

Order Below Exhibit 5 in RCS No 70 of 2015

1) Present application is filed by the plaintiffs/Applicants under Order 39 rule 1 and 2 of the code of civil Procedure 1908 for temporary injunction against the defendants.

2) Plaintiffs have filed RCS no 70 of 2015 against the defendants for seeking relief of declaration that, release deed dated 19.08.2015 executed by defendant no 1 to 5 in favour of defendant No 1 is without any consideration and illegal and is not binding on the Plaintiffs and for cancellation of release deed dated 19.08.2015 and for permanent injunction restraining defendants from transferring properties involved therein.

3) It is the case of the plaintiffs that, subject matter of the suit is agricultural land properties situated in Village Mauje Pale Ta Mahad Dist Raigad as under:

Sr. No	Survey Nos.	Hissa No	Area H-R.
1	43	5	0-38(R)
2	98	3	0-11(R)
3	6	4D	0-06(R)
4	5	8	1-40(R)
5	76	1B	0-02(R)
6	96	13	0-02(R)
7	96	11	0-15(R)

(The aforesaid agricultural land properties hereinafter shall be referred to as suit property for the sake of brevity.) apart from the above suit properties, property bearing Survey nos 7A/2A,. 9/9, 11A/11, 86/0 and 30/21A were owned and possessed by deceased Tularam Babaji Dhondge.

4) The aforesaid suit properties were originally owned and possessed by Shri Tukaram Babaji Dhondge who died in the year 1988 leaving behind him his son Namdeo tukaram Dhondge and daughter Mrs. Laxmi Shripat Khambe(Defendant No 5)as legal heirs. Namdeo Tukarram Dhondge Died on 19.03.2010 leaving behind him his legal heirs Defendant Nos 1 to 4. Defendant No 5 has legal heirs i.e. Plaintiff No 1(Daughter),

Plaintiff No 2 and 3(Sons) and son Umaji Shripat Khambe who died in the year 1997 leaving behind him his legal heirs, i.e. Plaintiff No 4 as wife, plaintiffs no 5 and 6 as sons and Plaintiff No 7 as daughter. Out of the aforesaid properties, property in Suvey no 11A/11 has been sold by the defendants to Chintaman Shantaram Valawalkar and property in Survey no 9/9 has been sold by defendants to Shri. Chandrakant Shankar Bhide.

5) Further it is the case of the plaintiffs that, suit properties are joint family properties and till date partition thereof is not effected. The suit property is ancestral property of Deceased Tukaram Babaji Dhondge who acquired the same as tenant by paying necessary fees under the tenancy law. The suit property and other properties are joint family properties and plaintiffs and defendants are joint owners thereof, hence any joint owner has not right to sell the property of other joint owner.

6) Plaintiffs are legal heirs of Defendant No 5 who is daughter of deceased Tukaram Babaji Dhondge and are entitled to inherit share in the suit property. Plaintiffs are in common use, occupation of the suit property and cultivating suit property by taking rice crop, and other crops in the suit property. The release deed of the suit property dated 19/08/2015 executed by defendant no 2 to 5 in favour of defendant no 1, without any consideration and defendant no 1 has not taken possession of the suit property from defendant no 5 and till date suit property is in possession of the plaintiffs. The Defendant No 5 is illiterate and age old and defendant has taken undue advantage of the same and got executed release deed bearing registration no 2471/ 2015 dated 19/08/2015 without any consideration in his favour. The defendant no 5 has not relinquished her right in the suit property voluntarily and the same is executed by playing fraud on defendant no 5 as the contents thereof were not read over to the defendant no 5. If possession of the suit property is taken by the defendants, plaintiffs are likely to cause irreparable loss. Defendant no 1 talking about applying for the permission for sale of the suit property before sub- divisional officer Mahad, under the provision of section 43 of Maharashtra Tenancy and Agricultural land act. Therefore, plaintiffs have

filed present application seeking temporary injunction restraining defendants from transferring the possession of the suit property.

7) Defendant no 1 to 4 after the service of suit summons appeared before the court and filed their say to exhibit 5 and written statement at Exhibit 28. Defendant no 1 to 4 denied contentions made by the plaintiffs in the suit and in Exhibit 5. They contended that, suit filed by the plaintiff is false, frivolous and without any basis hence liable to be dismissed.

8) Defendant no 1 to 4 denied possession of the plaintiffs and cultivation of the suit property and contended that, they are in exclusive use, occupation and possession of the suit property. Further they contended that, defendant no 5 after her marriage was residing at her matrimonial house at Village Mahapre. But after some period she came back at her parents house at Village Gandharpale. Her brother Deceased Tukaram Babaji Dhondge made arrangement of her maintenance by construction of separate house to her. Defendants are cultivating the suit property from years to years and were giving part of the income of the suit property to defendant no 5. Defendant no 5 on account of maintenance by defendants decided to relinquish her rights in the suit property and executed release deed of the suit property dated 19/08/2015 in the office of sub registrar, Mahad and on the same day she also executed irrevocable power of attorney of some properties of defendants in favour of Pratik Chandrakant Bhide in consideration of Rs. 2,33,625/-. Out of the aforesaid consideration Defendant no 5, accepted Rs. 1,60,000/- by cheque from defendant No 1 to 4. Therefore defendant no 5 has executed voluntarily, out of her free will, release deed of the suit property and power of attorney dated 19/08/2015 in the office of sub registrar, Mahad. Therefore defendant no 5 has filed present false suit through her heirs plaintiff no 1 to 7 only for harassment to the defendant no 1 to 4.

