

:: ORDER BELOW EXH.5 IN RCS NO. 52/2018 ::

(Shailesh Sadashiv Ugale Vs Sudam Ramchandra Karle)

1. I have heard argument of learned advocate for plaintiffs and learned advocate for defendants respectively. I have also gone through the record and proceeding and documents produced by both the parties. The plaintiff has filed application below Exh.5 and sought interim relief. Considering the above, I have decided the application with finding and reasons.

2. The following points arise for my determination and I have recorded my findings thereon for the reasons given below.

	<u>POINTS</u>		<u>FINDINGS</u>
1	Whether plaintiff prove that they have <i>prima-facie</i> case ?	:	Yes
2	Whether plaintiff prove that balance of convenience lies in their favour ?	:	Yes
3	Whether plaintiff prove that irreparable loss would be caused to them, if interim relief as prayed is not granted ?	:	Yes
4	What order ?	:	As per final order.

: REASONS :**AS TO ISSUE NO. 1 TO 3 :-**

3. Under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure (in short hereinafter referred as “the Code”), the temporary injunction can be granted if, it is shown that; the suit property is in danger, being alienated or damaged. *Prima-facie* case does not mean proving the case at hint what is to be see that, whether the bonafide and reasonable issue has been raised for the adjudication on merit. At this stage, Court is not required to conduct mini trial of the suit. Keeping in mind these principles, it has to be seen that, whether the prima-facie case is made out by the plaintiffs.

4. The plaintiff has contended in nutshell that, the suit property belongs to one Ramchandra Dhondu Karle. Thereafter Ramchndra Karle died on 29.06.2002 leaving behind mother of plaintiff no.1 to 3 i.e Pramila and defendants as his legal heirs. The name of Pramila and other legal heirs are recorded in the record of rights by different Mutation entries. The mother of plaintiff no.1 to 3 and wife of plaintiff no.4 i.e. Pramila executed a registered will deed and expressed her wish to give her share in the suit property to plaintiff no.1 to 3. Thereafter Pramila died on 15.07.2016 leaving behind plaintiffs as her legal heirs. Therefore the plaintiffs had filed an application to revenue authority for mutating their name as legal heirs of deceased Pramila. The

defendants took an objection and prepared false documents to grab their share. The name of defendants are shown in the record of rights and they may create third party interest in the suit property and prayed to restrained them from alienating the suit property.

5. The defendants have filed their W.S. and say at Exh._36. They have submitted that the plaintiffs have not mentioned the other ancestral properties in the present suit. The plaintiffs are not having any rights in the suit property. The suit properties are the self acquired properties of deceased Ramchandra Karle. The entire ancestral properties are not come in the common hotchpot and hence suit not maintainable. During his lifetime he has partitioned the suit properties and given to the defendants. The defendants and mother of plaintiff i.e Pramila were having very cordial relation during her life time. She had not claimed any share in the suit property. Thereafter Pramila had executed a relinquishment deed of her share in favour of defendant no.2 on 11th February 2014 due to her love and affection towards her brother. The deceased Pramila has already relinquished her share and therefore the plaintiffs are not having any share in the suit property. They have prayed to dismiss the application.

6. I have perused the documents and contentions of both the parties. There is no dispute about relationship between plaintiff and defendant no.1 to 5. It is not is dispute that the suit property belongs to Ramchandra Dhondu Karle. Thereafter Ramchandra Karle died on 29.06.2002 leaving behind three sons and three daughters. After his death the name of defendant no.1 to 5 and Pramila Ugale is record as his legal heirs. There is no dispute that Pramila Ugale died on 15.07.2016. The revenue record reveals the name of late Smt. Pramila Sadashiv Ugale (i.e. mother of plaintiff no.1 to 3 and wife of plaintiff no.4) is shown as co-owner of the suit property. The plaintiffs claiming to be legal heirs of Late Pramila Ugale, whereas the defendants have not denied their status. The deceased Pramila having undivided share in the suit property. The record reveals that after the death of Ramchandra Karle, the name of Pramila i.e. mother of plaintiff no.1 to 3 is recorded along with the name of defendant by M.E. No. 306 on 24.07.2007. The name of Pramila Ugale was recorded as legal heirs of deceased Ramchandra Karle for suit property situated at village Bhaliwadi by M.E. No. 3239 and village Golwadi by M.E. No. 625. The plaintiffs have submitted a registered will-deed dated 17th March 2015 and submit that their mother has given suit property to plaintiff no.1 to 3. The record further reveals that the plaintiffs being legal heirs of deceased Pramila filed an application for mutating their name in revenue record. The Ld. Tahsildar and Ld. Sub-divisional Officer have

rejected their application. Thereafter they filed an appeal no. 05/2022 before Ld. Addl. Collector, Alibag. The Ld. Addl. Collector has set aside the orders passed by lower authorities and remanded the matter to Ld. Tahsildar for fresh decision.

7. The defendant no.1 to 3 submit that the deceased Pramila has executed relinquishment deed on 11th February 2014 in favour of defendant no.2 before notary. The name of Pramila was recorded as legal heirs of deceased Ramchandra Karle. Thereafter plaintiff being the legal heirs are having rights to include their name in the record of rights. The deceased Pramila was having certain rights in the suit property. Whether the deceased Pramila has relinquished her right willingly during her lifetime or not ? These controversy will be decided after final adjudication of present suit. After death of Pramila the name of defendants are in the record of rights.

8. Considering the above i came to the conclusion that, the plaintiffs are entitled to protect their rights. If the rights are not protected then the plaintiffs will suffer irreparable loss. The balance of convenience lies in favour of plaintiffs. Therefore, the prima facie documents and pleadings of plaintiffs, I found that balance of convenience lies in favour of plaintiffs. Therefore, if rights and interest of the plaintiffs are not protected then it will

suffer irreparable loss. Hence, I answer **Point No. 1 to 3 in the affirmative.**

As to Point No.4:

9. In view of my affirmative findings to the points No.1 to 3, this application deserves to be allowed on certain conditions. Hence, in the result and in answer to this point, I proceed to pass following order.

: O R D E R :

1. The application is allowed.
2. The defendants or their agent or servant or power of attorney holder or on their behalf is hereby temporarily restrained from alienating or creating third party interest in the possession of the suit property (more particularly mentioned in para no.1 of the plaint) till final decision of the present suit.
3. Costs in main cause.
4. Parties to take note of this order.

Date: 08 /07/2024

(**Sau. Sujata R. Shinde**)
Jt. Civil Judge Jr. Division,
Karjat, Dist. Raigad