

Order below Exh.05

This is an application filed by the plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 ('C.P.C.' In short).

Brief facts as mentioned in the application are as under :-

2. The properties which includes agricultural land at Deopur, Tal.Sinnar, house property and open properties at Musalgaon, Deopur and Sinnar are the subject matter of the suit as well as this application. These properties have been specifically described in para 1A to 1D in this application. (Hereinafter these properties are referred to as the “***suit property***” for the purpose of brevity).

3. The plaintiffs submit that, they have claimed the partition and separate possession as well as perpetual injunction in the suit. They have also prayed that, two relinquishment deeds and alleged partition deed is not binding on their share. Defendant No.1 is step-mother of plaintiffs and defendant Nos.2 and 3 are their step-sisters. The suit property is the ancestral property. Originally, the suit properties were owned by deceased Arun Gadakh. After his demise the partition has not been effected between the plaintiffs and defendants. Since last one to one and half years, the defendants are not giving share of the plaintiffs. The suit property is joint family property of the plaintiffs and defendant Nos.1 to 3. The plaintiffs never

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relinquished their rights in the suit property. The alleged partition deed was recorded without consent of the plaintiffs.

4. The plaintiffs further submit that Gangadhar Dange is brother of defendant No.1. Defendant No.1 and Gangadhar Dange have alienated the suit property on the basis of forged and illegal documents. Defendant No.1 had no authority to dispose of the suit property. The suit properties was recorded in the name of defendant No.1 on the basis of forged documents. Now she is trying to alienate the suit property. If the suit properties are transferred, the plaintiffs will be deprived from their share. Therefore, they prayed that, defendant Nos.1 to 3 may be restrained from dealing with the suit property (except the suit property described in para 1D) till the final disposal of the suit.

5. Defendant Nos.1 and 2 resisted the application by filing say-cum-written at Exh.29 and denied all the material averments made in the application. It is denied that, the suit property was originally owned by Arun Gadakh. There is no cause of action to file the suit. The suit is bad for non-joinder of properties at CTS Nos.197 and 201 at Sinnar. Defendant Nos.1 and 2 further contended that, father of defendant Nos.2 and 3 namely, Arun Gadakh died on 22.12.2009. Arun Gadakh was having son namely Shubham who was suffering from kidney disease. Deceased Arun Gadakh performed marriages of the plaintiffs during his lifetime and gave them Stridhan.

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After the death of the Arun Gadakh defendant No.1 has also looked after the plaintiffs and defendant Nos.2 and 3. After death of Arun Gadakh names of plaintiffs, defendants and deceased Shubham was recorded in the revenue record. Husband of plaintiff No.1 was serving in the PWD. The matrimonial home of plaintiff No.1 is Tas Dindori, Tal.Niphad. Plaintiff No.2 and her husband are residing at Vapi, Gujath. They both are in service. Plaintiff No.3 and her husband are also in service in health department. Plaintiffs and defendant Nos.2 and 3 are educated. Plaintiffs and defendant Nos.2 and 3 were having no interest in the property of their father. Therefore, on 04.02.2013 they executed relinquishment deed bearing No.938/2013 in favour of deceased Shubham and defendant No.1. This relinquishment deed was in respect of property as described in para 1B and 1C of the application.

6. These defendants further submit that, there was no partition between Arun Gadakh and his brother Vijay Gadakh. In order to avoid future dispute, plaintiffs, defendants, deceased Shubham and deceased Vijay decided to separate their shares. At that time, the plaintiffs, defendant Nos.2 and 3 have executed relinquishment deed No.6661/2013 in respect of property in para 1A in favour of deceased Shubham and defendant No.1. Thereafter, immediately, deed No.6662/2013 was executed between Vijay, Shubham and defendant No.1 regarding the partition. At the time of registration of this partition, defendant Nos.2 and 3 were present in the

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Sub Registrar Office. The said partition deed was registered after consultation with the plaintiffs.

