

MHND180009002019

Syed Rashid Syed Ismail

Vs.

Syed Mukhadar Syed Ismail

ORDER BELOW EXHIBIT NO.77 IN
REG. CIVIL SUIT NO.53/2019

By this application filed under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, the plaintiff has prayed for grant of temporary injunction, restraining defendants from making any sort of construction over the suit property and under order XL, Rule 1 for appointment of receiver, till the final disposal of the present suit.

Plaintiff's case in brief is as follows :-

02. The land bearing Gat nos.34 to 36 of Village Kothari Chikhli, Tal-Kinwat, Dist. Nanded, are the suit properties hereinafter referred to as "**Suit property**" for sake of convenience.

03. It is contended that, the plaintiff, defendant no.1, defendant no. 10 and deceased Syed Ahmed are real brothers. Defendant no. 3,4 and 6 to 9 are heirs of their deceased brother Syed Ahmed. Defendant no. 5 and 11 are sons of defendant no.1. According to plaintiff, he and his brothers were doing agricultural and wood business. The suit properties bearing Gat no. 34 was purchased in the name of defendant no.1, Gat no.35 was purchased in the name of defendant no.3 and Gat no.36 was purchased in the name of defendant no.5 out of joint fund of their family.

04. It is contended that, on 21/09/1999 deed of settlement was executed between the four brothers declaring that all the

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properties were joint and all are equal share therein. On the basis of said deed mutation entries no. 2061, 2072 and 2073 were affected in respect of suit properties. However, after passage of time, defendant no.1 having change his stance and challenged those mutation entries before sub-divisional officer. Consequently, the same were cancelled.

05. Further, it is contended that, the plaintiff has filed appeal against the order of Sub-divisional officer before collector Nanded. Thereafter, he demanded partition of suit property to defendants to which they denied. Hence, he constrained to file present suit for partition and separate possession of his 1/4th share and for consequential relief of perpetual injunction. By way of this application, he prayed to grant temporary injunction restraining defendants from raising any sort of construction over suit property and for appointment of receiver.

Defendant's case in brief is as follows :-

06. Defendant Nos.1,3,5 and 11 by filing their say at **Exhibit 80** contested the application, categorically denying all the adverse allegations made by the plaintiff. According to them they had purchased suit property from their own income. They denied that, suit properties were purchased from joint income of four brothers. According to them, the plaintiff has no right over the suit property. It is submitted that previous application filed by the plaintiff for temporary injunction was rejected and therefore, second application is not tenable. Hence, they prayed to reject the application.

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07. Considering the rival contentions between the parties, the following points arise for my determination and I have recorded my findings thereon with reasons as stated below.

<u>SR.NO.</u>	<u>POINTS</u>		<u>FINDINGS</u>
1)	Whether the plaintiff has made out prima-facie case?	...	Negative
2)	Whether the balance of convenience is in favour of the plaintiff?	...	Negative
3)	Whether irreparable loss would be caused to the plaintiff, if the injunction as prayed is refused?	...	Negative
4)	What order?	...	AS PER FINAL ORDER.

-: **REASONS** :-

08. In order to support their respective claim and defence both the parties have placed reliance on various documentary evidence. The reference of said documents will be made in my discussion at the relevant place. Heard Ld. Advocates for both the parties at sufficient length.

AS TO POINT NOS.1 to 3 :-

09. According to the plaintiff, the suit properties were acquired in the names of defendants No. 1, 3, and 5 from their joint income. Consequently, a settlement deed was executed on 21.09.1999. In accordance with this deed, the names of the plaintiff, his deceased brother, and defendant No. 10 were recorded in the record of rights of the suit properties in "Other Rights" column by mutation entry Nos. 2061, 2072, and 2073 dated 14.03.2011. However, later on, defendant No. 1, having changed his stance, filed an application with the Sub-

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Divisional Officer to cancel the said mutation entries. Consequently, those mutation entries were cancelled. The plaintiff has filed an appeal against the order of SDO before the Collector of Nanded.

