

MHND230002452022

**ORDER BELOW EXHIBIT 05**

This is a suit for partition, separate possession. Wherein, plaintiff has filed the present application for grant of temporary injunction under Order 39 Rule 1 of the Code of Civil Procedure, for restraining defendants not to alienate or create third party interest over the suit property till disposal of the suit.

Brief facts of the application are as under :-

2] The agricultural land bearing Gat No.271 admeasuring area of 3 H 47 R, situated at Village Sugaon, Tq.Mukhed, Dist. Nanded, more particularly described in claim clause of the plaint is the subject matter of the suit. (Hereinafter for the sake of brevity referred as “the suit property”)

3] The case of plaintiffs is that, the defendant No.1 is husband of her deceased sister and defendant Nos. 2 to 6 are the children of her deceased sister Kaushalyabai. It is further submitted that, the father of plaintiff died in the year 1990 and her mother Gangabai has died prior to 15 years. Deceased Aapparao and Gangabai were having two daughters i.e. the present plaintiff and deceased Kaushalyabai who is wife of defendant No.1.

4] It is further submitted that, previously the suit property was owned by deceased father of plaintiff and after his death being Karta of family, the name of her mother entered in to the revenue record as per mutation entry No.209. After the death of mother of plaintiff, the suit property was cultivated by defendant No.1 and he used to give the income arising out of suit property to plaintiff. According to plaintiff, the suit property is being cultivated by defendant and his wife. Therefore mutation entry No.498 came to be sanctioned in the name of sister of plaintiff and the name of plaintiff recorded into the other rights column of the suit property.

5] It is further submits that, the sister of plaintiff namely Kaushalyabai died on 26.04.2004. However till 2020 the defendants used to give the income arising out of the suit property to plaintiff. Therefore there was no reason to see the 7/12 extract of the suit property. However in the year 2021 when the plaintiff approached to defendant and demanded the income arising out of the suit property that time defendants flatly refused to give the income to plaintiff. After that plaintiff had occasion to see the revenue record of the suit property that time. It appears to plaintiff that, the name of defendant Nos.1, 2 and 4 are standing in to the revenue record of the suit property.

6] According to plaintiff, in view of decree passed in R.C.S.No.134/2017, the mutation entry No.1615 sanctioned in the name of defendants. It is contended that, the defendant Nos. 1 to 6

in collusion and behind back of the plaintiff partitioned the suit property. It is further submitted that, the plaintiff is having her birth right in the suit property and she being the necessary party in the R.C.S.No.134/2017. Inspite defendants in collusion obtained false decree by suppressing material fact. Plaintiff asked to defendants about the aforesaid act, that time defendants threatened to plaintiff and refused to give the share in the suit property. As such plaintiff has constrained to file the present suit.

7] Defendants have filed his say cum written statement at (Exh.18). Defendants are coming with the specific plea that, plaintiff has suppressed the material facts and have not come with the clean hand before the court. It is admitted by the defendants that, they were cultivating the suit property on behalf of plaintiff and their deceased sister Kaushalyabai. Because in the year 2001, and as per the mutation entry No.498, plaintiff has relinquished her share in favour of her deceased sister. Plaintiff by way of consent deed executed on the stamp paper worth of Rs.20/- have relinquished her share and agreed that her name should not be entered in the other rights column. As such the plaintiff being relinquished her share. Defendant was cultivating the suit property.

8] It is further contended that, plaintiff waived her right in favour of defendants, therefore she was not necessary party in R.C.S.No.134/2017. Moreover during the pendency of suit, plaintiff has not raised any objection. As such plaintiff has no concern with

the suit property. Therefore she has no right to claim in the suit property. Therefore, the application is liable to be rejected.

9] Considering the rival contention of the parties following points arise for my determination. I have recorded my findings on the said points with reasons as follows;

Sr. No.	<u>Points</u>	<u>Findings</u>
1)	Whether plaintiff has made out prima-facie case?	No.
2)	Whether plaintiff proved that the balance of convenience in her favour?	No.
3)	Whether plaintiff would suffer irreparable loss if injunction is not granted ?	No.
4)	What order?	Exhibit 5 is rejected.

