

:: ORDER BELOW EXH.05 IN REGULAR CIVIL M.A.
NO.50-2021 ::

Kamini Shailendra Lanke & Another

...Applicants

Vs

Krushna Dhondu Ambavane & Another

...Opponents

01. This is an application under order 39 rule 1 and 2 of the Civil Procedure Code for the relief of temporary injunction restraining opponent no.1 from alienating or creating third party interest over the land situated in survey no.3/3/A of Karjat, Tal-Karjat, Dist-Raigad. (This property herein after shall be referred as the suit property which is described more particularly in para no.1 of the application).

02. I have framed following points for determination alongwith my findings thereon as under.

Sr. No.	POINTS	FINDINGS
[1]	Do applicants prove that there exists prima facie case in their favor ?	Yes
[2]	Do they further prove that balance of convenience lies in their favor ?	Yes
[3]	Do they further prove that, they will suffer irreparable loss if no order of injunction is passed in their favor ?	Yes

[4]	What order ?	As per final order.
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:: REASONS ::

As to point Nos.1 to 3 :-

03. Applicants filed the present application for the relief of setting aside the exparte decree passed in R.C.S.No.108/2020 of this Court. The said civil suit was filed by opponent no.1 for declaration of ownership of the suit property by virtue of adverse possession. It is decreed exparte therefore applicants filed the main application for setting aside the decree exparte. The present application is filed on the grounds that, the suit property is owned and possessed by Prabhakar Govind Lanke and Vijay Govind Lanke. It is their ancestral property. Applicant no.1 is daughter-in-law and applicant no.2 is grand son of Prabhakar Govind Lanke. He used to stay at Pune since so many years. He died on 14/04/2014. His son Shailendra who was husband of applicant no.1 also died on 29/01/2013. Applicant no.1 and 2 and opponent no.2 are the only legal heirs of Prabhakar Govind Lanke. Vijay Govind Lanke also used to stay at Pune. Since last so many years he is not in contact with applicants. Therefore, they are not aware about his legal heirs. He also died around 2009-10 at Pune. Due to simultaneous deaths in their family,

applicants could not visit the suit property. By taking its undue advantage opponent no.1 created a false and concocted story and filed the false suit. Opponent no.1 was aware about deaths of Prabhakar and Vijay Govind Lanke. He has falsely shown their address of village Gagode, Tal-Pen, Dist-Raigad and has illegally obtained decree against dead persons. Summons was issued in such a newspaper which is not circulated in Pune. Therefore, decree obtained is nullity. On the basis of such void and illegal exparte decree, opponent no.1 has succeeded in mutating his name to the 7 x 12 extract of the suit property. Now he is in hurry to alienate and create third party interest over the suit property. Applicants therefore filed the present application for the relief of interim injunction restraining opponent no.1 from alienating or creating third party interest over the suit property.

04. Opponent no.1 has resisted the application by filing his say below Exh.23. He has denied almost all the averments in the application for temporary injunction. It is submitted that, the application is filed on false grounds. It is further submitted that, the application is not within limitation and he is filed by suppressing material facts. The civil suit bearing R.C.S.No.108/2020 was filed for declaration and perpetual injunction. The said suit was decreed exparte as defendants nos.1 and 2 in the said suit did not appear despite service of summons through newspaper. The said suit was decreed as the documentary evidence and oral evidence in it remained

unchallenged. The suit property is in possession of opponent no.1 since last 30 years. Applicant nos.1 and 2 are nowhere concerned with defendant nos.1 and 2 in the said suit. The present application is filed by them merely on the basis of similarity in surname. They have not filed any documentary evidence to show their actual relationship with Prabhakar and Vijay Govind Lanke. In the said civil suit notice was issued on Prabhar and Vijay Govind Lanke through Dainik Navrashtra which is a daily newspaper circulated in Mumbai, Pune, Nashik and Nagpur. The present application is filed merely to cause harassment of opponent no.1. He therefore has prayed for dismissal of the present application.

05. I have heard learned Advocates on behalf of respective parties. I have also gone through the entire record placed before me. It is an admitted position of facts that, R.C.S.No.108/2020 is decreed exparte. It is also known that, name of opponent no.1 is mutated to the 7 x 12 extract of the suit property on the basis of Judgment and decree in R.C.S.No.108/2020. The said decreed was obtained exparte on the basis of service of summons through newspaper. Order V, Rule 20(1-A) of the Civil Procedure Code provides that, where there is service of summons by and advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last know to have actually and voluntarily resided, carried on business or

personally worked for gain. Now, when applicants claim that, they are legal heirs of defendants in R.C.S.No.108/2020, they have filed copies of Aadhar card, death certificate of one of the defendant i.e. Prabhakar Govind Lanke. They have also filed death certificate of Shailendra Prabhakar Lanke. Applicant nos.1 and 2 are claiming to be wife and son of Shailendra Prabhakar Lanke. The address shown in the Aadhar Card of Prabhakar Govind Lanke is of Rasta Peth Pune. Opponents on the other hand, did not file any documentary evidence to show that, Prabhakar and Vijay Govind Lanke were residents of Gagode, Tal-Pen, Dist-Raigad. Neither they have filed any documentary evidence to show that, Dainik Navrashtra is being circulated even at Pune. Prima facie, therefore it appears that, there is a substance in the application.

6. The applicants have also filed on record copies of public notice published in daily Krushiwal dated 11/05/2021, notice of lease pending copy of RTS appeal and copy of legal notice issued on opponent no.1. These documents also go to show that, balance of convenience at present is in favour of applicants. Unless and until R.C.S.No.108/2020 is decided on merit, neither of the parties get any right to deal with the suit property. I am therefore, of the opinion that, applicants shall suffer irreparable loss if no order of injunction is passed in their favour. Hence I togetherly answer point nos.1 to 3 into the affirmative.

As to point No.4 :-

07. In the case in hand, applicants have apparently and prima facie shown that, there is error in the ex parte order passed against defendants in R.C.S.No.108/2020. By considering my findings on point no.1 to 3, I am of the opinion that, in order to protect applicants rights, the present application needs to be allowed. It is also necessary to take into consideration that, applicants are getting these orders merely on the basis of alleged procedural error. Actual merits of the case shall be decided if at all applicants succeeded in setting aside the decree in R.C.S.No.108/2020. The proceedings of the main application therefore needs to be tried expeditiously. Resultantly in answer to point no.4, I proceed to pass the following order.

:: ORDER ::

1. Application Exh.5 is allowed.
2. Opponent no.1 is hereby temporarily restrained from alienating or creating third party interest over the suit property till final decision of the main proceedings i.e. Civil M.A.No.50/2021.
3. Both parties are directed to expedite the trial for getting it disposed off within three months from this order.

Karjat
Date:04/05/2022

(Manod V.Tokale)
Civil Judge, J.D.,Karjat.
Dist-Raigad.