



R.C.S. No. 413/2022
 Sou. Manisha & Ors.
 Vs.
 Vitthal & Ors.

ORDER BELOW EXH.5

(Passed on 10/03/2023)

This is an application filed by plaintiffs for temporary injunction against defendants no. 1 to 3 as under.

2. According to plaintiffs the land admeasuring 4H 98R including *potkharab* out of land gut no.428 situated at village Devulgaon gada, Tal. Daund, Dist. Pune bounded as under.

Towards East	:	Gut no. 429.
Towards West	:	Supe-Chaufula road.
Towards South	:	Gut no. 295.
Towards North	:	Gut no.427.

Out of the land admeasuring 66 R including *potkharab* in the name of plaintiff no. 2 and out of the same also the land admeasuring 22 R alienated by defendant no. 3 in favour of defendant no. 1 & 2 vide registered sale deed bearing day book no.6349/2022 dated 05/09/2022 bounded as under.

Towards East	:	The land of Gajanan Ramrao Shitole out of land gut no. 428.
Towards West	:	The land of Vinod Dyandeo Shitole out of land gut no. 428.
Towards South	:	Gut no. 295.
Towards North	:	Gut no. 427.

(hereinafter referred as a "suit property" for the sake of brevity)

3. The suit property inherited in the name of plaintiff no. 2 by way of compromise in R.C.S. no.194/14 on 22/01/18. As the plaintiff no. 2 was minor, the name of defendant no. 3 mutated as his natural guardian and accordingly mutation entry came into existence in the name of minor plaintiff no. 2 over the land to the extent of 66 R. i.e. suit property. In the said compromise it was settled that, neither the

plaintiff no. 1 nor the defendant no. 3 i.e. the father of plaintiff no. 2 alienate the suit property. However, without obtaining permission from competent authority, the defendant no. 3 alienated the suit property to the extent of 22 R in favour of defendant no. 1 & defendant no. 2 vide registered sale deed bearing day book no. 6349/22 on 05/09/22. The alleged sale deed is null and void and illegal. Therefore, plaintiffs have constrained to file the present suit against defendants for restrain them. By filing this application plaintiffs sought injunction against defendant no. 1 to 3 to restrain them from creating third party interest over the suit property. Hence, this application.

4. The defendant no. 1 to 3 & 10 have filed their written statement cum say at Exh. 39 and thereby strongly opposed this application contending that, plaintiffs have not come before court with clean hands and they have suppressed material facts from the Court. The entire adverse allegations made by plaintiffs against defendants are denied. In true fact of the case defendant have submitted that, suit property is ancestral and joint family property. In R.C.S. no. 194/14 after execution of partition the suit property kept jointly which is belong to plaintiff no. 2 and defendant no. 3. The plaintiff no. 1 is the wife of defendant no. 3. Since last 12 years the plaintiff no. 1 resides separately from defendant no. 3. She has not having good character and she resides with another person. The defendant no. 3 is suffering from paralysis with another disease i.e. blood pressure and diabetes. The defendant no. 3 requires 15,000 to 20,000/- to each month for his medicine. Furthermore, the defendant no. 3 had undergone heart surgery to which he has sustained Rs. 15,00,000/- expenditure. Therefore, to fulfill his legal necessity he alienated the land admeasuring 22 R out of the suit property to the defendant no. 1 & 2 vide registered sale deed dated 05/09/22. After fulfilling legal conditions he alienated the portion of the suit property to defendant

no. 1 & 2. Therefore, they lastly prayed to reject the present application with costs.

5. On perusal of the contains of the application and say following points are arise for my determination and I have recorded my findings against each of them with reasons as under :-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether prima facie case is made out by the plaintiffs ?	In the Affirmative
2.	Whether balance of convenience lies in favour of plaintiffs ?	In the Affirmative
3.	Whether irreparable loss will cause to the plaintiffs if temporary injunction is not granted ?	In the Affirmative
4.	What order ?	As per order

REASONS

6. In order to prove their contentions plaintiffs and defendants have adduced various documents, those will be discussed at the relevant time. Heard both sides at considerable length.

As to Point nos.1 to 3 :-

7. All these points are interlinked with each other therefore they are discussed together to avoid the repetition. It is the contention of the plaintiffs that, the suit property inherited to plaintiff no. 2 by way of compromise in R.C.S. no. 194/14 on 22/01/18. It was also settled in between parties to the suit in R.C.S. no. 194/14 that, the suit property should not be alienate unless and until the plaintiff no. 2 became major. Even though defendant no. 3 alienated the suit property to defendant no. 1 & 2 by way of registered sale deed. The alleged sale deed is illegal and null and void. The defendant no. 3 breached the conditions of compromise in R.C.S. no. 194/14. Therefore, by filing this application plaintiffs sought injunction against defendant no. 1 & 2 not to create third party interest and also against defendant no. 3 for

not to create third party interest in respect of remaining portion of suit property.