10. It is submitted that the plaintiff had earlier filed an application for a temporary injunction, and after it was rejected, a Miscellaneous Civil Appeal no.45/2022 was filed before the Hon'ble District Court. The Hon'ble District Court granted an ad-interim injunction against the defendants restraining them from creating third party interest in the suit property. Despite order of Hon'ble District court, the defendants have constructed tin sheds on the suit properties and same were given on rent, thereby they are changing the nature of the property and creating third-party rights. Hence, the plaintiff has once again filed this application for a temporary injunction, requesting that the defendants be restrained from raising further construction on the suit properties and that for appointment of receiver.

11. Upon perusal of the record, it appears that the plaintiff has relied on a settlement deed executed on 21.09.1999 to establish that the suit properties were purchased from their joint income. However, upon going through the said deed, it is found that it is an unregistered document and does not mention the specific properties. The first paragraph of the document states that the properties are in possession of the respective parties as owners as per revenue record, and that they are enjoying their respective properties. However, there is no reference of those properties in the said deed. In clause No. 3 of the deed, there is stipulation that a plot located at Kothari Village, on Main Road Site, are equal between all brothers and it will be partitioned accordingly.

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But the description of that property or property number is not given in the partition deed. Prima facie it appears that the settlement deed is ambiguous document.

12. A significant point is that the settlement deed was executed in the year 1999 and till 2011, its effect was not given into the record of rights of the suit property, for which no explanation has been provided by the plaintiff. The plaintiff has examined one of the attesting witnesses of the partition deed, Mr. Mallu Yerekar, who in his cross-examination stated that the deed was handwritten. However, he also admitted that the document is actually typed, and that it was not written by an individual named Kasim. This raises doubts regarding the authenticity of the document, which create prima facie question regarding the deed itself. Furthermore, the plaintiff has not filed any sale deeds concerning the suit properties on record. Therefore, based solely on this settlement deed, it cannot be prima facie concluded that the suit properties were purchased by the plaintiff and his siblings from their joint income in the names of defendants No. 1, 3, and 5.

13. Additionally, the plaintiff claims that the defendants are constructing shops on the suit properties and thereby they are altering its nature. However, the photographs on record show that temporary tin sheds have been erected, and there is no indication of any permanent construction that would change the nature of the property. Thus, the plaintiff's contention that permanent construction is being carried out on the suit properties does not having force.

14. Furthermore, even if the defendants are carrying out construction on the suit properties, if the plaintiff succeeds in proving

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his case during the final hearing, the removal of such constructions may be ordered. Moreover, there is no evidence on record suggesting that the construction would obstruct any future partition of the properties. Therefore, considering the above observations, it cannot be said that there is a prima facie case in favor of the plaintiff.

15. So far as balance of convenience and irreparable injury is concerned, the names of defendants No. 1, 3, and 5 have been recorded in the record of rights of the suit properties since 1991 to 1993, these entries carry a presumption of correctness, the partition deed is not sufficient document to rebut said presumption. Besides, the record shows that Mics. Appeal filed by the plaintiff against earlier temporary injunction order of this court was also rejected by the Hon'ble district court, therefore I am of the view that balance of convenience does not lie in favour of the plaintiff. As the defendants are enjoying the suit property, their names are reflected in the revenue record since long, whereas there is no evidence on record about possession of plaintiff on the suit property, in such circumstances if injunction as prayed is granted or receiver is appointed, it will cause serious injury to the defendants which cannot be compensated in terms of money, on the contrary no such injury will be caused to the plaintiff, if injunction is refused. Therefore, the plaintiff is not entitled to the temporary injunction and for appointment of a receiver as sought. Accordingly, I answer to point Nos. 1 to 3 "in the negative".

MHND180009002019**AS TO POINT NO.4:-**

16. Thus, in view of my findings to the aforesaid points, the instant application deserves to be rejected. Hence, in answer to point No.4, I proceed to pass the following order.

:-ORDER:-

01)	Application (Exhibit No.77) is rejected.
02)	Cost of this application be cost in cause.

(Dictated and pronounced in open court)

Date:- 03/10/2024.
Kinwat.

(PM.Mane)
Civil Judge, Jr. Division,
Kinwat.

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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 Sr.Clerk : A.Mujahid
Court Name : Court of C.J.J.D., Kinwat
Date : 03/10/2024
Order signed by
the Presiding Officer on : 03/10/2024
Order uploaded on : 03/10/2024

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