9) I have heard arguments of Learned Advocate Shri. Gandhi for the plaintiff and Learned Advocate Shri. Potdar for defendant No 1 to 4 . so

also perused plaint, say of the defendants , written statement and documents annxed thereto Exhibit 5 Application and affidavit in support at Exhibit 6 . from the rival pleadings of the parties fillwoing point arise for my determination and i record my findings against eh of them with reason thereon as under

Sr. No	Points	Findings
1	Does the plaintiffs prove prima facie case in their favour?	No
2	Does plaintiffs prove that, balance of convenience lies in their favour?	No
3	Does the plaintiffs prove that, irreparable loss is likely to be caused if temporary injunction as sought is not granted?	No
4	What order?	Application is rejected

10) Plaintiffs in support of their case filed following documents at Exhibit 4.

- i) Certified copies of 7/12 extract of suit properties at Exhibit 4/1
- ii) Certified Copy of 8A Khate Patrak of Defendnat No 5 Exhibit 4/2.
- iii) Certified Copy of Mutation Entry no 2774 , 3785, 3572 Exhibit 4/3
- iv) True Copy of release deed dated 19/08/2015 Exhibit 4/4. Defendant No 1 to 4 in support of their case relied upon following documents at Exhibit 26:
 - i) Xerox Copy of release deed dated 91/08/2015
 - ii) Irrevocable power of attorney dated 19/08/2015 vide registration no 2467/2015
 - iii) Original Copy of Advocate Legal Notice dated 12/09/2015

Reasons

Point No 1

11) It is the case of plaintiffs that, Defendant no 5 is joint owner of the suit property and her name is entered in 7/12 extract of the suit

property as one of the legal heirs of Deceased Tukaram Babaji Dhondge. On perusal of documents at Exhibit 4 it appears that, name of defendant no 5 is entered in the column of occupant of the suit properties, vide mutation entry no 2774.

12) Plaintiffs contended that, The release deed of the suit property dated 19/08/2015 executed without any consideration by defendant no 2 to 5 in favour of defendant no 1, is illegal and not binding on the plaintiffs. The Defendant No 5 being illiterate and age old defendant no 1 has taken undue advantage of the same and got executed release deed bearing registration no 2471/ 2015 dated 19/08/2015 without any consideration in his favour. The defendant no 5 has not relinquished her right in the suit property voluntarily and the same is executed by playing fraud on defendant no 5 as the contents thereof were not read over to the defendant no 5. On the other hand Defendant No 1 to 4 contended that, they are cultivating the suit property from years to years and were giving part of the income of the suit property to defendant no 5. Defendant no 5 on account of maintaining to her by defendants and her deceased brother Tukaram Babaji Dhondge she decided to relinquish her rights in the suit property and executed release deed of the suit property dated 19/08/2015 in the office of sub registrar, Mahad vide registration no 2471/2015 and on the same day she also executed irrevocable power of attorney of some properties of defendants in favour of Pratik Chandrakant Bhide in consideration of Rs. 2,33,625/-. Out of the aforesaid consideration Defendant no 5, accepted Rs. 1,60,000/- by cheque from defendant No 1 to 4. Therefore defendant no 5 has executed voluntarily, out of her free will, release deed of the suit property and power of attorney dated 19/08/2015 in the office of sub registrar, Mahad.

13) Learned advocate for the Defendant no 1 to 4 submitted that, defendant no 5 executed release deed dated 19/08/2015 before the office of sub registrar, Mahad, out of her free will and free consent. On perusal of instrument release deed dated 19/08/2015(Exhibit 4/4) it appears that, husband of Plaintiff no 1, Shri. Sachin Janardhan Gangan was present and

he signed on release deed as witness to the said instrument. Further on perusal of document irrevocable power of attorney dated 19/08/2015 relied upon by the defendants at Exhibit 26 it appears that, husband of Plaintiff no 1, Shri. Sachin Janardhan Gangan was present at the time of execution of the instruments and he signed on irrevocable power of attorney as witness to the said instrument. Further it is to be noted that, plaintiffs have not challenged in the present suit power of attorney dated 19/08/2015 executed by defendant no 1 to 5 in favour of Mr. Pratik Chandrakant Bhide on the same date on which release deed was signed by which defendant no 5 had agreed to transfer property mentioned therein in favour of power of attorney holder. Therefore prima facie it appear that, release deed dated 19/08/2015 executed by defendant no 5 in favour of defendant no 1 is not made by playing fraud on defendant no 5 . therefore i find that, plaintiffs failed to prove prima facie case in their favour. Hence i record my finding to point no 1 in the negative.

Point No 2 and 3

14) In view of recording negative finding to point no 1, i find that, balance of convenience lies in favour of defendant no 1 to 4. Further i find that, if temporary injunction as sought is granted more irreparable loss is likely to be caused to the defendants than the plaintiffs .Hence, answer to point Nos.2 & 3 are given in negative and in answer to point no 4 i proceed to pass following order.

ORDER

- 1) The application, Exh.05, is rejected.
- 2) Any interim order, if any passed in this matter stands vacated.
- 3) Costs to cause in the suit.

Dated 10th march, 2017
Place: Mahad

(V.R. Doifode)
Jt.Civil Judge, J.D. Mahad