

MHOS150006652020

**ORDER BELOW EXH. 5**

This is an application filed by the Plaintiff praying for grant of temporary injunction restraining the defendant No.1 and 2 from alienating the suit properties i.e. area Adm. 2 Hecter, 83 R from block No. 69, area Adm. 0 Hecter, 3.50 R from block No. 71, area Adm. 1 Hecter, 24 R from block No. 73, (more particularly described in para no.3 of the application), situated at Village. Malkapur, Tq. Parada, District. Osmanabad.

2. The plaintiff came with the case that he and defendant No. 1 and 2 are the real brothers and having members of the Hindu joint family. The defendant No. 1 is the Karta of their joint family. The suit properties are their ancestral and joint Hindu family properties. The suit properties were recorded in the name of their mother namely Mausabai Changdeo Warpe. She died on 19/06/1998. After her demise, the names of plaintiff and defendant No. 1 to 3 were recorded to the revenue record of the suit properties by way of mutation entry No. 375 which was effected on 24/04/2002. Nevertheless, the defendant No. 1 and 2 caused to enter the name of defendant No. 1 to the revenue record of the land area Adm. 1 Hecter, 42 R from block No. 69. So also, the defendant No. 2 transferred the area Adm. 5 R from block No. 69 to defendant No. 3 by way of sale deed dated 29/04/2009 registered at document No. 733/2009. Accordingly, the name of defendant No. 3 is recorded by way of mutation entry No. 652,. Therefore, the said sale deed and the mutation entry effected in pursuance of the said sale-deed are not binding on the plaintiff's share in the suit properties. Despite to this, the defendant No. 1 and 2 caused to be recorded their names to the land area Adm. 62 R from Block No. 73. According to the plaintiff, the suit properties are the ancestral properties of

plaintiff and defendants. They are cultivating it jointly,. However, by taking disadvantage of the minority and illiteracy of the plaintiff, defendant No. 1 and 2 recorded their name to the suit properties.

3. It is the further contention of the plaintiff that the plaintiff has purchased land area Adm. 1 H 45 R from block No. 72 situated at Malkapur by the income arising out of his own exertion. Therefore, in the year 2001–2002, the plaintiff recorded his name to the said land by obtaining consent of defendant No. 1 and 2. The defendant No. 1 to 3 has no concern to the said land from Block No. 72. Now, the children of the plaintiff became elder, therefore, the income arising out of the said land from block No. 72 is not sufficient to earn their livelihood. Therefore, the plaintiff asked the defendant No. 1 and 2 for partition and separate position of his 1/3 share in the suit properties on 14/04/2020. However, the defendants refused for the same. On the contrary, they threatened the plaintiff to cause alienation of the suit properties. According to the plaintiff if the defendant No. 1 and 2 alienated the suit properties, it would cause irreparable loss to him. Therefore, during the pendency of the suit, the defendant No. 1 and 2 needs to be restrained from causing alienation of the suit properties till the final disposal of the suit. On the aforesaid grounds, lastly, the plaintiff prayed to allow the application.

4. In spite of due service of summons, the defendants failed to appear before the court. Therefore, the suit is proceeded exparte against them.

5. Heard Ld. advocate for the plaintiff. Having taken into consideration the nature of the application, following points for my determination. I have recorded my findings thereon along with the reasons which are given as under:-

Sr. No.	Points	Findings
1.	Whether plaintiff has a prima case?	YES
2.	Whether balance of convenience lies in favour of	YES

	the Plaintiff ?	
3.	Whether irreparable loss would be caused to the plaintiff if the temporary injunction, as sought, is not granted in his favour?	YES
4.	What order?	Application is allowed.

6. To Support his contention, the plaintiff has filed on record the certified copies of 7/12 extract of land block No. 69, 71,73 situated at village Malkapur, Tq. Paranda, Dist.Osmanabad (exhibit 7 to 9), mutation entry No.375 and 652 of village-Malkapur, Tq.-Paranda, Dist-Osmanabad. I have carefully gone through the documents on record in the light of argument advanced by the plaintiff. on perusal of documents on record, particularly the mutation entry No. 375(exhibit 10), it is seen that, the suit properties were recorded in the name of plaintiff and defendant No. 1 to 3 on 15/04/2002, being legal representatives of their mother namely Mausabai Changdeo Warpe at the instance of defendant No.1 Shivdas Changdeo Varpe. Further, on perusal of mutation entry No. 352. It is seen that the defendant No. 2 Laxman transferred the land area Adm. 5 R from block No. 69 by way of sale-deed on 29/04/2009 registered at doc. No. 733/2009 in favour Defendant No. 4. The name of the defendant No. 4 was recorded to the land from block No. 69 by way of mutation entry No. 652.

7. The application is supported with the affidavit of the plaintiff. From the documents on record, it is prima-facie seen that the suit properties are the ancestral properties of the plaintiff and defendant No. 1 to 3. From the mutation entry No. 652, it is seen that the defendant No. 2 transferred the land from block No. 69 to defendant No. 4. According to the plaintiff, till

today there is no partition in between plaintiff and defendant No. 1 to 3. He is having 1/3 undivided share in the suit properties. As aforesaid, in spite of service of summons, the defendant did not appeared, therefore, the suit is proceeded exparte against them. In this situation, i have no reason to disbelieve contention of the plaintiff. Considering this, I am of view that the plaintiff is succeeded in improving that he has prima-facie case, balance of convenience also in his favour and if the defendants are not restrained from causing alienation of the suit properties during the pendency of the suit. It would certainly cause irreparable loss to the plaintiff. Thus, the application deserves to be allowed. Hence, following order is passed.

ORDER

1. Application below exhibit 5 is allowed.
2. The defendant no. 1 and 2 are hereby restrained from causing alienation of the properties till disposal of this suit.

Sd/-

Date:- 14.12.2023

(Mayura V. Nimbalkar)

3rd jt. CJJD, Paranda