

Order below Exhibit 5 in Regular Civil Suit no.35/2018

1- Present application is made for grant of temporary injunction under Order XXXIX Rule-1 of Civil Procedure Code restraining defendants no.2 to 7 not to alienate house as well as agricultural land.

2- Perused application and say filed at Exhibit 21.

3- Heard Mr.L.V. Kulkarni, learned advocate for applicant and Mr.A.J. Kaldate, learned advocate for defendants.

4- The points for determination along with findings thereon for reasons stated are as under:

Points		Findings
1.	Whether prima-facie case lies in favour of applicant ?	.. No.
2.	Whether applicant proves that balance of convenience tilts in her favour ?	.. No.
3.	Whether applicant further proves that if injunction is refused, she will suffer an irreparable loss ?	.. No.
4.	What order ?	.. As per final order.

REASONS

5- In support of application, applicant has filed following documents :

- A- Copy of 7/12 extract of land survey no.32 of year 2015-16 to 2017-18,
- B- Copy of registered gift deed no.2034/2017,
- C- Copy of registered sale-deed no.2266/2017,
- D- Copy of index-II of registered sale deed no.627/2018,
- E- Copy of application filed at police-station, Manwat on 30.03.2018 and 31.03.2018,
- F- Copy of marriage card,
- G- Copy of documents of treatment of pregnancy in National Health Programme.

6- In support of contention, defendants have filed following documents :-

- A- Copy of identity card of plaintiff issued by Election Commission of India,
- B- Copy of residential certificate of plaintiff,
- C- Copy of declaration of plaintiff,
- D- Copy of diagnostic report of plaintiff,
- E- Copy of report of civil hospital, Manwat,
- F- Copy of prescription of civil hospital, Manwat,
- G- Copy of N.C. filed at police-station, Manwat,

- H- Copy of mutation register,
- I- Copy of sale-deed no.600/1994,
- J- Copy of mutation register bearing no.507,
- K- Copy of P.T.R. of house no.8-10-105.

Points No.1 to 3 :-

6- In order to get temporary injunction, plaintiff has to prove three golden principles i.e. Prima-facie case, balance of convenience and irreparable loss. Prima-facie case does not mean prima-facie success. Prima-facie case means there must be issues at the trial.

7- It is contention of plaintiff that she is wife of defendant no.1. Their marital tie is still in existence. Defendant no.2 is mother-in-law, whereas, defendants no.3 to 6 are her sister-in-laws and defendant no.7 is husband of her sister-in-law. Their marriage is solemnized on 11.05.2011 as per Hindu rites and rituals at village Karanji, Tq. Manwat. Thereafter, she had been to Manwat to cohabit with him at Golait nagar, Manwat. They were residing in house no.8-10-105 there. However, they treated her nicely for initial period of only one year. But, thereafter started ill-treatment on trivial grounds. However, defendants no.3 to 6 when used to come at maternal home, they were instigating

her husband. She was not able to conceive a child. Hence, defendants forced her to leave their house. When they came to know that she is not willing to leave their house, they started ill-treatment by making demand of Rs.1,00,000/-. During said period, she conceived a child from defendant no.1. Even though, there was no change in behaviour of defendants. They left her at matrimonial house no.8-10-105 situated in Golait nagar, Manwat. Hence, she is living alone there.

8- However, in order to avoid to pay maintenance, defendant no.2 transferred agricultural land owned by her in favour of defendant no.4 as well as no.3, 5 & 6 by way of registered sale-deed as well as gift deed. They also transferred house no.8-10-105 where applicant is residing in favour of defendant no.7 without any consideration. That's why applicant has prayed for restraining them not to further alienate the same till conclusion of trial.

9- On the other hand, defendants appeared and contested application by filing written statement at Exhibit 21 and it is treated as their say to present application. They denied all allegations. It is specific contention of defendants that applicant is living in adultery with Ashok Rathod. She is also pregnant from him. However, she is

unauthorizedly living in house no.8-10-105 situated at Golait nagar, Manwat. However, it is self acquired property of defendant no.2. She has transferred the same in favour of defendant no.7 for his livelihood and for medicinal purpose. However, it is further contention of defendants that agricultural land in survey no.32 owned by defendant no.2 admeasuring 3 H 75 R. Out of which, 1 H 88 R is transferred is her self acquired property and rest of agricultural land is allotted to her in partition by her husband. However, she has transferred the same in favour of defendant no.4 by way of gift deed. Defendant no.1 did not own any ancestral as well as joint family property, nor any house. He is labour. Accordingly, prayed for rejection of application.

10- It is admitted fact that defendant no.2 has transferred agricultural land owned by her in survey no.32 situated at village Savli by way of gift deed in favour of defendant no.3, 5 & 6 admeasuring 51 R each. She has also transferred 1 H 20 R land by way of sale-deed in favour of defendant no.4, as well as, house no.8-10-105 in favour of defendant no.7. However, there is prima-facie no document to show that rest of the property or whole of the property belongs to defendant no.2 is ancestral and joint family property of defendants no.1 & 2.

11- On the other hand, defendants have specifically submitted that out of said property 1 H 88 R land is purchased by husband of defendant no.2 in the year 1991 and rest of the agricultural land is allotted to her husband in partition. However, there are no documents in respect of the same to show that said property is self acquired property of defendant no.2. However, it will be proved during the trial whether said property is self acquired property of defendant 2 or not. At this juncture, there is no prima-facie evidence adduced by both parties in order to prima-facie show that properties are ancestral properties of defendant no.1 & 2.

12- However, some of the properties transferred in faovur of defendant no.3 & 6 are by way of registered documents. Hence, they may not be prevented from alienation. However, it is pertinent to note that, though, applicant is claiming maintenance and also prayed for keeping charge over said agricultural land and house no.8-10-105. However, no where it is contention of applicant/plaintiff that defendants are trying to alienate suit properties. She is apprehended of being alienated the same. Moreover, applicant did not show that they have made any agreement to sell or talks are going on for alienation of same. In such circumstances, only on the basis of contention it will not

be desirable to prohibit defendants not to alienate properties. Accordingly, there is no substance in the contention of learned advocate for applicant that they may be prevented from alienating the same. Accordingly, answered points no.1 to 3 in negative.

Point No.4:-

13- In answer to point No.4, following order is passed. Considering, relations of parties, they are directed to bear their respective costs.

Order

- 1- Application is rejected.
- 2- Parties to bear their respective costs.

Date: 24.10.2018

(J .G. Wagh)
Civil Judge, J.D,
Manwat.