

R.C.S No.115/2016

Atharva & 1/Shivkumar & 1

**ORDER BELOW EXH. 05**

( Passed on 23-11-2016 )

1) Applicant Sau. Sheetal Amit Jaiswal, mother of applicant No. 1 and 2 has filed application for grant of temporary injunction under Order 39 Rule 1 and 2 R/w 151 of Civil Procedure Code on behalf of her sons. The non applicant No. 2 has filed his reply vide Ex. 19 and non applicant No. 1, 3 and 4 have filed their reply at Ex. 25.

2) Applicant has contended that the applicant No. 1 and 2 are the grand son and grand daughter of the N.A.No. 1 and son and daughter of N.A.No. 2 . The agricultural land, house property and plots owned by N.A.No. 1 are situated at village Panchgaon, Th. Umrer, District Nagpur. These applicants have their interest and shares in the above ancestral property. The N.A.No. 1 has sold out 2 Acre agricultural land situated at village Panchgaon and now he is trying to sell the remaining property. The mother of the applicant No. 1 and 2 objected for his act but he threatened to assault her. If he sold out ancestral property, applicants will be deprived from their legal rights, therefore, it is required to restrain the non applicants from alienating suit property till the disposal of suit.

3) The non applicant No. 1 , 3 and 4 in reply submitted that, the suit has been filed by applicants with collusion of N.A.No.

2 . Property bearing No. 693 is owned by deceased Nirmala and plaintiffs are having no shares in the same. Already partition of the house property has been effected. Already N.A.No. 2 has got his share in the agricultural land in the form of amount of Rs. 14,00,000/- therefore the applicants are not entitled for the partition and suit and application are not tenable. While N.A.No. 2 in reply at Ex. 19 submitted that the applicants are not having any prima facie case. They have intentionally and deliberately harassed this non applicant by filing this suit. Therefore, he prayed for rejection of the application.

4) On the rival contentions of both parties following points arose for determination and I have recorded my findings thereon, for the reasons mentioned below :-

**POINTS**

**FINDINGS**

- |  |                           |
|--|---------------------------|
| 1) Whether applicant proves that she has made a prima facie case ?                                   | <u>In affirmative.</u>    |
| 2) Whether balance of convenience lies in favour of applicant ?                                      | <u>In affirmative.</u>    |
| 3) Whether applicant proves that if present application rejected she would suffer irreparable loss ? | <u>In affirmative.</u>    |
| 4) What order  | <u>As per final order</u> |

## REASONS

### AS TO POINT NO. 1 to 3 :-

5) Heard learned counsels for both parties. The counsel for non applicant No. 1, 3 and 4 submitted to the Court that, they are not going to create any third party interest in the suit property, therefore they have no objection to allow the application. While counsel for non applicant no. 2 submitted that when the father of applicants is alive, no question arises to claim the partition by these applicants from N.A.No. 1 therefore suit is not maintainable. As the suit is not maintainable, no question arises to grant temporary injunction in favour of applicants.

6) After hearing and perusing documents filed by applicants on record it appears that the property is in the name of N.A.No. 1. He has sold agricultural land to one Keshav Raghute therefore it is quite natural to create apprehension in the mind of applicant regarding disposal of suit property by him. Whether applicants are entitled for partition ? this question will be decided on merit, but at this stage considering the nature of suit, it is required to protect the suit property which is in the name of N.A.No. 1. Hence, I concluded that the applicants have a prima facie case and the balance of convenience lies in their favour. If during the pendency of suit, property is disposed off by the non applicants and on merit it appeared that the applicants have interest in the property, naturally they will suffer irreparable loss. On the contrary, if application is allowed no prejudice would be

caused to the non applicants. Hence I answer **all three points in affirmative.**

In the result, I proceed to pass following order :-

O R D E R

- 1) Application is allowed.
- 2) Non-Applicants, their agents, servants or anybody on their behalf are hereby temporarily restrained from transferring suit property to any person or creating third party interest in the suit property till the decision of suit.
- 3) No order as to costs.

Date: 23-11-2016  
Place:- Umrer

( Ku. V.R.Jambhule )  
Civil Judge (Jr. Dn.),  
Umrer.