

Vicky Batista & Ors. Vs. Gullibility & Ors.**ORDER BELOW EXH. 60 (Amended Ex 5)**

The present application has been filed by plaintiff under order 39 rule 1 and 2 of Code of Civil Procedure for the grant of temporary injunction against the defendant no.21 to 25 by which it is prayed that, they should not alienate, mortgage, mutate, transfer or sale land in survey no.17, now gut no.58 ad-measuring 6 H 55 R situated at Dingle Palimony, Ta- Sailu, Dist- Parsnip (hereinafter referred as suit property

THE BRIEF FACTS OF PLAINTIFF'S CASE ARE AS UNDER:-

02. The plaintiffs averred that, they are heirs of deceased Jodhpurs and Maupassant. One Mani Patrolman Paul sold suit property to Jodhpurs Sher sing Bhatiya by Sale deed executed on 07.07.1973 bearing day book no. 802/1973. On 01.09.1973 by mutation entry no.194 dated 01.09.1973 the name of Jodhsingh was entered in the 7/12 extract of suit property as owner and possessor. The Jodhsingh died on 12.12.1973 leaving behind wife namely Basantkumar, sons namely Amarjitsingh, Surendrasingh, Amloksingh and daughters namely Rampyari, Kulwantkaur, Rajendrakaur and Surendrakaur. The contention of plaintiffs that, Amloksingh one of the son of deceased Jodhsingh mutated the suit property in his own name by mutation entry no.482 which is false and fabricated. The mutation entry no.482 mentions that only Amloksingh is the heir of deceased Jodhsingh and other son Amarjitsing left Jodhsingh and resided separately from him whereas another son Surendrasingh also left Jodhsingh on 18.12.1970. It is also mentioned in mutation entry no.482 that, Amloksingh was the

only caretaker of Jodhsingh and so Jodhsingh executed a Will deed in favour of Amloksingh and the rest of sisters had executed consent deed in favour of Amloksingh. It is further contention of Plaintiffs that, neither Jodhsingh executed a Will deed in favour of Amloksingh nor the sisters had executed consent deed in favour of Amloksingh. Moreover, the will deed executed by Basantkumar in favour of Amloksingh is also false. Basantkumar being wife of Jodhsingh had no right to execute a will deed in favour of Amloksingh with respect to all of the suit property. As the suit property is joint family property, Basantkumar was entitled execute will deed only to the extent of her share. Hence, the mutation entry no.483 is false and fabricated.

03. Plaintiffs further submitted that, on the basis of mutation entry no. 482 and 483 the name of Amloksingh was entered in 7/12 extract as owner of suit property. Amloksingh subsequently sold the suit property to person named Vishnu Kishnarao Paul by sale deed day book no.599/1983. Accordingly, the name of Vishnu Kishnarao Paul was mutated as per mutation entry no.496 dated 25.07.1983 which is also illegal. After the demise of Jodhsingh, all the family members went to Ahmadabad and Kanpur and Amloksingh used to frequently visit Sailu and lookup further property. As Surendrasingh died due to cancer the plaintiffs had no idea about the existence of suit property. In 2015, the plaintiffs came to know about the suit property situated at Sailu and so when they collected documents of suit property they came to know that, Amloksingh falsely mutated the whole suit property in his own name. As the plaintiffs are heirs of Jodhsingh they have legal share in the suit property which is ancestral and joint family property. However, Amloksingh has sold suit property to Vishnu Kishnarao Paul and the

aforesaid sale deed is illegal and is entitled to be cancelled. As Amloksingh is no more, the plaintiffs approached his wife Gulbirkaur who is defendant no.1 and Vishnu Kishnarao Paul and asked them to handover the suit property to the extent of their share in suit property. However, both of them denied the same and so the cause of action accrued in favour of plaintiff on 01.03.2016.

04. As the plaintiffs have legal and lawful right over the suit property which is ancestral property, there is apprehension that, defendant no.21 to 25 who have become owners of suit property by way of illegal sale deed may dispose off the suit property by way of sale or mortgage . Therefore, it is the submission of plaintiffs that, for the aforesaid reasons the defendants are necessary to be restrained by way of temporary injunction. Hence, they prayed that his application be allowed.

