

R.C.S. No.195/2017
Chintaman.vrs. Mukunda

ORDER BELOW EXH.5

(Passed on 26th October, 2018)

1] Plaintiff filed suit for declaration and partition and separate possession. He submitted that suit property is ancestral property of plaintiff and defendants. Defendant owned and possessed the suit property field no. 330/1 ,area 3/42. Name of defendant recorded in revenue record. Suit property is ancestral property.

2] Plaintiff came to know that defendant in 24-9-2017 sold some suit property to defendant no.5. He came to know it in 2017. Defendants are likely to dispose the suit property to deprive plaintiff from his share. Hence he filed this application.

3] Non-applicant no. 1,2 and 5 filed their reply at exhibit no. 24 and denied the averment. They submitted that plaintiff was fully aware of the transaction 2014.They submitted that partition was taken place in 1998 and suit property came in share of defendant no.1.He has right to enjoy t and dispose of suit property. Suit is baseless and false. From rival contention of the parties and document on recored following point came for my consideration .I have recorded my finding thereon with reasons :-

| Sr. No. | Points | Finding |
|---------|---|-----------------------------|
| 1 | Does plaintiff prove that he has prima facie case ? | No |
| 2 | Does plaintiff prove that he has balance of convenience ? | No |
| 3 | Does plaintiff prove that he suffer irreparable injury? | No |
| 4 | What order | Application rejected |

As to point no 1 to 3 :-

4] Learned counsel for plaintiff argued that plaintiff is owner of suit property. He filed his written note of argument on exhibit no.29.I have gone through it. He submitted that he prima facie case and balance of convenience lies in his favour. Hence temporary injunction may be granted in his favour.

5] On the other hand learned counsel Mr. Akhande submitted that defendants are not intending to dispose the land. In partition plaintiff got 3 acre land. Application and suit is false. Hence liable to be rejected.

6] I have gone through the document filed by plaintiff and defendant .Heard both parties. From documents filed by plaintiff at exhibit no.4,name of defendant no. 1 shown on the basis of partition

in 1988. Plaintiff got some land through partition. There is no document prima facie show the title and possession of plaintiff on suit land. In such circumstances ,it can not be said that plaintiff has prima facie case and balance of convenience lies in his favour. He has not shown any case of irreparable loss. Hence I answered points no. 1 to 3 in Negative.

As to point no 4 :-

7] In view of the answers given to points no. 1 to 3 in negative. Applicant failed to show prima facie case,balance of convenience and irreparable injury in his favour hence I passed following order :-

ORDER

Application is rejected.

Umrer,

Date: 26.10.2018

(A.V.Pandit)

Jt. Civil Judge (Jr.Dn.)

Umrer.

CERTIFICATE

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

| | | |
|------------------------------------|---|------------|
| <i>Application heard on</i> | : | 17.09.2018 |
| <i>Order dictated on</i> | : | 26.10.2018 |
| <i>Transcription ready on</i> | : | 26.10.2018 |
| <i>Order checked and signed on</i> | : | 26.10.2018 |

Name of Stenographer : Mrs. S.D. Karemore

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