

ORDER BELOW EXH.5

1. This is an application, by the plaintiff, seeking interim injunction, restraining defendant Nos. 1 to 5 from alienating the suit properties till disposal of the suit.

2. It is contended that the plaintiff is seeking relief of partition in respect of suit properties mentioned in para No.1-A and 1-B of plaint, possession and injunction. According to plaintiff, the defendant No.1 is his father and defendant no.2 to 5 are his brothers and sister. The suit properties mentioned in para 1A of the plaint at serial no. 1 to 10 are ancestral properties and the properties mentioned at serial no. 11 to 14 and para 1B of the plaint are purchased out of the joint nucleolus of their family. Hence all suit properties are ancestral properties and plaintiff has undivided share in the suit properties.

3. It is further contended that, the father of mother of plaintiff and defendant no. 2 to 4 deceased Shankar Zoman had no child except mother of plaintiff and defendant no 2 to 4 viz. Kamalabai. When the plaintiff was at the age 1 ½ year he went with him at kurnoli. Defendant no. 1 and Kamalabai had given permission for the same. The deceased Shankar Zoman during his lifetime take care of plaintiff properly and performed the marriage of plaintiff with the consent of defendant no. 1 and Kamalabai. Deceased Shankar Zoman has two wives namely Laxmibai and late Satyabhama. The second wife of deceased Shankar Zoman is maintaining by plaintiff. During the lifetime of Shankar Zoman, he transferred the properties bearing Nos. 126, 146, 147, 150 and 154 in the name of plaintiff by giving application to revenue authority. Hence, plaintiff become owner of that properties and the said thing was

knowing by Kamlabai and defendant No. 1 to 5. At the same time, plaintiff was also helping to the defendants in their agricultural work of the suit properties at Sukene and Mohadi. The suit properties are ancestral properties and plaintiff has share in the suit properties. Defendants are trying to alienate the suit properties by creating third party interest to deprive his share and hence, he has filed application for interim injunction restraining them to create third party interest by way of injunction. He has prima facie case, balance of convenience lies in his favour and therefore, he prays to grant the application.

4. The defendant No.1 to 5 have resisted the application by filing their say vide Exh.16 and denied that the suit properties are ancestral properties. According to defendants, some of the suit properties are self acquired properties of defendants. The properties mentioned in para 1A of the plaint at serial No. 1 to 10 are not ancestral properties out of that properties certain properties are purchased by defendant no. 1 from his own income. The properties mentioned at serial No. 11 to 14 of para 1A of the plaint are self acquired properties of defendant no. 2 to 5. plaintiff has no concern with that properties. The real fact is that the father of mother of plaintiff and defendant no. 2 to 4 deceased Shankar Zoman had no child except mother of plaintiff and defendant no 2 to 4 viz. Kamalabai. The plaintiff was residing with Shankar Zoman at kurnoli. Plaintiff was also residing at Sukene and Mohadi, due to love and affection of Kamlabai. But he was not helping in cultivation of the suit properties. In fact, Defendant no. 1 and Kamalabai was taking care of the plaintiffs and family of Shankar Zoman. During the lifetime of deceased Shankar Zoman, plaintiff has illegally mutated his name to the properties bearing Nos. 126, 146, 147, 150 and 154 by way of mutation entry No. 394 and the said entry was done only on the basis of application. Plaintiff by taking disadvantage of illiteracy of Shankar Zoman and in collusion with revenue authority, recorded his name to record of said properties. And now plaintiff wants to acquire the suit properties by claiming his share in the suit properties.

5. All suit properties are not ancestral properties, some of the suit properties are purchased by the defendants from their own income, the plaintiff has no any right to ask share in their self acquired properties. He has right over the ancestral properties only. According to defendants, the plaintiff has no prima facie case, nor balance of convenience lies in their favour and hence, requested to reject the application.

6. Following points arises for my determination and I have recorded my findings against each of them for the reasons discussed below :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiff has established prima facie case ?	Yes
2. Whether the balance of convenience lies in favour of plaintiff ?	Yes
3. Whether plaintiff would suffer irreparable loss if temporary injunction is refused ?	Yes
4. What order ?	As Per Final Order....

