

ORDER BELOW EXH.27

Perused the application. Heard Ld. counsel for the plaintiff and defendants. The present suit is filed for declaration, writ of preemption and permanent injunction. Plaintiff has filed present application for status-quo in respect of suit property till order below Exh.5. Plaintiff contended that, registered sale deed no. 34/2022 and 27/2022 executed between defendants in respect of suit property gat no. 203/2 are not binding on 2R area out of gat no. 203/2 which is suit property. Plaintiff has filed present suit for right of preemption for purchasing above said area in gat no. 203/2 in respect of which defendants have executed sale deed. Defendants are trying to disturb possession of plaintiff in 2R area of gat no. 203/2. Defendants have threatened plaintiff to endanger his life and ask him to withdraw complaint filed by plaintiff against defendant no.1 lodged at Yavat police station. Defendants have executed above mention sale deed by fraud and on the basis of that sale deeds defendant no. 1 started to disturb possession of plaintiff. Plaintiff has filed appeal against mutation entry no. 3222 in respect of suit property in appeal before Sub Divisional Officer Daund-Purander no. 34/2023. Status quo has been granted vide order dt. 21/02/2023. Therefore, plaintiff prayed for granting status quo so as to restrain defendant no. 1 to 6 from obstructing possession of plaintiff in suit property till decision of Exh. 5.

02. Defendants have filed their say upon application at Exh. 30, defendant contended that, suit is not maintainable as right of preemption in view of Sec.22 of Hindu Succession Act cannot be claimed by the plaintiff. Suit property is not ancestral property of plaintiff and he is not class I legal heir of defendants in respect of suit property. Therefore, plaintiff has no right to claim right of preemption in respect of suit property. Plaintiff is not in

possession of 2R area out of gat no. 203/2. Defendant no. 1 and 2 have purchased suit property from defendant no. 3 to 6 by virtue of registered sale deed and demarcated boundaries in respect of their area respectively. Therefore, defendant no. 1 and 2 are in possession of suit property legally as owner. Plaintiff has no possession in the suit property. Hence, prayed for rejection of present application.

03. Upon perusal of material on the record and considering the documents filed it reveals that defendant no. 1 and 2 have purchased suit property by virtue of registered sale deed from defendant no. 3 to 6. Prima facie defendants are in possession of suit property gat no. 203/2. Plaintiff has merely pleaded about his possession in 2R area of gat no. 203/2. However, in support of the pleading and argument heard plaintiff has nowhere shown his prima facie possession in 2R area of gat no. 203/2. Therefore, plaintiff is failed to prove his prima facie case for granting status quo. On the other hand, if the status quo is granted there are possibilities to disturb prima facie possession of defendants by the plaintiff by taking disadvantage of order of status quo. It would be justifiable to determine right of preemption of the plaintiff after hearing both the parties in detail during trial. Therefore, present application is liable to be rejected. Hence, the following order.

ORDER

1. Application is rejected.
2. parties to take note accordingly.

Place : Daund.
Date : 09/03/2023.

(A.G.Kulkarni)
3rd Jt. Civil Judge, Jr. Division Daund
Tal. Daund, Dist. Pune.