

Order below Exh.17

By the application, the plaintiff sought temporary injunction as per Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908.

2. In short, the plaintiff's case is that, the suit lands forming the parts of block Nos.922, 921, 618, 621, 619, 598, 810, and 912 of village Nirhale of Sinnar taluka are the ancestral and joint family properties of him and defendant Nos.1 to 7. It is alleged by the plaintiff that, the partition deed dated 25.05.2016 with regard to the suit lands came to be effected by exercising deception and fraud upon his father late Somnath Waman Ghuge by defendant Nos.1 to 5. The said partition is inequitable one. Yet no revenue entries came to be effected on the basis of the said partition deed or it is yet not been implemented. Then, the consequent correction deed of partition deed dated 19.01.2016 came to be executed by personification by defendant Nos.1 to 5 by keeping present a fake person in the place of his father. Therefore, both the deeds are illegal. Therefore, the plaintiff filed the suit for declaration that, partition deed dated 25.05.2016 and its correction deed dated 19.01.2016 are illegal, for partition, and permanent injunction. In the suit, by way of interim relief, the plaintiff sought to restrain defendant Nos.1 to 5 from alienating the suit lands and obstructing his joint possession over them, till the decision of the suit.

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3. Defendant Nos.1 to 5 resisted the application by filing their say vide Exh.21. According to them, the suit lands have been duly partitioned among its co-owners vide registered partition deed dated 25.05.2016 with registered correction deed dated 19.01.2017. Therefore, the suit itself is not maintainable. The plaintiff filed the suit with sole intention to harass the defendants. There is no prima facie case in his favour. Ultimately, defendant Nos.1 to 5 sought the rejection of the application.

4. Points for determination along with my findings thereon, are as follows,

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether there is prima facie case in favour of the plaintiff ?	...No.
2. In whose favour, the balance of convenience tilts ?	...In favour of defendant Nos.1 to 5.
3. In comparison, to whom, greater hardship would cause by allowing or rejecting the application ?	...In favour of defendant Nos.1 to 5.
4. What order ?	...The application is rejected.

REASONS

5. Heard the learned counsel for both side. Both the parties relied on certain documents, and they will be referred hereinafter, if required.

As to Point Nos.1 to 3,

6. Since these points are intermingled, they are being

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discussed together for the sake of convenience and to avoid repetition. Before venturing upon the factual discussion, it would be just to notice legal position with regard to temporary injunction. Law of injunction is well settled that granting or refusing to grant temporary injunction is governed by three well established principles, (a) Whether prima facie case has been made out; (b) Whether balance convenience is in their favor; and (c) whether petitioner will suffer irreparable injury, if temporary injunction is not granted. The party who seeks aid of injunction must show that the act complained of is in violation of his rights, and whether there is fair, and substantial question to be decided by the parties, and there is bona fide contention between the parties. If such contentions are available, then relief needs to be granted. It then becomes the duty of the Court to consider the material placed before granting or refusing to grant injunction and consider the documents if any, before an interim relief can be passed. The prima facie case does not mean a case to succeed but which fairly needs an inquiry. At the time, while granting interim relief the court has also to take into account whether the interim relief claimed is in aid of final relief so as to maintain status quo ante or preserve the status of parties (Ref. **Deshmukh and Co. vs Avinash: 2005(3) Mh.L.J 387**).

7. It to be noted that, the suit lands came to be partitioned by a registered partition deed dated 25.05.2016 and its correction deed dated 19.01.2016. These are registered documents. The plaintiff's case of fraud and personification is vague one, without any specification as required by Order 6 Rule 4 of the Code of Civil Procedure. Apart from that, those pleas could be

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considered after trial, and not at this interim stage of the suit. The plaintiff filed the suit in 2022 after much delay of effecting the said partition deeds in 2016. The person sleeping over his rights for long time, not entitled for equitable relief of injunction. Delay defeats equity. Hence, I do not find prima facie case in favour of the plaintiff as the suit lands have already been partitioned among its co-owners, and they are not remained to be joint family property of them.

8. Since, there is no prima facie in favour of the plaintiff, he would not be entitled for interim protection as prayed. The aspects of balance of convenience, and irreparable loss do not tilt in favour of the plaintiff, and rather, they tilt in favour of defendant Nos.1 to 5. In view of this entire discussion, point No.1 is being answered in the negative, and point Nos.2 and 3 are being answered accordingly.

As to Point No.4,

9. In view of my aforesaid findings to point Nos.1 to 3, the application is liable to be rejected. The cost of the application be decided as per final decision of the suit. In result, in answer to point No.4, I pass the following order,

ORDER

1. The application is rejected.
2. The cost in cause.

Date : 03.01.2024.

Sd/-xxx
(M. M. Gadiya)
Civil Judge, S.D., Sinnar.