

ORDER BELOW EXH.5

The present application is filed for grant of temporary injunction under Order XXXIX Rule 1 of the Civil Procedure Code restraining the defendants from alienating the suit property till the final disposal of the suit.

2. It is the case of the plaintiffs that the properties no. “अ” to “ओ” mentioned and described in Para no.1 of the plaint situated at Mouje Karambeli, Taluka Khalapur, Dist- Raigad (Hereinafter, referred as “the suit properties” for the sake of brevity) are ancestral joint family properties of plaintiffs and defendants. The suit properties are the self acquired properties of deceased Pandurang Vichare. He died intestate. He had total 7 children. Narmada Shridhar Palande was the daughter of deceased Pandurang Vichare. The plaintiffs are legal heirs of deceased Narmada Shridhar Palande. After her death, her name was purposefully not added as legal heir of Pandurang Vichare by defendant no. 1 and 2 while making mutation entry no. 743 and 753. Defendants nos. 1 to 33 have illegally excluded plaintiffs and entered their names in the revenue records of the suit properties. Defendant nos. 1 to 23 have created third party interest in suit properties without there being partition by metes and bounds. Also, they are in process to further alienate the suit properties. Therefore, the plaintiffs prayed for grant of temporary injunction.

3. The defendants filed say at Exh.96. Defendants denied that plaintiffs are legal heirs of deceased Pandurang Vichare.

There was partition and by metes and bounds and it was done when deceased Pandurang Vichare was alive. It is contended that during the lifetime of Pandurang Vichare oral partition had taken place amongst the family members in relation to suit properties pursuant to which all family members were placed in their respective shares. It was alleged that the partition was acted upon by all the family members including the mother of plaintiffs without any objection from any member. Defendants are in possession of the suit properties. Therefore, they prayed that the application be rejected with costs.

4. Heard learned advocate Shri. A.V. Mandalik for plaintiffs and learned advocate Shri.D.K.Patil, for defendant nos.1 to 3, 9 to 23 and learned advocate Shri. Shivaji Tokre, for defendant nos. 24, 31 to 33. The plaintiffs averred that they have no claim against defendant nos. 34 to 40. The learned advocate for plaintiffs have filed written arguments at Exh. 109. Following point arose for the determination and findings thereon alongwith reasons are as under:

No.	POINTS	FINDINGS
1.	Whether the plaintiffs has made out prima facie case ?	Yes.
2.	Whether balance of convenience lies in faovur of plaintiffs ?	Yes.
3.	Whether any irreparable loss would cause to the plaintiffs, if injunction as prayed is not granted ?	Yes.
4.	What order ?	Application is allowed.

REASONS

POINT NO.1 TO 4

5. In support of the contentions, the plaintiffs have relied upon following documents –

Copy of Death certificate of Narmada Shridhar Palande, copy of school leaving certificate of plaintiff no.1, copies of 7/12 extract of suit properties, copies of Form no.8 of suit properties, copy of mutation entry of suit property no. “ओ”

6. On the other hand, the defendants have not filed documents.

7. Perused the application and say and documents thereon. The suit is for partition and injunction. The plaintiffs filed copy of death certificate of deceased Narmada Shridhar Palande in which it is mentioned that her father's name is Pandurang Vichare and Mother's name is Saraswati Vichare. Plaintiff no.1 filed his school leaving certificate dated 19.12.1981 in which his name is mentioned as Palande Pratap Shridhar. Plaintiff no.2 filed her school leaving certificate dated 05.10.2015 in which her name is Nanda Shridhar Palande. Therefore, it is prima facie proved that plaintiffs are legal heirs of deceased Narmada Shridhar Palande who is legal heir of Pandurang Vichare. Therefore, the contention of defendants that plaintiffs are not legal heirs of deceased Pandurang Vichare is not acceptable.

8. The defendants have not filed any documents on record to support their claim that the suit properties were partitioned by metes and bounds. Hence, at this stage it can be presumed that partition has not taken place by metes and bounds between the plaintiffs and defendants. The 7/12 extract shows that after the death of Pandurang Vichare, the name of the mother of plaintiff was not entered in it.

9. Defendant nos. 1 to 23 has denied their relations with the plaintiffs. Therefore, this issue is to be decided at the stage of trial. Prima facie, the plaintiffs have shown through documentary evidence that they are the legal heirs of Narmada Shridhar Palande. They have filed copies of mutation entries through which it is seen that defendant nos. 1 to 33 have created third party interest in the suit properties. From mutation entries of suit property no. ॐ filed on record it can be seen that said suit property is sold and there is possibility of alienation of other suit properties till pending of the suit which will cause irreparable loss to the plaintiffs if they subsequently succeed in the suit. If the injunction is not granted, the suit of plaintiffs will lose its purpose. Therefore, the balance of convenience is also in favour of the plaintiffs.

10. In the light of above discussion, as the plaintiffs have proved the prima facie case. In the result, I pass the following order.

ORDER

1. The application is allowed.

2 . The defendants, their agents, servants or any person claiming through them are restrained from alienating the suit properties no. “अ”to “ऐ” till the final disposal of the suit.

Date: 28.03.2018

Place: Khalapur.

(S.M.Gade)

Jt. Civil Judge, J.D., Khalapur.