

R.C.S. No. 163/2015
Nirmala Vs. Hastimal.
CNRNo.MHNS160012072015.

Order Below Exh 108.

1. In the present suit for declaration, partition and perpetual injunction, plaintiff has filed an application (Exh.108) for granting status-quo in respect of suit properties. Plaintiff submitted that, during the pendency of this suit defendant No. 3 Ashok and defendant No. 4 Jagdish, by taking disadvantage of the old age and ill-health of their father, i.e., defendant No. 1 Hastimal @ Babushet Fulchand Burad got executed a registered will-deed bearing No. 962/2023 dated 29/03/2023. Plaintiff further submitted that, she is a daughter of defendant No. 1 Hastimal and she has undivided share in suit property. Defendant Nos. 3 & 4 got executed a registered will-deed from defendant No.1 just with the malafide intention of keeping plaintiff away from taking her share in suit properties. Plaintiff further submitted that, defendant No. 1 Hastimal has died on 22/09/2023 and now defendant No. 3 & 4 are trying to record their name over the suit properties by taking disadvantage of a registered will-deed. Furthermore, they are trying to transfer the suit properties. Hence, under such facts and circumstances, it is necessary to pass a status-quo order directing defendant Nos. 3 & 4 not to deal with the suit properties in any way.

2. Defendant Nos. 3 & 4, by filing their Say (Exh.113) has opposed the application (Exh.108) of plaintiff and specifically contended that, there is no cause of action for the instant application. Defendant Nos. 3 & 4 further contended that, defendant No. 1 has voluntarily executed a registered will-deed in their favour and the said

will-deed has not yet been canceled by any competent Court and there is no litigation pending in respect of the said will-deed before any Court. Defendant Nos. 3 & 4 further contended that, all the properties mentioned in a will-deed are not included in the instant suit, therefore, this Court is having no power to pass any order in that respect. Hence, the application (Exh.108) filed by plaintiff is liable to be rejected.

3. I have perused the application (Exh.108) and Say filed thereon. Heard Advocates of both the parties. I have also gone through the record of this suit. On perusal of the plaint in this suit it appears that, plaintiff has filed this suit for declaration, partition and perpetual injunction. Plaintiff has averred that, the suit properties are ancestral and joint family properties of plaintiff and defendants and therefore, she has undivided share in suit property. On the other hand, defendant Nos. 3 & 4 have denied the plaintiff's averment regarding the nature of suit property. Thus, there is a dispute between plaintiff and defendants regarding the nature of suit property. It is a matter of record that, the instant suit is pending for plaintiff's evidence. Furthermore, now it is also an admitted fact between the parties regarding the execution of will-deed dated 29/03/2023 (though its genuineness has been challenged by plaintiff), wherein, suit properties are also one of the properties. Thus, when the instant suit has been filed by plaintiff for partition and separate possession of her undivided share in suit properties and when during the pendency of this suit defendant No. 1 has executed a will-deed in favour of defendant No. 3 & 4 in respect of suit properties, then under such facts and circumstances, it can be said that, there is a danger to the plaintiff's interest and under such circumstances if defendant Nos. 3 & 4 make any transaction in respect of suit properties on the basis of registered will-deed, then there is a

possibility of further complexity in this suit. This possibility gets corroboration when defendant Nos. 3 & 4 aggressively opposes the instant application of plaintiff for granting status-quo.

4. It is to be noted that, defendants have admitted their relation with plaintiff. Furthermore, there is dispute regarding the nature of suit properties between the parties. Therefore, under such facts and circumstances, the the legality and executability of will-deed dated 29/03/2023 is under cloud. Furthermore, plaintiff has challenged the genuineness of such will-deed. Hence, considering all these aspects, at this juncture, in order to avoid the multiplicity of proceedings and further complications and more particularly, in order to protect the plaintiff's purpose behind the institution of this suit, it would be proper to grant status-quo in this suit directing the defendant Nos. 3 & 4 to not to deal with suit properties in any way, till further order. Hence, I pass following order :-

ORDER

1. Application Exh.108 is allowed.
2. Defendant Nos. 3 & 4 are hereby restrained from dealing with the suit properties in any way and creating any third party interest over the suit properties in any way, till the further order of this court.

Date : 24.11.2023.

(Prasad B. Joshi)
Civil Judge (Jr.Dn.), Chandwad.