

ORDER BELOW EXH. 5

(Passed on 26th November, 2021)

1. By this application (Exh.5), the plaintiff is claiming temporary injunction to restrain the defendant No.15 from interfering with the possession of plaintiff over the suit property and for not to alienating the suit property or creating any encumbrances or third party interest therein.

2. Facts giving rise to this application are that the plaintiff has filed present suit for declaration, partition and permanent injunction. The suit property is ancestral property of plaintiffs. The suit property is not yet partitioned. Being the senior member of family, the defendant No. 1 was holding the suit property. On 01/02/2017, defendant No.15 came in the suit property and asked the plaintiff that he had purchased the suit property for Rs.3,60,000/- (Rs. Three lacs, Sixty thousand only) and plaintiff shall leave the suit property. On 17/02/2017, plaintiff issued legal notice to the defendant No.1 through learned Advocate Shri. R.L. Alone but defendant No. 1 not acted upon the notice. Thereafter, plaintiff came to know that the defendant No.1 by avoiding plaintiffs right had alienated the suit property in the name of defendant No.15. The plaintiff being the family members are in possession of suit property. Defendant No. 15 can not be inducted in to the possession of suit properties as the property is joint one. On 25/07/2017, the plaintiffs have issued legal notice to defendant Nos. 1 to 15 they have not replied nor acted upon the notice. Hence, the plaintiffs have filed present suit for declaration, partition and permanent injunction and also prayed for interim injunction to restrain the defendant from causing obstruction to the possession of plaintiff and for not to alienating or creating third party interest over suit property.

3. Defendant No. 15 appeared and resisted the suit by filing his say and contended that the defendant No.1 allotted 0.45 H.R property in survey No. 241/1 to his share. Defendant No. 1 has the sole and exclusive right to deal with the suit property. The name of defendant No. 1 was recored to the revenue record of suit property. The plaintiffs are not in possession of suit property. Defendant No.15 preyed for rejection of application.

4. Heard Shri R.D. Kindarle Ld. Advocate for the plaintiff and Shri. A.M. Nabira for the defendant No.15.

5. In view of the pleadings of the parties, material produced on record and arguments advanced at bar, following points arise for my determination. I have recorded my findings thereon for the reasons given herein below.

Sr.No.	Points	Findings
1.	Whether the plaintiff has made-out prima-facie case ?	Partly Yes.
2.	Whether balance of convenience tilts in favour of the plaintiff ?	Partly Yes.
3.	Whether the plaintiff will suffer irreparable loss, if injuncion is refused ?	Partly Yes.
4.	What Order ?	Application is partly allowed.

REASONS

6. **AS TO POINT NO.1:** The application is supported by an affidavit. The contention of the plaintiff that the plaintiff and the defendant No.1 to 8 are in relation are not denied by the defendant. Merely because the

revenue records contains the name of defendant No.1 to the suit property does not mean that the plaintiff has no right in the suit property. The plaintiff claims the suit property is in his joint-possession and joint family property. It is to be noted that the relationship of plaintiff with defendant is not denied by the defendant. But, plaintiff have not filed documents to show his joint-possession over the suit property.

7. Be that as it may, the question whether the suit property is absolute property of defendant or joint family property of the plaintiff requires full fledged trial. As such the plaintiff has successfully raised triable issues and I find *prima facie* case in favour of the plaintiff. Hence, point no. 1 is answered in the affirmative.

8. **AS TO POINT NO 2 AND 3:** The recitals in affidavit of plaintiff are evident to *prima-facie* show that defendant is in haste to alienate the suit property. Normally, during the pendency of a substantive suit where rights to immovable properties are in dispute, status quo cannot be allowed to be altered which includes creation of third party interests. If, temporary injunction is not granted, it may result into multiplicity of proceedings inasmuch as the transferee *pendente lite* may apply for impleadment, which will result in delay in proceedings of the suit. Plaintiff has made-out *prima-facie* case in their favour, the implication of which is that at least at this stage, it will be apt to say that no loss would be caused to the defendant if he is restrained in comparison with the loss apprehended to be caused to the plaintiff if no injunction is granted. Thus, the balance of conveniences tilts in favour of granting interim relief. Hence, Point No. 2 and 3 are answered in the affirmative.

9. **AS TO POINT NO.4:** In view of my findings recorded to Point no. 1 to 3, the application Exh.5 deserves to be allowed. The costs of this application may leave to be considered at the time of adjudication of the costs of entire litigation. In the conclusion, I pass the following order.

ORDER

- A) The application [Exh.5] is Partly allowed.
- B) Issue temporary injunction restraining defendant No.15 from alienating or creating third party interest or encumbrances on the suit property i.e. i.e Survey No. 249/1 area 0.45 H.R. situated at Village-Titur, Tah- Kuhi, Dist.- Nagpur in any mode of transfer of property till decision of this suit.
- C) Costs in main cause.

Date: 26/11/2021.

(D.U. Rajput)
Civil Judge, Junior Division,
Kuhi.

CERTIFICATE

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

Name of the Stenographer : Nagappa Gurapadappa Majage

Court Name : J.M.F.C. & C.J.J.D., Court,
Hadgaon.

Date : 06/02/2015

Order signed by the Presiding Officer on : 10.02.2015

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