05. Defendant Nos.21 to 25 by filling their written statement at Exh.63 have opposed the application of the plaintiff. They admitted that the suit property was purchased by defendant No.21 by sale deed No.599/1983 dated 14.05.1983 and it was mutated in the name of defendant No.21 by mutation entry No.496. They also admitted that, according to mutation entry No.898 the suit property was mutated in the name of defendant Nos.22 to 25 as heirs of defendant No.21. Defendants submitted that, they have no idea whether defendant nos.1 to 20 are the heirs of deceased Jodhsing and Basantkumar. Since 1983 the defendants are in the possession of suit property and till today no objection have been lodged in the competent Court regarding the suit property by anyone. They submitted that, the plaintiffs Nos. 1 to 7 have

no relation with the suit property and they have no knowledge about the pedigree given by the plaintiff in the plaint. They further submitted that, the plaintiffs have no right to get cancelled the mutation entry No.496 and 1731 because they have not launched any procedure with respect to said mutation entries before any competent authority within limitation. They further submitted that, the defendants have purchased the suit property by sale deed and since 1983 till 2019 they are in the peaceful possession of the suit property. Therefore, the plaintiffs are not entitled to any relief claimed by them in the plaint.

06. The defendants further submitted that, the plaintiffs had filed an application before Deputy Collector, Sailu for cancellation of mutation entry No.482, 898 & 1731 which was allowed. The defendant Nos. 21 to 25 have filed an appeal before Additional Collector and the Additional Collector has ordered to keep in abeyance the mutation entry No.482, 483, 496, 898 & 1731 till the final decision of this suit. For the aforesaid reasons the defendants prayed that, the application be rejected.

07. Heard learned advocates for plaintiff and defendants. In view of rival contentions of both the parties, following points arise for my determination and I have recorded the findings for each point for the reasons given below.

Sr.No	Points	Findings
1.	Whether the plaintiffs prove that, prima-facie case is in their favour ?	
2.	Whether the plaintiffs prove that, the balance of convenience lies in their favour ?	

3.	Whether the plaintiff prove that, they would suffer irreparable loss in absence of order of temporary injunction ?	
4.	What order?	As per final order.

REASONS

08. As all the four points are interlinked with each other, they are discussed together in order to avoid repetition.

AS TO POINTS NOS. 1 TO 4 :-

09. To grant the relief of temporary injunction when the suit is pending is within the discretionary power of the court. While exercising such discretionary power, *The Hon'ble Supreme Court in the Judgment of Dalpat Kumar and another Vs. Pralhad Singh and others (1992) 1 SCC 719* has held that, court must examine whether following factors are proved:-

A)Whether plaintiffs have a prima-facie case in their favour ?

B)Whether balance of convenience lies in favour of plaintiffs ?

C)Whether plaintiffs would suffer irreparable loss if the relief of temporary injunction is refused ?

10. While claiming the equitable relief of temporary injunction under Order 39 rule 1 and 2 of Code of Civil Procedure, it is utmost necessary for the plaintiff to prove that, prima-facie he is in possession of suit property. Further it is essential for the plaintiff to prove his prima-facie case on his own and on the basis of documents on record. In this case the plaintiff has instituted suit against defendants for partition, possession, cancellation of Will deed and mutation entries and perpetual injunction.

11. It is the contention of plaintiffs that, Jodhsing had purchased the suit property from a person name Manik Ganpatrao Paul in 1973 for consideration of Rs.7,000/-. If we perused the sale deed No. 802/1973 it reveals that, Manik Ganpatrao Paul had sold the property in survey No.17 ad-measuring 14 acers bounded by land of Pandurang Gunaji Paul to the East, land of Yadavrao Gyanoba to the West, land of Dnyanoba Nathoba to the South & Share of Basant Kaur Jodhsing to the North for the consideration of Rs.7,000/- to Jodhsing Shersing Batiya. Hence, there is no dispute that, in 1973 Jodhsing Shersing Batiya became owner of suit property. Now it is the contention of the plaintiffs that, Jodhsing had wife name Basant Kaur and they had sons namely Amarjitsing, Surendrasing, Amloksing & daughters namely Rampyari, Kulwant Kaur, Rajentra Kaur and Surendra Kaur. Now if we perused mutation entry No.482 placed on record by plaintiffs at Exh.4/3 it reveals that, the names of Amarjitsing, Surendrasing, Amloksing, Surendra Kaur, Rajendra Kaur, Rampyari & Kulwant Kaur have been entered in the said mutation entry as the heirs of deceased Jodhsing. Further, if we perused the pedigree given by the plaintiffs in the plaint it reveals that, plaintiffs are the children of deceased Surendrasing. Prima-facie relying upon the mutation entry No.482 and the pedigree in the plaint it can be said that, the plaintiffs are the legal heirs of deceased Jodhsing & Basant Kaur. Further, the mutation entry No.482 reveals that, Amloksing is the only lawful owner of the property owned by deceased Jodhsing. It is mentioned in the said mutation entry that, Amarjitsing and Surendrasing are residing separately from their father Jodhsing and therefore, they have no share in the property. It is also mentioned that, Amloksing has taken care of Jodhsing and therefore,