REASONS

7. AS TO POINTS NO.1 TO 3 :-

The plaintiff is seeking relief of partition and possession and injunction as to suit properties. It is the contention of plaintiff that it will take time to commence trial and dispose of the suit on merits. During that period, defendant Nos. 1 to 5, who are possessing the suit properties, are going to dispose of the suit properties and therefore, he will suffer irreparable loss. Defendant Nos. 1 to 5 resisting on the point that suit properties are self

acquired properties, hence plaintiffs does not have any interest in the suit property. On this count it is argued that, plaintiff was residing with the father of plaintiff's mother Shankar Zoman since long and it is also admitted to plaintiff. During the lifetime of deceased Shankar Zoman, plaintiff has illegally mutated his name to the properties bearing Nos. 126, 146, 147, 150 and 154 by way of mutation entry No. 394 and the said entry was done only on the basis of application. Plaintiff by taking disadvantage of illiteracy of Shankar Zoman and in collusion with revenue authority, recorded his name to record of said properties. The Shankar Zoman has only one daughter viz. plaintiff's mother Kamlabai and wife namely Laxmibai, hence they are having right over the said properties as legal heirs. But the plaintiff illegally mutated his name to that properties and now plaintiff wants to acquire the suit properties by claiming his share in the suit properties. All suit properties are in possession of defendants since long and they are cultivating the same. Plaintiff has no concern with the suit property and therefore question would not arise as to claiming share in the suit properties. Therefore, he would not get interim relief thereof. On the other hand, it is argued on behalf of plaintiff that the plaintiff came with clean hands. Hence, he has not conceal this fact that, he was residing with his grand father Shankar Zoman. But it is his contention that, though he was residing with his grand father, he was helping to the defendants in cultivation of the suit properties and as the suit properties are ancestral properties he is having right and interest over the suit properties.

8. It is pertinent to note here that, the relationship between the parties is admitted. So far as nature of the suit properties is concerned, it is contended that, out of the all suit properties some of the suit properties are ancestral properties. They further contended that, the suit properties bearing Nos. 174 and 268 are self acquired properties of defendant no. 2, suit property bearing No. 201/2 is self acquired property of defendant no 3 , suit property bearing No. 68 is self acquired property of defendant no. 4 and suit property

bearing No. 99 is self acquired property of defendant no. 1. They are much emphasizing on that, as the plaintiff was not residing with them, hence, he has no concern with the suit properties. Moreover, Plaintiff has filed 7/12 extracts of the suit properties and also relied upon mutation entry no. 1477. On perusal of M. E. No. 1477, it appears that, after the death of father of defendant no. 1 the names of the defendant no. 1 and others legal heirs were mutated to the revenue record of the suit properties bearing Gat Nos. 70, 187, 200, 257, 263 and 416 of deceased Shriram Sukhdev Fugat. And on perusal of 7/12 extracts of the other suit properties, the names of other co-sharer of the suit properties are also appeared on it. On the contrary defendants have not filed any documents from which it can be seen that, suit properties became their self acquired properties. Hence on perusal of documents produced by plaintiff, it prima facie appears that, except the suit properties bearing Nos. 174,268,201/2,68 and 99 other suit properties are ancestral properties.

9. In this matter, it is pertinent to note that, it is not the plea of defendants that suit properties have been previously partitioned and accordingly, they have got their separate share therein. Since, there is no plea of prior partition, it is open for defendant Nos. 1 to 5 to contest the matter. On the other hand, the relation between the parties is admitted thing, therefore, plaintiffs and defendant no. 1 to 5 are co-parceners, and having right and interest in the suit properties. The plaintiff, if at all, succeed, would get his share in the suit properties. However, at this juncture, he is seeking relief in respect of all suit properties, wherein admittedly, defendant Nos. 1 to 5 are also having share. Undivided interest can also be transferred. Interim injunction would certainly a restraint for the same. Therefore, said aspect is also required to be considered. It is argued by Learned counsel for plaintiffs that if the suit properties are alienated, then, plaintiff will have to chase the purchasers, and they will be required to be impleaded as party to the suit. The matter will prolong in the whole exercise, and ultimately, plaintiff will suffer irreparable

loss. So far as principle of Lis Pendence is concern, there is adequate protection to the plaintiff, in respect of alienation of suit property, during the pendency of suit U/s 52 of Transfer of Property Act. But, defendants are admitted that, some of the suit properties are ancestral properties and plaintiff has right over that suit properties. Therefore, considering the admission of defendants granting of interim injunction would not caused irreparable loss to Defendant nos. 1 to 5. The balance of convenience lie in favour plaintiff. I, therefore, answer point Nos. 1 to 3 accordingly.

As to point No. 4 :-

10. In view of findings of above points, application of the plaintiff is liable to be allowed partly. Therefore, in answer to point No. 4, I pass following order.

Order

- 1) The application is rejected.
- 2) Defendant No.1 to 5 are hereby temporarily restrained from alienating the suit properties mentioned at serial 1 to 10 of para 1A of the plaint and from creating third party interest therein, till disposal of suit.
3. Cost in cause.

Place :- Dindori
Date :- 26/04/2018

(Smt.G.S.Bora)
Jt.Civil Judge, J.D., Dindori.