

Order below Exh. 5 in R.C.S. No. 108/2024

01. Present suit is filed for partition, injunction and declaration. Cause of action to the suit is basically notice dated 05/07/2024 which is issued under S. 101 recovery proceeding initiated by co-operative society.

02. Perused the record. Heard Ld.Adv for plaintiff. Plaintiff is pressing ad-interim ex-parte injunction against defendant No. 7 to 9 who through their recovery proceeding likely to take possession of alleged suit properties. Thereby plaintiff loosing his undivided share in the suit property. To stop the same the urgency is pleaded in suit against Co-operative Sociery. But it is important to note that the due process of law needs to be followed i.e. issue notice u/s. 164 of M.C.S. Act. Such notice is of prior nature. From perusal of record no such notice is said to be given. Further while institution of suit was made no waiver of notice was sought by party.

03. The urgent of ex-parte injunction is based on the notice dated 05/07/2024, copy of which is at Exh. 3 Doc. 10. The said notice is dated 05/07/2024 in which it mentioned that possession panchnama proceeding will by initiated on 05/08/2024 i.e. since the issuance of notice till date nearly



one month period has lapsed. The party to whom notice is issued is father of plaintiff who is also defendant No. 3 in the present proceeding. He has nowhere challenged the said notice. In such situation, the illegality of notice cannot be assumed.

**04.** There are two important aspects that needs to be proceeded is i.e. tenability of present proceeding as it is against co-operative society and challenging S. 101 of MC.S. Act proceeding. Hence in such situation it is necessary to hear other side. The plaintiff is directed to argue as to tenability. Hence, ex-parte injunction prayer is rejected.

**ORDER**

1. Issue suit summons to defendants R/o 13/08/2024.
2. E.B.and S.B. is allowed.
3. Issue show cause notice to the defendants call their say on Exh. 05 R/o. 13/08/2024.

Bhor

Date : 03.08.2024.

  
( N.K.Nagargoje )

I/c. Jt. Civil judge, Jr. Dn.,  
Bhor, Dist. Pune