Jodhsing by Will deed has transferred the suit property in the name of Amloksing. It is also mentioned that, the sisters of Amloksing have waived their share in the suit property in favour of Amloksing by executing consent letter.

12. Now if we perused the mutation entry No. 483 at Exh.4/4 it reveals that, Basant Kaur before her death had executed a Will deed in favour of Amloksing by which she transferred suit property in his name. It must be noted that, the suit property which was previously owned by Jodhsing would devolve according to law of succession upon his children and wife. However, the Will deed No.1284 executed by Basant Kaur on 04.07.1974 reveals that, the whole of the suit property has been transferred in the name of Amloksing. The plaintiffs have challenged the mutation entry No. 482 and 483 on the ground that, said mutation entries are false. They argued that, the contention that, Amarjitsing and Surendrasing left their father and the sisters waived their share in the suit property is totally false. There is no document on record to show that, Amarjitsing, Surendrasing and the other sisters have waived their share in the suit property. Amloksing behind the back of his brothers & sisters got mutated the whole of the suit property in his name and therefore, have deprived the plaintiffs on their legal share in the suit property.

13. After considering the above contentions it must be noted that, there is no dispute that, Jodhsing was the original owner of the suit property and he had wife Basant Kaur and other children. However, the suit property was mutated only in the name of Amloksing and the other brothers and sisters were not given their share in the suit

property. Further, on the basis of his name as a owner of the suit property Amloksing sold the suit property to Vishnu Kishanrao Paul by sale deed No.599/1983 dated 15.04.1983. Since then the suit property is in the possession of the defendants. While deciding the temporary injunction application the Court certainly examines as to which party is at present in the possession of the suit property. There is no dispute that, defendant Nos. 21 to 25 are in the possession of suit property and the sale deed No.599/1983 certainly reveal that, they had purchased the suit property. But, it must also be noted that, the plaintiff has instituted the present suit for partition and he is claiming his share in the suit property. As discussed above prima-facie the plaintiffs are the legal heirs of the original owner Jodhsing. Further, the plaintiffs by way of this suit have also prayed for the cancellation of the very mutation entries by which the suit property was transferred in the name of Amloksing and also the Will deed executed by Basant Kaur and the sale deed by which the suit property was sold to Vishnu Kishanrao Paul.

14. So considering the above discussion, I am of the opinion that, whether the plaintiffs have legal share in the suit property by way of succession is the matter of merit which has to be decided after appreciating substantive oral and documentary evidence on record at the time of trial. By bringing on record that, they are the heirs of original owner Jodhsing the plaintiffs have prima-facie proved that, they are certainly entitled to the share in the suit property. On the other hand, the defendants are in the possession of the suit property. Under such circumstances, in order to avoid the further complications it is necessary that, the suit property must be prevented from dispossession or alienation in favour of any third person. For that purpose the

defendants are necessary to be restrained. It must be noted that, even though the defendants are lawful owner and possessor of the suit property as per sale deed No. 599/1983, restraining them from selling, mortgaging or alienating the suit property would not in anyway impose hardship or loss upon them. On the contrary, if the application is rejected the plaintiffs might suffer irreparable loss as there might be possibility that the defendants would create third party interest in the suit property. Therefore, in my opinion, the prima-facie case and balance of convenience lied in favour of the plaintiffs and in the light of above discussion the present application is entitled to be allowed. Hence, I answer point no.1 to 3 in affirmative and in answer to point no.4 pass following order-

ORDER

01. The application vide 60 (amended Exh 5) is allowed.
02. Defendants are hereby temporarily restrained from alienating, mortgaging, selling or creating any third party interest in the suit property in any manner till the final disposal of suit.
03. The cost of the application shall be cost in cause.

Date : 23.01.2023
Place : Sailu

(Mandar M. Raut)
Civil Judge Jr. Division,
Sailu Dist. Parbhani.