parties and documents placed on record. It is contention of the plaintiffs that, their father i.e. deceased Champati was the original owner of the suit property. Hence, they are having shares in the suit property. Defendant in her written-statement in paragraph no. 04 specifically admitted that, deceased Champati was the owner of the suit property. From said admission *prima facie* it appears

that, suit property is the ancestral property of the plaintiffs and defendant.

09- Apart, the plaintiffs along-with list Exh. 07 filed copy of 7/12 extracts of the suit property and also filed copy of mutation entry bearing no. 540. After perusing said documents it appears that, deceased Uttam i.e. husband of defendant got suit property from deceased Champati. After perusing said documents prima facie it appears that, the suit property is the ancestral property of the plaintiffs and defendant.

10- The plaintiffs contended that, the defendant is going to alienate the suit property. Prima facie it clears that, the suit property is ancestral property. Therefore, it becomes necessary to restrain the defendant from alienating the suit property, till decision of the suit. If the defendant alienate the suit property, then plaintiffs would definitely suffer irreparable loss. Moreover, there will be multiplicity of the proceeding if injunction is not granted in favour of the plaintiffs. Hence, in view of the above discussion, in my opinion, the plaintiffs prove their prima facie case. Plaintiffs also prove that, balance of convenience lies in their favour. Therefore, my findings to point nos. 01 to 03 are in the affirmative and accordingly as to point no. 04, I pass following order:-

O R D E R

1- Application is allowed.

- 2- The defendant is hereby temporarily restrained from alienating or creating any third party interest in the suit property i.e. land bearing Gut No.143 admeasuring 01H. 09R. (80R., land in the name of defendant + 29R., land in the name of deceased Uttam) situated at Kandli (K), Tq. Himayatnagar Dist. Nandad, till decision of the suit.

Date: 25/03/2022.

(K. M. Chandaliya)
Civil Judge, Jr. Division,
Himayatnagar.

CERTIFICATE

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

Name of the Stenographer :- L. V. Pensalwar

Court Name :- Court of CJJD & JMFC Himayatnagar.

Date:- :- 25.03.2022.

Judgment/Order signed by

the Presiding Officer on : 25.03.2022.

Judgment/Order uploaded on : 28.03.2022.