

MHNG070003702022

**ORDER BELOW EXHIBIT 05 IN R.C.S. NO. 12/2022****Pradipkumar Bagde and oths.**

V/S

Vilas Bagde and oths.[Order dated 05th August 2022]

1) This is an application for temporary injunction filed by plaintiffs under order 39 Rule 1 of the Civil Procedure Code through which they pray for non-obstruction in possession and non-alienation of suit property i.e. survey No. 105 ad measuring 2.40 HR. located at Wai, Tah. Katol, which is herein after is referred as suit property. Whereas in the suit, plaintiffs have prayed for declaration of registered will deed dtd. 21.05.2007 being null and void and not binding on plaintiffs and cancellation of it and for perpetual injunction as noted above.

The case of plaintiffs may be briefly stated as below:-

2) As noted above, the suit property agriculture land bearing No. 105 ad measuring 2.40 HR. is located at village Wai. Plaintiffs

contends that the said land was owned by one Maniram Dadu Bagde who died in year 1983 without any children and class one heir therefore, property devolved upon his class two heirs Shewantabai Bhajikhaye and Kaushalya Bagde and after them property was devolved upon one Janbaji Bagde, Pillaji Bagde. Sulochanabai, Padminitai and Damayanti. However, the sibling of Janbaji relinquished their rights in the property in favour of Janbaji Bagde. Therefore, Janbaji became holder and possessor of the property and it was not self acquired property. The said Janba Bagde on 28.05.2007 plaintiff No. 3 is his widow and plaintiff No. 1 and 2 are his son and daughter respectively where as defendants are the Lr's of another deceased son of Janba Bagde.

3) Plaintiffs further contend that after the death of Janba, name of his Lr's was mutated as per mutation entry 185. However, plaintiffs learnt in 2020 that the deceased Janba Bagde executed registered will deed on 20.05.2007 in favour of defendant No. 3 of 2.40 HR of Gat No. 105 from total area of 4.17 HR.

4) Plaintiffs contend that he registered will deed is not valid as it was got executed by coercion etc. Moreover, said Janba was not sole owner of the property. Moreover, plaintiff No. 3 is in possession

of the suit property and defendants her cause of obstruction and they may alienate the property. Moreover, the mutation entry which was affected in honour of will deed i.e. M.E. 297 is also challenged before SDO and it is pending. Hence, plaintiffs prays for temporary injunction as mentioned above.

5) The respondents herein who are defendants No. 1 to 3 have resisted this application vide their W.S. and say Exh. 14 and 15 and contend that although the suit property devolved upon deceased Janba. However, he became absolute owner of it as he heritated female ancestors namely, Shewantabai Bhajikhaye and Kaushlayabai Bagde therefore, he was competent to bequeath his property and as deceased Vilas his another son took care of him till his death. Therefore, said Janba Bagde out of his free will executed he will dtd. 21.05.2007 and since then as per mutation entry 297 defendant No. 3 through his guardian defendant No. 1 has been owner and possessor of the suit property. Moreover, plaintiff No. 3 is one of attesting witness of the will deed. Hence, Hence, they pray for rejection of this application.

6) I have heard learned counsel of the plaintiffs and defendants. I have perused the documents annexed by plaintiff vide

Exh. 4 list.

7) On consideration of it, following points arise for my determination to which, I record my findings with the reasons as follows:-

POINTS

FINDINGS

- | | |
|---|--------------------|
| 1) Do plaintiffs proves that they have prima facie case? | Negative |
| 2) Do plaintiffs proves that balance of convenience lies in their favour? | Negative |
| 3) Do plaintiffs prove that they will suffer irreparable loss if temporary injunction is not granted to their ? | Negative |
| 4) What order? | As per final order |

REASONS

AS TO POINTS No. 1 to 3 :-

- 8) For brevity point No. 1 to 3 are discussed together.
- 9) As noted above, the suit property agriculture land bearing No. 105 ad measuring 2.40 HR. is located at village Wai. Moreover, the kinship among parties is not disputed as well as the deceased Janba Bhivaji Bagde became owner of the property through his class two heirs an plaintiffs and defendants are Lr's of deceased Janba Bagde.

10) The factum of execution of registered will deed dtd. 21.05.2007 is not disputed. However, its legality and competency of the testator is being questioned.

11) The registered will deed of the year 2007 is still in force. Moreover, plaintiffs are questioning it in spite of plaintiff No. 3 being one of the signatory to it as one of the attesting witness.

12) The documents which have been annexed by plaintiff vide Exh. 4 are 7/12 extract, relevant mutation entry including M.E. 185 and 297, photocopy of registered will deed dtd. 21.05.2007 and Advocates notice etc.

13) The documents annexed such as 7/12 and mutation entries reveal that it is the defendant No. 3 who has been shown as owner and possessor of the suit property and mutation entry 297 is still in force.

14) Moreover, there is not prima-facie proof of illegality of the registered will deed and incompetency of the testator. Moreover, there is no prima-facie of the plaintiff being in possession of the suit property and attempt of the defendants of its alienation. Moreover, the will deed of the year 2007 it is being questioned in the year 2022.

15) Therefore for the reasons noted above, I answer points No.1 to 3 in the negative.

AS TO POINT No. 4 :-

16) As plaintiffs have failed to prove all three ingredients in their favour. Therefore, this application is liable to be rejected. Hence, I proceed to pass following final order.

ORDER

- (i) Application at Exhibit 05 is hereby rejected.
- (ii) Cost in cause.

Date :- 05.08.2022.

(Padmakar S. Jondhale)
Civil Judge Jr. Division, Katol

CERTIFICATE

I affirm that the contents of Judgment are word to word, as per original Judgment.

Sau. P. I. Geed
Stenographer (Grade - III)