

MHNG130010022023



Spl. Civil Suit No. 102/2023

(Old. Spl.C.S. No. 722/2019)

(Kalpana Jalandhar Rode and ors. Vs Sadhu Mahadev Bhole and ors.)

(Appearance for Plaintiffs Ld. Advocate Shri.P. B.Awchat

Appearance for Defendants Ld. Advocate Shri. L.G.Mandape)

ORDER BELOW EXH. 80

(Passed on this 8th day of July, 2024)

This is an application by plaintiff under Order 39 R(1)(a) of Code of Civil Procedure (CPC) for an injunction restraining defendant no. 1 to 5 from alienating suit properties to the third parties, in any manner till the decision of the suit.

2. It is the case of the plaintiffs that, suit properties are ancestral properties and they have share in the suit properties by birth. All plaintiffs are sisters and defendant no.1 is their father. Defendant no.2 is their real brother. Defendant no. 3 is son of defendant no. 2. Defendant no. 4 and 5 are purchasers. The suit properties had been fallen in the share of defendant no.1 after the partition being effected between defendant no.1 and his brothers.

3. On 7/06/2019, plaintiffs asked for partition to the defendant no.1. the defendant no. 1 refused. On the contrary, defendant no. 1 sold out part of the suit property to the defendant no.4. The defendant no.1 also made gift deed of part of suit property in favour of defendant no.2 and 3. The defendant no.1 again sold out part of suit property to the defendant no.5 on 4/04/2022. The defendant no.1 is alienating suit properties without giving share of plaintiffs. Therefore, under this circumstances, plaintiffs are

constrained to move this application to restrain defendant no.1 to 5 from further alienating suit properties to the third party till the decision of the suit.

4. On the other hand, defendant no.1 to 3 have filed their reply below Exh.84 stating that part of the suit properties had been sold for the legal necessity of the family of defendant no.1. The defendant no.1 has right to alienate the suit properties as he is karta of the family. Therefore, under this circumstances, present application may be rejected.

5. Whereas, defendant no. 4 has filed her reply below Exh.85 stating that claim of the plaintiffs is out of limitation as plaintiffs are challenging sale-deed being executed in the year 2005. The sale-deed being executed in favour of defendant no.4 is a valid sale-deed as there was no stay order in any proceeding. Therefore, present application may be rejected.

6. The defendant no. 5 has adopted his written statement being filed at Exh.81 as his reply to this application. The defendant no. 5 has stated that defendant no.1 was karta of the family and he sold out part of the suit properties for legal necessity of his family. The defendant no. 2 is consented to the sale-deed. Therefore, under these circumstances, the defendant no.5 prayed for rejection of the application.

7. Considering the nature of controversy, the following points arise for my determination and I have recorded my findings thereon with reasons as follows :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether there is a prima facie case in favour of plaintiffs ?	In the affirmative
2.	Whether there is balance of convenience in favour of plaintiffs ?	In the affirmative

3.	Whether plaintiffs would suffer irreparable loss, if interim relief is refused ?	In the affirmative
4.	What order ?	Application is allowed.

REASONS

AS TO POINT NO. 1 TO 3 :-

8 All points are interconnected to each other, therefore, they are required to be taken up together. In order to seek interim injunction, plaintiffs must show that they have prima facie case and balance of convenience in their favour. In addition to this, plaintiff must further show what hardship would be caused to them if injunction is not granted.

9. Before considering prayer of plaintiffs, the settled position of law on this point, needs to be mentioned herein. The cardinal principles for grant of temporary injunction are spelt out by the Hon'ble Apex Court in landmark judgment of **Dalpat Kumar vs. Pralhad Singh [(1992) 1 SCC 719]**, wherein it has held that-

“It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to

occur from withholding the injunction will be greater than that would be likely to arise from granting it”.

10. It is pertinent to note here that the party is not entitled to an order of injunction as a matter of right. The Hon'ble Apex Court in the case of **Shiv Kumar Chadha Etc. Etc. vs. Municipal Corporation of Delhi [1993 SCC (3) 161]** reiterated the said dictum and held that;

“It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit”.

11. On this legal position, case of the both parties are required to be considered herein. It is case of the plaintiffs that they have share in the suit properties. On the other hand, the case of the defendants that defendant no.1 was a karta of the family and he had right to sell out suit properties for legal necessity of his family.

12. Considering submissions of both sides, I must mention here that it is not disputed fact between the parties that suit properties are ancestral properties. The relationship between the parties is also admitted fact.

13. The plaintiffs being coparceners are having right, by birth in the suit properties as it is an ancestral properties. It is case of the defendants that defendant no.1 was the Karta of the family and he was

alienating suit properties for legal necessity of his family. While considering the submissions, I must mention here that whether defendant no.1 was a Karta of the family and he was selling suit properties for legal necessity of the family, is question of trial and same cannot be considered without evidence at this stage.

14. Apart from this, in my opinion, defendant no.1 was not entitled to sell out part of the properties more than his approximate share. It is settled position of law that, coparcener can alienate his undivided share, but purchaser has to file suit for general partition and separate possession for the possession of his purchased portion.

15. In the instant case, it is seen that there had been execution of sale-deed in favour of defendant no.4, execution of gift-deed in favour of defendant no. 2 & 3 and execution of sale-deed in favour of defendant no.5. All these transactions being happened without parting share of the plaintiffs. If, execution of sale-deeds/transactions is going on, interest of the plaintiffs in the suit properties would be substantial affected and same cannot be compensated later on. Thus, in my opinion, the interest of the plaintiffs in the suit properties is required to be protected at the stage.

16. It is one of the defence of defendant no.4 that, suit is out of limitation. while considering the submission, I must mention here that question of limitation is mixed question of fact and law and needs to be decided after evidence. Therefore, submission of Ld. Advocate of defendant no.4 cannot considered at the stage.

17. Moreover, execution of gift-deed on 4/05/2018 in favour of

defendant no.2 and 3 cannot be termed as a transaction being executed for the legal necessity of the family of defendant no.1 rather it would reflect that it was for depriving share of the plaintiffs.

18. Thus, under this circumstances, I am inclined to hold that the grievances being raised by the defendants are questions of trial and same needs to be considered at the time of trial.

19. Thus, I am inclined to hold that, the plaintiffs have prima facie case and balance of convenience in their favour at this stage. Therefore, if an interim relief is not granted to the plaintiffs, they would suffer irreparable loss or injury at this stage and same cannot be compensated later in terms of money. Therefore, interest of plaintiffs is required to be protected at this stage. Hence, I answer all the points in favour of plaintiffs.

AS TO POINT NO. 4 :-

20. In view of findings to point No. 1 to 3, the application is deserved to be allowed. Hence, I proceed to pass following order-

ORDER

1.	Application is allowed.
2.	The defendant no.1 to 5 or any person on behalf of them or through them are hereby temporarily restrained from alienating suit properties (as described in para No.1 of the plaint or schedule of the property) to the third parties, in any manner till the decision of suit.
3.	Cost in cause.

Nagpur.
Dated : 08.07.2024.

(S. M. Sarode)
Civil Judge Senior Division,
Ramtek.

CERTIFICATE

I affirm that, the contents of this PD.F. file of order are word to word, as per original order.

Name of Stenographer :

R. J. Khobragade, Stenographer (Grade II)