

MHNG140002882016

Regular Civil Suit No.38/2016
Kum.Komal/Waman and others

ORDER BELOW EXH.63

(Passed on 25th day of February, 2020)

1. In order to restrain the defendants from alienating and creating any third party interest in the property in dispute during the pendency of this suit, the plaintiff has filed this interlocutory application under Order XXXIX Rules 1 & 2, r/w section 151 of C.P.C.

2. The facts of the case, in short, are as under:-

That the defendant no.1 Waman Bhagat is her grandfather i.e. father of her deceased mother Sindhubai. Waman Bhagat has four children namely Moreshwar Bhagat (deceased), Dnyaneshwar Bhagat (deceased), Sindhubai (deceased) and Revati (defendant no.7). Defendant nos.2 to 4 are the legal heirs of deceased Moreshwar, defendant nos.5 and 6 are the legal heirs of deceased Dnyaneshwar and plaintiff is the sole heir of deceased Sindhubai.

3. The suit properly i.e. field bearing survey no.462 area 2.22 HR, situated at Karambhad, Tahsil Parshioni, District Nagpur is originally owned by the great grandfather of plaintiff and father of Waman Bhagat namely Bajirao Bhagat. Hence, it being an ancestral property, the plaintiff after the death of her mother Sindhubai is entitled for her one fifth share in it. The plaintiff time and again requested the defendant no.1 father to partition the suit property, but

he did not pay any heed. The plaintiff came to know that the defendant no.1 in order to deprive the plaintiff and other co-parceners from their legitimate share in the suit property, executed one registered will deed dated 16.08.2019 in favour of his one of the daughter Revati Raut (defendant no.7), who is also one of the co-parcener in the suit property alongwith plaintiff and others. Therefore there is apprehension that the defendant no.7 may alienate the suit property and may create third party interest in the suit property.

3. Despite service of notice, defendant no.7 did not turn up before the Court, therefore the application proceeded without her say.

4. Heard the learned counsel for the plaintiff at length. No arguments are tendered from the side of defendants.

5. Having perused the application and the relevant documents placed on record, following points arise for my determination and I have recorded my findings against the same for the reasons mentioned as under :-

SN	Points	Findings
1	Does the plaintiff prove that she has prima facie case ?	Yes
2	Does the plaintiff further prove that balance of convenience lies in her favour ?	Yes
3	Does the plaintiff prove that she would suffer irreparable loss if temporary injunction is not granted in her favour ?	Yes
4	What order ?	Application is allowed as per final order.

REASONS

AS TO POINT NO.1:

6. The defendant no.1 Waman Bhagat is dead. Moreover, the suit proceeded without the written statement of defendant nos.2 to 4 and it proceeded ex parte against the defendant no.7. Only the written statement of defendant nos.5 and 6 could come on record. They have filed their written statement vide Exh.52 wherein they have admitted that the suit property is an ancestral property. Apart from it, the plaintiff has filed some documents vide list of documents Exh.4. Its bare perusal prima facie probablises the claim of plaintiff that the suit property is an ancestral property of plaintiff and defendants. Therefore, the plaintiff has prima facie succeeded to establish on record that the suit property is an ancestral property and she alongwith defendants has right, title and interest in it. In other words, the plaintiff has succeeded to establish on record that she has prima facie case in her favour. I, therefore, record my findings as against point no.1 in the affirmative.

AS TO POINT NO.2:

7. It is settled position that while deciding an application for grant of temporary injunction, the Court has to take into consideration whether there is bonafide contest between the parties and serious question is required to be tried. The plaintiff has filed this suit for partition of the suit property and separate possession of her share in it. It means relevant provisions of Hindu Succession Act would come into picture. Therefore, in my opinion, the balance of

convenience lies in favour of plaintiff. I, therefore, record my findings as against point no.2 in the affirmative.

AS TO POINT NO.3:

8. While recording my findings as against point nos.1 and 2 I have come to the conclusion that the plaintiff has prima facie succeeded to establish on record that she has right, title and interest in the suit property. Therefore, in my opinion, the suit property needs to be protected till the decision of this suit. One of the object of injunction is to maintain status-quo as on the date of the suit, so that the parties can go to trial and after recording evidence the trial court can decide the suit. Having regard to this settled position, I am of the considered view that in order to resolve the controversy as mentioned above, the status-quo needs to be maintained. If the defendant no.7 Revati Raut is not restrained, then definitely the nature of the suit property would change and the plaintiff would suffer irreparable loss which cannot be compensated in terms of money. Moreover, it would result in multiplicity of litigations. I, therefore, record my findings as against point no.3 in the affirmative.

In view of the discussions noted above, I am of considered view that the plaintiff succeeded to establish triple test for getting the interim relief of temporary injunction. In such circumstances, I am of the considered view that the interlocutory application filed by the plaintiff deserves to be allowed. Accordingly, I proceed to pass the following order:-

ORDER

1. The application Exh.63 is hereby allowed.

2. The defendant no.7 Revati Raut is hereby restrained from alienating the suit property or from creating any third party interest in the suit property, till the disposal of the suit.
3. Costs in cause.

Parseoni.
Date-25.02.2020.

(N.R.Bhalgat)
Civil Judge, Jr.Dn., Parseoni,
Tahsil-Parseoni, District,Nagpur.

Argument heard on	16.01.2020
Order passed on	25.02.2020
Transcription ready on	25.02.2020
Order checked and singed on	25.02.2020

CERTIFICATE

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

Name of Stenographer-Abhijit Yeshwant Kulkarni