

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,**

**BHOR DIST. PUNE**

**Reg. Civil Suit No. 106/2009**

Reshma Pradeep Shete and Others ..... Plaintiff

V/S.

Sonba Haribhau Navghane and Others ..... Defendants

**ORDER BELOW EXH. 62**

**(Dated:11/02/2019)**

1. This is an application under Section 94(e) of the Civil Procedure Code for grant of temporary injunction preferred by plaintiffs to restrain defendants from alienating, or creating third party interest in suit land, (more particularly mentioned in para. no. 1 of the plaint) till final disposal of the suit.

2. The present suit has been filed for Partition, Declaration and Injunction. The plaintiff submitted that, defendant no.1 has already sold some of suit land in favor of defendant nos.3 and 4. Moreover plaintiff submitted that, they have prayed the sale-deed executed by defendant no. 1 in favor of defendant nos. 3 and 4 in respect of suit land be declared as illegal, void- ab-initio and not binding on the plaintiffs. The plaintiff further submitted that, defendant no.3 Arun Dinkar Kamthe has dugged out well in agriculture land bearing Gat No.266 situated at Village Titeghar without the permission of the Hon'ble Court. Similarly, the

plaintiffs has apprehension that defendant No.3 is making alteration in the suit land. The plaintiff further submitted that, if he succeeded to do so the plaintiff will suffer financial loss and irreparable loss which cannot be compensated in terms of money.

3. The plaintiff submitted that defendant nos.1,3 and 4 are carrying out illegal acts and trying to change the nature or alienating or creating third party interest in suit land. Therefore, the plaintiffs has prayed to restrain defendant nos.1, 3 and 4 from alienating, or creating third party interest in suit land till final disposal of the suit.

4. The say of defendants has called. The defendant no.1 has not filed their say. The defendant nos.3 and 4 has filed their say at Exh.68 and they are strongly and categorically denied the contentions of the plaintiff made in the plaint as well as in the application. The defendant contended that, the application deserves to be rejected as it is not tenable in eyes of law. The defendants further contended that plaintiff has not come before the court with clean hands, the contents of application are baseless and prayed to reject the application.

5. Similarly defendant further contended that the agreement to sale is bogus and which is not made as per law of contract. Moreover, the defendant contended that they are bonafied purchaser for value without notice and in good faith. The defendant further submitted that, these properties are self acquired

properties and defendant no.1 has sold their properties to the defendant nos.3 and 4 for his family necessities. In such circumstances, the plaintiff has filed instant application to harass and grab the money from the defendants. In such a way the plaintiff has no any concern with this suit land. The defendant categorically denied the contention of the application and prayed to reject the plea of the plaintiff.

6. In view of the facts, the following points arose for my consideration, and I, record my findings thereon for the reasons thereto are as under:

### **POINTS FOR DETERMINATION**

| <b>SNo.</b> | <b>POINTS</b>                                                                                       | <b>FINDINGS</b>    |
|-------------|-----------------------------------------------------------------------------------------------------|--------------------|
| 1)          | Whether the plaintiffs have made out prima-facie case ?                                             | Yes                |
| 2)          | Whether balance of convenience lies in favour of the plaintiffs ?                                   | Yes                |
| 3)          | Whether the plaintiffs will suffer irreparable loss or damage, if temporary injunction is refused ? | Yes                |
| 4)          | What Order ?                                                                                        | As per final order |

### **REASONS**

In order to substantiate his case, the plaintiff has requested to consider the document filed alongwith Exh.3 and

other document filed alongwith suit.

7. Heard the advocate for plaintiff Adv.Deshpande. The defendant nos.3 and 4 are contesting the suit and appeared on record through Adv. Thakur.

**TO POINT No. 1 to 4 :**

8. As point nos. 1 to 4 are inter linked with each other, I prefer to discuss it under one common caption. Ld. Advocate for plaintiff submitted in consonance to his plaint and application. In order to substantiate his submissions Ld. Advocate for plaintiff gathered attention towards documents filed on record. He submitted through his application that, prima facie case and balance of convenience lies in favor of plaintiff and irreparable loss would be caused to the plaintiff which could not be compensated in terms of money and accordingly prayed to allow the instant application.

