

CNR : MHRG06-000430-2018

ORDER BELOW EXH.5 IN RCS NO. 71/2018

(Shri. Vithoba Joma Mhatre and others V/s.

Shri. Narayan Tukaram Mhatre)

(Passed on 19/01/2019)

1. This application is filed by plaintiff for temporary injunction against defendant No.2 to 5.

2. Suit is for partition and injunction. It is contended in the suit that, suit property No. 87, 7/4/A, 6/3/A, 47/2B, 44/2B/3, 9/1/A and 9/3/A are ancestral properties of plaintiffs and defendants. Originally, these properties were belonging to Joma Changu Mhatre. Plaintiff and defendant are his legal representatives. Defendant No.2 to 5 unlawfully started construction of the house over suit property No.9/1/A. In fact plaintiffs have undivided share in this property along with other suit properties.

3. Defendant No.2 to 5 have filed their written statement. It is contended by the defendants that, they have started construction in their share. It is admitted by defendants that suit property No. 9/1/A is an ancestral property.

4. Heard argument of both sides at length. Prima facie perused oral and documentary evidence on record. Following points are raised for determination.

POINTS

FINDINGS

1. In whose favour prima facie case lies?

...In favour of plaintiffs

2. What order?

... Application is allowed.

REASONS

AS TO POINT NOS. 1 AND 2 :-

5. At the outset, it is important to note that, generally injunction cannot be granted and against co-owners and co-sharers. But, in this case admittedly the suit properties are ancestral properties of plaintiff and defendants. Admittedly, there is no partition. The undivided share of the parties to the suit are yet to be determined by metes and bounds by concern Revenue Authorities. Moreover, yet preliminary decree to determine the share of each party is not pass. Under these facts and circumstances, it is not proper for defendant No. 2 to 5 to construct house upon suit property on particular area of the suit property. Particular area of suit property will be decided at the time of final decree. Therefore, if injunction would not have been granted to defendant No. 2 to 5 to construct home, it will amount to multiplicity of proceeding and complication in the matter. Defendant No. 2 to 5 cannot claim their share on particular area of suit property without final decree became final. Therefore, they are required to restrain from constructing house on suit property.

To sum-up, I pass following order.

ORDER

1. Application is hereby allowed.
2. Defendant No.2 to 5 or anybody on their behalf are hereby restrained from carrying out construction on suit property No. 9/1/A till adjudication of their shares by metes and bounds.

Pen
Date-19/01/2019

Sd/-
(V.V. Kulkarni)
Civil Judge, J.D. Pen