8. Per contra, it is the contention of defendant nos. 1 to 3 & 10 that, the suit property is ancestral and joint family property. The suit property kept jointly in the partition executed in between plaintiff no.2 and defendant no. 3 before court in R.C.S. no. 194/14. The plaintiff no. 1 is the wife of defendant no. 3. Since last 12 years the plaintiff no. 1 resides separately from defendant no. 3. She has not having good character and she resides with another person. The defendant no. 3 is suffering from paralysis with another disease i.e. blood pressure and diabetes. The defendant no. 3 requires Rs. 15,000 to 20,000/- to each month for his medicine. Furthermore, the defendant no. 3 had undergone heart surgery to which he has sustained Rs. 15,00,000/- expenditure. Therefore, to fulfill his legal necessity he alienated the land admeasuring 22 R out of the suit property to the defendant no. 1 & 2 vide registered sale deed dated 05/09/22. After fulfilling legal conditions he alienated the portion of the suit property to the defendant no. 1 & 2. The defendant no. 3 executed the registered sale deed in respect of portion of suit property to defendant no. 1 & 2 fulfill his medical necessity. Hence, he prayed to reject present application with costs.

9. I have carefully gone through the entire documents put forth by both sides on record in the light of facts of application and contents of say filed by defendant. In support of their contention the Learned Advocate for the defendant placed his reliance on the authority of The Hon'ble Apex Court in the case of Narayan Bal & Ors. Vs. Sridhar Sutar & Ors reported in AIR 1996 2371, in this case The Hon'ble Apex Court held that,

"The joint Hindu family by itself is a legal entity capable of acting through its Karta and other adult members of the family in management

of the joint Hindu family property. Thus section 8 in view of the express terms of section 6 and 12, would not be applicable where a joint Hindu family property is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint Hindu family property.”

I have also perused the ratio laid down in the authority cited supra. On perusal of the same it is crystal clear that, the suit property is ancestral and joint family property and by way of partition in R.C.S. no. 194/14 it has inherited in the name of plaintiff no. 2. It is also crystal clear from the documents on record that, it was settled in between them that, unless and until plaintiff no. 2 became major the suit property not to alienate. However, record shows that, the defendant no. 3 alienated the same to defendant no. 1 & 2 by way of registered sale deed.

10. So far as concern the ground of the defendant no. 3 for alienation the portion of the suit property to the defendant no. 1 & 2 was due to legal necessity it would be decided after trial only. But, prima faice it appears that, the suit property inherited to minor plaintiff no. 2 and without obtaining permission from competent authority the defendant no. 3 alienated the portion of suit property to defendant no. 1 & 2 by way of registered sale deed. Actually there is bar to alienate the same in compromise pursis at Exh. 68 of R.C.S. no. 194/14. Even though defendant no. 3 alienate the same which is not proper. So far as concern the ratio laid down in the authority cited supra being different facts and contingencies at this stage it is not applicable to the case in hand respectfully. Therefore, it goes to shows that, the plaintiffs are having prima faice case against defendants no. 1 to 3.

11. The balance of convenience also lies in favour of plaintiffs only. As the suit property inherited to plaintiff no. 2 by way of compromise and the defendant no. 3 alienated the portion of the same to the defendant no. 1 & 2 without obtaining permission from

competent authority and ignoring the conditions in compromise pursis at Exh. 68 of R.C.S. no. 194/14, it clearly goes to show that, if defendants not restrained plaintiffs will have suffered irreparable loss. Therefore, in order to protect the interest of minor plaintiff no. 2 it is require to restrain the defendant nos. 1 & 2 from creating third party interest over the portion of the suit property alienated to them by defendant no. 3 i.e 0.22R land out of the suit property till the disposal of the suit. It is also require to restrained the defendant no. 3 to alienating or creating third party interest in respect of remaining portion by excluding 22 R land out of the suit property which was alienated by defendant no. 3 in favour of defendant no. 1 & 2 till the disposal of the suit. Hence, in the light of above discussion I record my findings to point no. 1 to 3 in affirmative.

As to point No.4:-

12. I have answered points No.1 to 3 in affirmative. In answer to point No.4 and in the decision of application, I pass following order.

ORDER

1. The application is hereby allowed.
2. The defendant no. 1 to 3 are hereby restrained from alienating or creating third party interest by any mode in respect of suit property till the disposal of the suit.
3. No order as to costs.

Date: 10/03/2023.

(Sharad B. Kaldate)
Jt.Civil Judge (Jr.Dn.),
Daund.

Certificate

I affirm that, the contents of this PDF File are same words to words, as per the original Judgment/Order.

Name of Stenographer : D. A. Merukar, Grade - 3

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