



ORDER PASSED BELOW EXH.5

1. I have perused pleadings of both the parties with respect to this application and the documents filed on record. I have heard learned counsels of both the sides. The arguments of the parties are in line of their respective pleadings and documents. Record perused.

2. On the basis of pleadings of parties I have framed following issues for determination of this application, which I answer them along with my reasons and findings thereon, as follows:

Sr. No.	Issues	Findings
01.	Whether prima facie case is made out by plaintiffs?	.. Yes.
02.	Whether balance of convenience lies with plaintiffs?	.. Yes.
03.	Whether plaintiffs are going to suffer inconvenience or irreparable loss or injury in case application for temporary injunction is disallowed?	.. Yes.
04.	What order ?	.. Application is allowed.



REASONS

3. AS TO ISSUE NO 1 TO 3:-

In short, plaintiffs submit in this application that, suit properties at serial no.1A to 1H are the ancestral properties of plaintiffs and defendants. The suit properties were originally belonged to Bhiku Yesu Yadav who is father of plaintiffs and defendants. Said Bhiku died on 07/11/1985. In the written statements/say of the defendants, they have denied that suit properties are ancestral properties. However, in their written statement/say, the defendants admit that the suit properties were in the name of their father.

4. It is the case of plaintiffs that, after death of Bhiku Yadav, defendant no.1 to 3 were looking after the affairs of the house of plaintiffs and defendants and thereafter it came to the notice of plaintiffs that defendant no.1 to 3 have got mutated their names over the suit properties by giving incorrect information to the revenue authority. The plaintiffs submit that, partition has not taken place and defendant no.1 to 3 have got executed one partition-deed dated 25/12/2020 in the office of Sub-registrar, Purandar without consent of plaintiffs. However, the defendants submit that, Bhiku Yadav in his life time has



partitioned the suit properties among defendant no.1 to 3 by oral partition and since then defendant no.1 to 3 are in possession of the suit properties. It is also submitted by these defendants that, plaintiff no.1 to 3 have relinquished their rights in the suit properties at serial no.1A to 1G and hence now they have no right in the suit properties. It is also submitted by the defendants that, suit property at serial no.1H is exclusively owned by defendant no.1 and plaintiffs have no concern with it. The defendants admit that, partition-deed no.6202/2020 dated 25/12/2020 was executed by defendant no.1 to 3 etc.

5. I am of the considered view that, the facts that plaintiffs have given consent or relinquished their rights in the suit properties or there was oral partition or the suit is filed after 36 years of the partition, are all the facts which are required to be ascertained after evidence is adduced in the suit in due course of trial. It is to be noted that, the plaintiffs deny the fact of giving any consent to the defendants as alleged.

6. Perusal of registered partition-deed no.6202/2020 dated 25/12/2020 prima faice shows that, defendants have admitted in this partition-deed in paragraph no.3 that the suit properties are ancestral properties and their names have been entered on the basis of succession vide mutation entry no.2311.



As such, it is clear that defendants are making different pleadings in their written defence and this partition-deed. Therefore, considering this conduct of defendants, the apprehension of plaintiffs that defendants may alienate or create third party interest in the suit properties appears to be reasonable. However, the copy of namuna no.8 of suit property at serial no.1H with respect to house no.184 prima facie shows that it is standing in the name of defendant no.1. Fact of limitation is a mixed question of fact and law.

7. On the basis of aforesaid discussion I came to the conclusion that plaintiffs have made out a prima facie case in their favour. The plaintiffs have made out a case which needs consideration in due course of trial. If the Injunction as prayed for is not granted in favour of plaintiffs, then they will suffer more inconvenience than defendant and that they will be put to suffer irreparable loss unnecessarily. Hence I hold that plaintiffs have proved issue no.1 to 3 accordingly. So I answer issue no.1 to 3 in the affirmative.

8. AS TO ISSUE NO. 4:-

Relief of Injunction is a discretionary relief. In the facts and circumstances of this case and after considering all the material on record, I find that this application deserves to be



allowed. Everything would be decided on merits in due course of trial. If temporary Injunction is granted then no prejudice would be caused to the defendant no.1 to 3. Therefore, to avoid multiplicity of litigation, conduct of defendant no.1 to 3 etc. this application deserves to be allowed. In the result I answer issue N.4 accordingly and proceed to pass following order:

ORDER

- I. Application Exh.5 is hereby allowed.
- II. Defendant no.1 to 3 are hereby temporarily restrained from alienating or creating third party interest over suit properties at serial no.1A to 1G as mentioned in paragraph no.1 of this application, pending hearing and final disposal of the suit, otherwise than by due process of law.
- III. Costs in main cause.

Dt.13/12/2022.

(Md Taher Bilal)
Civil Judge J.D., Saswad.



CERTIFICATE

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

Name of Steno : S. S. Gupte, Stenographer (Grade III)

Court Name : Shri. Md. Taher Bilal
Civil Judge Jr. Division, Saswad.

Date of Order : 13/12/2022

Judgment signed by presiding officer on : 13/12/2022

Judgment uploaded on : 14/12/2022