



ORDER BELOW EXH. 5 IN REGULAR CIVIL SUIT NO. 52/2022
CNR-No-MH-SI-08-000353 -2022

Perused the plaint, T.I. application, affidavit in support of it and documents produced on the record. Heard Ld. Advocate Shri. S. Marathe for the plaintiffs. He submitted that plaintiffs have filed this suit for declaration, permanent injunction in respect of suit property mentioned in para 1 of the plaint. He submitted that the suit for partition bearing No. R.C.S. No. 260/1949 was filed between plaintiffs predecessors and their other co-sharers in respect of the suit properties and other properties which was decreed on 27/02/1956 and accordingly decree was passed and shares of both plaintiffs and defendants were decided as mentioned in the present suit and application. Further Regular Darkhast No. 14/1999 was filed for execution of the said decree. The said Darkhast was filed by legal heirs of Shri. Bhagwan Sawant (original defendant No. 71) and Pandurang Dhondur Sawant (original defendant No. 80) against other parties in R.C.S. No. 260/1949. The said Darkhast was allowed and record and proceeding of the said suit bearing No. 260/1949 for partition to the District Court. Accordingly as per the order passed in the Darkhast, T.I.L.R. has suggested the partition. But plaintiffs and other co-sharers filed the partition Appeal No. 1/2004 in Sub Division Officer, Kankavali against that partition. The said appeal was allowed and the said matter was resend to T.I.L.R. for repartition. The said partition was done without giving notices to the parties. It was shown that, Tahasildar, Kankavali had given sanction to the partition work by the notice dated 25/02/2008 and actual possession was given on 26/02/2008. After

perusal of the record, it appears that the sanction for the said partition was granted on 01/03/2008 and the possession of the properties were given on 26/02/2008 before giving sanction to the partition suit. The order given for sanction was illegal and not binding as it was given without giving notice to the plaintiffs and other parties. The possession of the properties were given without bringing on record the legal heirs of the deceased party by the Talathi village Shirval/ Vagade, Circle Inspector village Shirval/Vagade, Tahasildar, Kankavali and Deputy T.I.L.R. and possession receipts were given. Against the said acts, plaintiff Nos. 1 and 2 and other co-sharers filed the suit bearing R.C.S. No. 20/2019 which is pending. The public notice was issued in Dainik Tarun Bharat dated 22/01/2019 about not to make any transaction or sale with defendant Nos. 3 to 16 in respect of suit property during the pendency of the said suit No. 20/2019. The predecessor of defendant Nos. 3 to 16 has no concerned with the suit property. The defendant Nos. 71 and 80 in R.C.S. No. 207/1949 i.e. predecessor of defendant No. 3 to 16 had mortgaged their shares in the suit property and they were not in possession of the suit property. The suit property is in possession of plaintiffs. According to plaintiffs, defendant No. 2 has sold 94 guntha area out of the suit property to the defendant No. 1 by executing registered sale deed dated 10/02/2022 and the sale deed in respect of the suit property between defendant No.2 and defendant Nos. 3 to 16 was executed on 01/01/2016. According to plaintiffs, both the sale deeds are false and frivolous and illegal and not binding on the plaintiffs. Hence plaintiffs have filed the suit and present application for restraining the defendant Nos. 1 and 2 on the basis of said false sale deeds from causing any kind of obstructions to the peaceful possession of the plaintiffs over the suit property and restraining them from

committing any kind of act which will devalue the suit property and not to mortgage, sale the suit property.

2. Heard. Perused the documents on record. After perusal of 7x12 extracts of the suit property (Exh. 6), it prima facie appears that the name of the defendant No. 1 and defendant No. 2 are shown in the column of the Cultivator. It prima facie shows that they are the owners of the suit property. After perusal of sale deed on record (Exh. 4/2 and 4/3), it appears that the sale deeds dated 01/01/2016 and 10/02/2022 were executed between defendant Nos. 2 and defendant Nos. 3 to 16 and defendant Nos. 1 and 2. After perusal of the documents on record vide (Exh. 4/4 to 4/5) it appears that R.C.S. No. 260/1949 was filed in respect of the suit property between predecessor of plaintiffs and their co-sharers and accordingly it was allowed and execution petition bearing No. 14/1999 was filed which was allowed and record and proceeding of the said matter to the District Collector for effecting the partition of the landed property in the said suit. It also shows that the redemption suit bearing No. 92/1951 was filed in between predecessor of the plaintiffs. It also prima facie appears that during the pendency of R.C.S. No. 20/2019 the notice was published in Dainik Tarun Bharat dated 22/01/2019 about informing not to do any transaction or sale in respect of the suit property with defendant Nos. 3 to 6. As the names of defendant Nos. 1 and 2 are appeared on the 7x12 extracts of the suit property and on their registered sale deeds (Exh. 4/2 and 4/3) and therefore they are the necessary parties. Hence before granting any interim relief it would be proper to hear the defendant Nos. 1 and 2 also. Hence I pass following order.

Manohar Sawant etc.4 Vs.
Geeta Yadav etc. 16

4 R.C.S. No.52/2022
(Order below Exh.5)

-: ORDER :-

- 1 Issue show cause notices to defendant Nos. 1 and 2 as to why temporary injunction order should not be granted against them as prayed.
- 2 Notice returnable on 05/05/2022.
- 3 EP and SB allowed, if prayed.

Date:-25/04/2022

(Smt.D.K.Patil)
Jt. Civil Judge (J.D.),
Kankavali.