REASONS

As to Point Nos.1 to 3:-

10] These points are interconnected and therefore, for convenient consideration, I am taking them together. While deciding the temporary injunction application the plaintiff has to prove prima facie case, balance of convenience and irreparable loss. Further both the Counsels have argued before me as per their contention.

Plaintiff relied upon the following documents-

11] Certified copy of mutation entry No.209, certified copy of 7/12 extract of Gat No.271 from the year of 1985-2000, certified copy of Judgment decree in R.C.S.No.134/2017, certified copy of

mutation entry No.1615, certified copy of 7/12 extract and form No.8-A of Gat No.271.

12] Learned Advocate for the plaintiff submitted that, the suit property is ancestral property of plaintiff and defendants. Being legal heir plaintiff has her right and share in the suit property. However defendants are trying to alienate the suit property with intent to defeat the birth right of plaintiff. Hence, defendants needs to be restrained. Hence it is prayed that, the application may be allowed.

13] On the other hand, learned advocate for the defendants submitted that, plaintiff has no right in the suit property as she has already waived her right in favour of defendants. It is further submitted that, the present suit is not at all tenable. Plaintiff is not made out any prima facie case to grant discretionary relief in her favour. Therefore, he prayed to reject the application.

14] It is settled principle of law that, while deciding the temporary injunction plaintiff must prove prima-facie case in his favour. Prima-facie case does not mean that, the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima-facie case means that, the contentions which the plaintiff is raising, require consideration on merit and are not liable to be rejected summarily.

15] Heard Learned Advocate for both the sides. Perused documents placed on record. It is specifically averred by plaintiff that, the defendants with intent to defeat the birth right of plaintiff have transferred the suit property in their own name. Moreover the defendants in collusion filed suit for partition and with consent they have compromised the said suit behind back of plaintiff.

16] I have gone through the submission canvased by plaintiff. Prima facie record shows that, the suit property is standing in the name of defendants in virtue of mutation entry No.498. On perusal the mutation entry No.498, the contents of the same shows that, plaintiff Tarabai gave written consent in favour of her deceased sister Kaushalyabai on the stamp paper worth of Rs.20/- that, her name shall not be entered in the other rights columns of the suit property. Therefore it prima facie appears that, plaintiff herself voluntarily waived her right in favour of her deceased sister. Therefore it prima facie appears that, on the basis of alleged mutation entry defendants became owner of the suit property.

17] Though it is settled principle that, entries of a property in the revenue record does not create or extinguish title nor it has any presumptive value on title. It only enables the person in whose favour it is ordered to pay the land revenue in question. The entries in revenue record are not conclusive proof. However, the said presumption is rebuttable. But prima facie, plaintiff has not put forth any prima facie material to rebut the said presumption. Neither it is

the case of plaintiff that, the alleged consent deed is forged and fabricated.

18] This is a stage of Temporary Injunction application while deciding the same it is not necessary to consider the merit of the suit. At this stage it is necessary to see prima-facie evidence on record which resulted into probabilities of the plaintiff to succeed in the suit.

19] Moreover, the plaintiff has not averred and pleaded that, to whom the plaintiff is going to alienate the suit property. Mere vague pleading is not sufficient to grant the discretionary power in favour of plaintiff.

20] The averments made by the plaintiff in the application prima-facie does not inspire confidence as to credibility of the plaintiff. As to the truthfulness of the said averment's plaintiff has not adduced prima-facie sufficient evidence on record. Thus, in my opinion plaintiff has not made out the prima-facie case. To see balance of convenience, it is necessary to compare the case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting it.

21] As such from the aforesaid discussion. I am of the opinion that, plaintiff has failed to prove the prima facie case in her favour.

She further failed to make out required ingredients of temporary injunction. Accordingly, I answer point No.1 to 3 in the negative.

As to point No. 4

22] As plaintiff failed to prove a prima-facie case, balance of convenience and will suffer loss if temporary injunction is not granted. Therefore, plaintiff is not entitled for temporary injunction and hence I proceed to pass the following order;

ORDER

The application Exh. 05 is rejected.

Sd/-

(K.M.Mundhe)

Date -14.03.2024.

2nd Jt.Civil Judge Junior Division,
Mukhed Dist. Nanded