

MHND240004892021



ORDER PASSED BELOW EXH.05
(Decided on 06-10-2021)

01 This is an application filed by the plaintiffs against defendant No.1 to 3 under Order 39 Rule 1 and 2 of the Code of Civil Procedure 1908. By way of present application, the plaintiffs are seeking temporary injunction against defendants restraining them from alienating the agricultural land bearing Gut No. 133, adm. 3 H. 74 R situated at Naigaon Bz., Tq. Naigaon (Kh.), Dist. Nanded (hereinafter referred as 'suit land' for the sake of brevity) till the disposal of the suit.

Brief facts of Plaintiff's case are as under :

02 The plaintiffs are the married daughters of the defendant No.1 and 2 and also real sisters of the defendant No.3. The suit land is ancestral property of the plaintiffs and defendants. The name of the defendants is taken in the 7/12 extract by deleting the share of the plaintiffs and by false mutation entry. By taking the advantage of this, defendants are trying to alienate the suit land. The plaintiffs have a legal share in the suit land. But the defendants denied to give them their share in the suit land. If the suit land is transferred by the defendants, the plaintiffs will suffer irreparable loss. The plaintiffs stated that, the prima facie case and balance of convenience is also in favour of the plaintiffs. Hence, they prayed to grant interim injunction in their favour.

03 The defendant No.1 to 3 have filed their say and written statement at Exh.24. They have admitted that, the suit land is ancestral suit land. But they stated that, they have developed the suit land by investing their own income. Therefore, the plaintiffs have no right to claim share in the suit land. The plaintiffs have filed the present false suit in order to harass the defendants. They stated that, till this date there is no partition of the suit land. They stated that, the suit land is allotted in the name of the defendant No.1 to 3 in order to avail the benefit of Government schemes. They have denied that, the plaintiffs have share in the suit land. Hence, they prayed to reject the said application.

04 Heard learned advocate Shri. S.B. Ingole, for the plaintiffs and Shri. U.G. Magde, advocate for the defendants.

05 Taking into consideration the rival pleadings and arguments of respective parties, following points arise for my determination. I have recorded my findings thereon for the reasons stated below :

Sr.No.	Points	Findings
1	Do the plaintiffs prove prima facie case in their favour ?	<i>In the Negative</i>
2	Do the plaintiffs prove balance of convenience lies in their favour ?	<i>In the Negative</i>
3	Do the plaintiffs prove that they will be put to an irreparable loss, if injunction is not granted ?	<i>In the Negative</i>
4	What order ?	<i>as per final order</i>

REASONS**AS TO POINT NOS.1 TO 3 :**

06 All these points are interlinked with each others, therefore, to avoid repeated discussion I have taken these points together for common discussion.

07 In the case in hand plaintiffs sought relief of partition and separate possession and for perpetual injunction to restrain the defendants from alienating the suit land. It is the contention of the plaintiffs that the suit land is ancestral land of the plaintiffs and defendants. The defendants also admitted that the suit land is ancestral property. The relation between the parties are not in dispute. It is the only contention of the defendants that the suit land was inherited to them and they have developed the suit land by investing their own income. Therefore, the plaintiffs have not right in the suit land. It is the also contention of the plaintiffs that the name of the defendant No.1 to 3 are taken into 7/12 extract by deleting the share of the plaintiffs and by false mutation entry.

08. In support of their contention, they have filed 7/12 extract of the suit land and mutation entry of the suit land on record. It shows that, the name of the defendant No.1 to 3 are taken in the 7/12 extract of the suit land as a owner. As discussed above, the defendants have admitted that the suit land is ancestral property. The defendants themselves stated that, till this date there is no partition of the suit land. But, the 7/12 extract placed on record

prima facie shows that, the suit land is in the name of the defendant No.1 to 3.

09 Considering the above discussion, I have no hesitation to hold that the plaintiffs have made out a prime - facie case in their favour, irreparable loss will be caused to them, as balance of convenience lies in their favour. The defendants have filed a pursis (Exh.29) and stated that, they are ready to maintain status quo of the suit land in respect of alienation. It shows that, the defendants themselves stated that, they will not alienate the suit land. Hence, I answer point no. 1 to 3 in the affirmative and pass the following order.

ORDER

- 1) The application (Exh.05) is allowed.
- 2) The defendants are hereby restrained from alienating the land bearing Gut No. 133, adm. 3 H. 74 R situated at Naigaon Bz., Tq. Naigaon (Kh.), Dist. Nanded i.e. suit land in their name till the disposal of the suit.
- 3) Cost in cause.

Sd/-

(Smt. R.B. Sorekar)

Date :06.10.2021

Jt. Civil Judge J.D. Naigaon Bz.

CERTIFICATE

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

Name of the Stenographer : Nagappa Gurapadappa Majage

Court Name : Court of Jt. CJJD, Naigaon(Bz).

Date : 06-10-2021

(5)

RCS No. 55/2021
Suvarna and Ors. V/s Sambhaji and ors.

Judgment signed by the Presiding Officer on : 06-10-2021

Judgment uploaded on : 06-10-2021