7. These defendants further submit that, the plaintiffs never raised objection about these documents during the lifetime of Shubham. On 17.08.2017 Shubham died. At that time also no objection was raised. Marriage of defendant No.2 was performed with Nitin Thakare. Said Nitin Thakare was expired in accident on 05.01.2016. Thereafter, defendant No.2 came to defendant No.1 along with her three children. She completed her education and not doing a job. Plaintiffs did not like that defendant No.2 is residing with defendant No.1. Therefore, they have filed the false suit. The plaintiffs and defendant Nos.2 to 3 have relinquished their rights in the suit property as described in para 1A to 1C of the application. Now after demise of Shubham, defendant No.1 is sole owner of the suit property as described in para 1A to 1C. The plaintiffs have no prima facie case and balance of convenience in their favour. Therefore, citing these grounds, defendant Nos.1 and 2 prayed for rejection of the application.

8. Defendant No.3 resisted the application by filing say-cum-written at Exh.39. She has repeated all the contents of the written statement filed by defendant Nos.1 and 2. Therefore, to avoid repetition, her contentions in written statement are not reproduced. Defendant No.3 also prayed for rejection of the application.

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9. Heard learned advocate Shri.V.P. Taskar for the plaintiffs and learned advocate Shri.S.Y. Deshmukh for defendants. Perused record of the case.

10. Points for determination along with my findings and reasons thereon are as under :-

<u>Points</u>	<u>Findings</u>
1. Do plaintiffs prove that, they have prima facie case in their favour ?	...No.
2. Do plaintiffs prove that, the balance of convenience tilts in their favour ?	...No.
3. Do plaintiffs prove that, they will suffer irreparable loss if the application is not allowed ?	...No.
4. What order ?	...Application is rejected.

REASONS

11. In support of their rival contention, the plaintiff has placed on record numerous documents below Exh.3. The relevant documents are considered at the appropriate stage of discussion in this order.

As to Point Nos.1 to 3 :-

12. I have discussed these points together, as these points are inter-linked with each other. The plaintiffs have

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approached the court with a case that, the suit property as described in para 1A to 1C is the subject matter of the suit as well as this application. The relationship between the parties is not disputed as it appears from the pleadings. It is not disputed by the defendants that, Arun Gadakh died on 22.12.2009. It is also not disputed that, deceased Shubham was suffering from kidney ailment. The plaintiffs have vehemently argued that, after death of Arun Gadakh, health of Shubham was also deteriorated. During his lifetime Arun Gadakh spent the amount on the treatment of Shubham. After death of Arun Gadakh, defendant No.1 took over all the management of the house. She was looking after the financial affairs of the family. Defendant No.1 falsely projected that, she was caring for the plaintiffs. In the year 2013, defendant No.1 got executed various documents in her favour as well as in favour of her son.

13. On perusal of 7/12 extract of the suit properties at list Exh.3/2, 3/4 and 8A extract of part of the suit property at list Exh.3/7 to 3/9, it can be gathered that, these properties are now standing in the name of defendant No.1. 7/12 extract of part of the suit property at list Exh.3/12 shows that, names of plaintiffs as well as defendants were appearing in 7/12 extract of the suit property for the year 2003-04 to 2015-16.

14. The copy of death certificate of Arun Gadakh at list Exh.3/14 shows that, he died on 22.12.2009. The death

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certificate of Shubham at list Exh.3/12 shows that he died on 17.08.2018. It is vehemently argued on behalf of the plaintiff that, after death of Arun Gadakh names of the plaintiffs and defendants along with deceased Shubham were recorded for the land in block Nos.276, 407 and 420. This fact is evident from the copy of mutation entry No.3743 (list Exh.3/16). Likewise, after death of Arun Gadakh, mutation entry No.5065 in respect of block No.905/1, plot No.6, 7, 11 & 12, row house No.3 etc. was taken. The copy of said mutation entry is at Exh.3/17. These mutation entries categorically shows that, after demise of Arun Gadakh, names of the plaintiffs as well as defendants including deceased Shubham were recorded in the revenue record. It clearly shows that, after demise of Arun Gadakh, the plaintiffs acquired undivided share in the suit properties.

