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R.C.S. No. 12/14

Order passed below Exh. 5

The plaintiffs have moved this application seeking temporary injunction restraining defendant nos. 1, 2 from alienating the suit properties.

2] The plaintiffs state that, the landed properties bearing block nos. 207, 208 situated at village Palkhed, Tal. Niphad, Dist. Nashik (hereinafter referred to as "the suit properties") were purchased in the name of Sunil Jadhav (husband of defendant no. 1) and defendant no. 3 Bhausahab for the benefit of joint family which consists of plaintiff no. 1 as father, plaintiff no. 2 as mother and plaintiff no. 3, defendant no. 3 as brothers of deceased Sunil. Thus, the suit properties were owned and possessed by the joint family of the plaintiffs, deceased Sunil and defendant nos. 3, 4.

3] Defendant no. 1 is wife whereas defendant no. 2 is daughter of deceased Sunil.

4] On 05/11/2009 Sunil passed away in an accident. The names of defendant nos. 1 and 2 were mutated in the revenue records of the suit properties as legal heirs of deceased Sunil. Taking undue advantage of the same, defendant no. 1 is trying to grab the suit properties denying the interest of the plaintiffs. Therefore, the plaintiffs have presented this suit seeking temporary injunction against defendant nos. 1 and 2 to restrain them from alienating the suit properties till disposal of the suit.

5] Defendant nos. 1 and 2 have resisted the suit by filing their

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written statement at Exh.28. They state that, deceased Sunil acquired 2/3rd share / interest in the suit properties on his own. Thus, after demise of Sunil, defendant nos. 1, 2 are having absolute interest over said 2/3rd share of Sunil which was acquired by him as his self acquired properties.

6] The plaintiffs and defendant nos. 3, 4 are having no interest in the 2/3rd share of defendant nos 1 and 2 in the suit properties. With this, they have prayed to reject the application.

7] The points for determination alongwith my findings thereon are as under -

<u>Points</u>	<u>Findings</u>
1] Do the plaintiffs prove that, prima facie case is in their favour ?	In the affirmative.
2] Do they further prove that, the balance of convenience lies in their favour ?	In the affirmative.
3] Do they further prove that, they would suffer irreparable loss and injuries, if injunction is refused ?	In the affirmative.
4] What order ?	As per final order

Reasons

8] Heard both the learned advocates. Considered submission. Perused the record.

As to Point nos. 1 to 3 :-

9] These points are interlinked with each other, therefore, I

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discuss these points together to avoid repetition.

10] The defendants have admitted the relation amongst the plaintiffs and the defendants. The defendants have contended that, deceased Sunil purchased the suit properties by contributing the amount equal to 2/3rd share while purchasing the suit properties alongwith defendant no. 3. Thus, the defendants have admitted a fact that, defendant no. 3 is having some interest in the suit properties. Furthermore, existence of the joint family, when deceased Sunil was alive, create probability of acquisition of the suit properties with the assistance of joint family income. Neither the plaintiffs nor the defendants have adduced sufficient prima facie evidence at this stage to prove their respective points. But, to protect the nature of the suit properties, it would be proper to restrain the defendants from alienating the suit properties i.e. from selling so as to create third party interest in the suit properties. On refusal of said claim, there would be a multiplicity of proceedings and it would be against the larger interest of both the sides. If the application is allowed, the nature of the suit properties will be protected and it would not cause prejudice as such to the defendants. Hence, on a prima facie consideration, as discussed hereinabove, point nos. 1 to 3 are answered in the affirmative.

As to Point no 4 :-

11] In view of the discussion so far made, in answer to point no. 4, following order is passed,

Order

1] Application (Exh. 5) is allowed as under.

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- 2] Defendant nos. 1, 2 (Manisha, Vaishnvi) are hereby temporarily restrained from alienating / transferring i.e. selling out the suit properties, in any way, till further orders.
- 3] Defendant nos. 1, 2 (Manisha, Vaishnavi) are hereby temporarily restrained from creating encumbrances / charge over the suit properties, in any way, exceeding their share / interest, in the suit properties till further orders.
- 4] Both the sides to note accordingly.
- 5] Costs in cause.

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(V. B. Gulve Patil)

Jt. Civil Judge Junior Division,
Pimpalgaon (B).

Date :- 04/04/2015.

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