9. Per Contra Ld. advocate for defendants has appeared and strongly replied to the claim. The defendant nos.3 and 4 are contesting the suit and appeared on record. The defendant nos.3 and 4 submitted that to consider their written statement to determine the instant application. The Ld. advocate for defendants Mr. Thakur has appeared and vehemently argued that the plaintiff is came with the ulterior motive and prayed to reject the application.

**10.** It is canon of settled legal principle that power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as the matter of right or course. The grant of injunction is at the discretion and must be exercised in favor of the party only if the Court is satisfied that, unless the other party is restrained by an order of injunction, irreparable loss or damage would be caused to that party. The court grants such relief on the principle of *ex debito justitiae* i.e. to meet the ends of justice.

**11.** Reverting back to the facts of the instant matter, as per the case of the plaintiff that the suit has been filed Partition, Declaration and Injunction. The plaintiff submitted that defendant no.3 has dugged out well in agriculture land bearing Gat no. 266 situated at Village Titeghar without the permission. Similarly, the plaintiffs has apprehension that defendant no.3 is making alteration in the suit land. The plaintiff further submitted that, if he succeed to do so the plaintiff will suffer financial loss and irreparable loss which cannot be compensated in terms of money. Therefore, plaintiff has prayed to restrain defendants from alienating, or creating third party interest in suit land till final disposal of the suit.

**12.** In order to establish a case, plaintiff has prima facie shows that the plaintiff is having interest in the suit land. The plaintiff has epitomize and submitted that, plaintiff has interest the suit

land as plaintiffs are the daughters of the defendant no.1. Similarly, the properties are the ancestral properties. On meticulous perusal of documents filed by plaintiff on record and Copy of 7/12 extract of Gat no. 266 of village Mouje Mouje Dhondewadi , Tal. Bhore, Dist.Pune, Copy of 7/12 extract of Gat no. 202 of village Mouje Titeghar, Copy of 7/12 extract of Gat no. 143 of village Mouje Titeghar and Copy of 7/12 extract of Gat no.469 of village Mouje Panhwal alongwith another documents filed on record, It clearly transpires that the defendant Sonba Hirbhau Navghane is possessor of these lands and therefore and prima facie it shows that the plaintiffs are having interest in the suit land being daughters of the defendant no.1.

**13.** It is submitted by the defendant nos.3 and 4 that, The defendants are in possession of the suit land by way of executing sale deed no.427/2007 and sale deed no. 429/2007 and defendant no.1 has taken handsome consideration for the same. Now defendant nos.3 and 4 are taking crops from the suit land. The family of the defendants is depended on these lands.

**14.** In such circumstance, on application of judicious mind, there is no hesitation to accept with the help of documents filed on record that, plaintiffs are having interest in suit land. Hence in the instant case, prima facie there is no reason to disbelieve that balance of convenience lies in favor of plaintiffs.

15. Moreover, the plaintiff further prayed that defendant are restrained from creating third party interest in the suit land. In view of the above discussion, plaintiff has prima facie case for injunction against defendant. Therefore, application deserves to be partly allowed. In view of the above findings, I proceed to pass following order:

**ORDER**

- 1) The application (Exh.62) is partly allowed.
- 2) The defendants no. 1, 3 and 4 are hereby restrained from alienating or creating any third party interest in the suit land till the final disposal of the suit.
- 3) No order as to cost.

Date: 11/02/2019

( Awate P.P.)

Bhor

Jt.CJJD, Bhor, Dist. Pune.

**“I affirm that the contents of this P.D.F file Judgment are same word for word as per original Judgment.**

**Name of the Clerk : D.N.Sonar**

**Court Name : P.P. Awate.**

**C.J.J.D & J.M.F.C., Bhor, Dist. Pune.**

**Date : 11/02/2019**

**Judgment signed by presiding officer on : 12/ 02/2019**

**Judgment uploaded on : 12/02/2019”**