15. Learned advocate for the plaintiffs argued that, Defendant No.1 got executed the relinquishment deeds from the plaintiffs by practicing fraud on them. It is argued that plot Nos.6, 7, 11 & 12 in block No.905/1 were purchased in the name of plaintiffs, defendants and deceased Shubham after the demise of Arun Gadakh. The copy of sale deed below list Exh.3/24 shows that, these properties were purchased in the name of plaintiffs, defendants and deceased Shubham. The copy of agreement of sale executed in the name of deceased Arun Gadakh is also part and parcel of the said sale deed. Said copy of agreement to sell shows that it was executed in

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the name of Arun Gadakh during his lifetime. There is no dispute between the parties, that after demise of Arun Gadakh, the plaintiffs' and defendants' names were mutated in the revenue record as legal representatives. The plaintiffs have placed on record the copy of relinquishment deeds at list Exh.3/25 and 3/26. On perusal of copy of relinquishment deed at list Exh.3/25, it can be gathered that, the plaintiffs along with defendant No.2 relinquished their share in plot No.47 in survey Nos.842/1 to 10/3A and plot No.7 in survey No.905/1. There is specific mention in the relinquishment deed that, they have relinquished their share without accepting any consideration. Likewise, the relinquishment deed at list Exh.3/26 shows that, the plaintiffs and defendant Nos.2 & 3 have executed this deed to relinquish their share in the land in block Nos.276, 420, 407 situated at Deopur.

16. There is specific mention in both the relinquishment deed that, the properties are ancestral properties. The plaintiffs, defendant Nos.2 and 3 are residing at their respective matrimonial homes. They have relinquished their share without accepting any consideration. Both these relinquishment deeds are duly registered before the office of Sub Registrar, Sinnar. Both these relinquishment deeds are executed in the year 2013. The document at list Exh.3/27 is a partition deed between Vijay Gadakh, deceased Shubham and defendant No. 1 Asha Gadakh. Vijay Gadakh is brother of deceased Arun Gadakh. The partition has been made

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between them in respect of land in block Nos.276, 420 and 407. Accordingly, in view of the partition in the year 2013, name of defendant No.1 is mutated in the revenue record.

17. The plaintiffs have approached the court with specific case that, the relinquishment deeds were got executed by defendant No.1 and her brother namely, Gangadhar Dange by practicing fraud on them. It is necessary to take a note that, the plaintiffs are educated women. They ought to have know the contents before signing the documents. They have executed two relinquishment deeds, first in February 2013 and second in October 2013. These documents are duly registered before the Sub Registrar, Sinnar. The registered relinquishment deeds carries presumptive value with it. Its contents cannot be lightly brushed aside. The plaintiffs have to prove the fact that fraud was practiced on them while executing the relinquishment deeds. Prima facie the plaintiffs have not placed on record any document or other evidence to suggest that, the relinquishment deeds executed by them were in fact, got executed by defendant No.1 by practicing fraud on them.

18. It is a matter of record that, those relinquishment deeds were executed in the year 2013. The plaintiffs have filed the suit in 2024. No plausible explanation has been offered by the plaintiffs for filing the suit for cancellation of these documents after an inordinate delay. If the defendants are restrained from

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alienating or disposing of the suit property or from enjoyment of the same as prayed by the plaintiffs, they will suffer irreparable loss as they may not be in a position to enjoy the suit property as per their will. Therefore, the comparative hardship also lies in favour of defendant No.1. The plaintiffs have failed to establish that, prima facie the relinquishment deeds were got executed by defendant No.1 by practicing fraud on them. Therefore, balance of convenience and prima facie case do not lie in their favour. In the light of above discussion, I have answered point Nos.1 to 3 in the negative.

As to point No. 4 :-

19. The plaintiffs have not established three necessary ingredients for the grant of temporary injunction. Therefore, the application deserves to be rejected. Hence, in view of negative findings to point Nos. 1 to 3 and in answer to point No. 4, I pass following order,

ORDER

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

Date : 01.04.2025.

Sd/-xxx
(R. S. Kanade)
Civil Judge, S.D., Sinnar.