

CNR No :- MHSI100001902021**:- REGULAR CIVIL SUIT NO. 19/2021 :-****:- ORDER BELOW EXH 05 :-**

The Plaintiffs have filed the present application under XXXIX Rule 1 of The Code of Civil Procedure, 1908 (hereinafter referred as “CPC” in short) for temporary injunction.

Plaintiff case in brief :-

2. The properties situated at village Maneri, Tal. Dodamarg as follows :-

Sr. No.	Survey No.	Hiss No.	Area (H.R.)	Assessment (Rs.Ps.)
1.	23	9	7-41-00	4.56
2.	49	1	1-14-00	0.70
3.	50	2	0-99-00	0.44
4.	135	4	1-99-05	11.19
5.	139	0	1-51-08	11.08
6.	140	4	0-34-03	2.18
7.	141	4	0-03-00	0.28
8.	141	9	0-04-00	0.37
9.	141	11	0-11-01	0.86
10.	141	12	0-01-00	0.06
11.	159	1	0-17-00	0.1
12.	159	4	0-16-00	1.94
13.	159	6	0-08-01	0.97
14.	159	9	0-32-02	

are the subject matter of suit. (Hereinafter referred as “suit

properties”)

3. It is contended that, the suit properties are the ancestral properties of Plaintiff and Defendants No. 1 to 3. Plaintiffs No. 1 to 4 are sisters of Defendant No. 1. Husband of Defendant No. 2 who is also the father of Defendant No. 3 Mallikarjun Ishwarappa Prasadi was the brother of Plaintiffs and Defendant No. 1. Plaintiffs and Defendant No. 1 have filed RCS No.86/2003 against Mallikaarjun for partition, which was finally decided on 08.04.2012. Defendant No. 2 and 3 preferred the appeal against the said decision which was came to be rejected. Accordingly, Plaintiffs and Defendants has rights over the suit property as per the succession law and order of Court.

4. For the purpose of RCS No.86/2023, Defendant No. 1 had obtained Power of Attorney Dtd.24.05.2002 from plaintiffs No. 1 to 4. Plaintiff have signed where ever Defendant No. 1 used to ask. However, immediately after two months, Defendant No. 1 made Plaintiffs execute Power of Attorney Dtd.26.07.2002 in favour of his friend Dr. Shri. Ramesh Dattaram Pendarkar under the pretext of the same being necessary documents for the suit. That, the plaintiffs signed the said Power of Atrorney Dtd. 26.07.2002 without reading believeing upon Defendant No. 1. The Defendants No. 1 and 4 were hands in glow with each other and during pendency of RCS No.86/2023, Defendant No. 4 executed release deed Dtd.17.01.2008 in the name of Plaintiff to in favor of Defendant No. 1. However, Plaintiffs never wanted to release their share in favour of Defendant No. 1. Hence, the said release deed is false. RCS No.86/2003 was decreed in year 2012 and

during its execution, when Plaintiffs obtained the 7/12 extracts of the suit property, they came to know that, vide mutation entry No. 2059, their names were deleted from the revenue record on the basis of the forged release deed. Hence, on 16.12.2019 Plaintiffs terminated the Power of Attorney Dtd. 24.05.2002 executed in favor of Defendant No. 1 by publishing public notice in daily Tarun Bharat. Notice was also issued to Defendant No. 2 by RPAD. However, he rejected. Likewise on 16.12.2019 Plaintiffs terminated the Power of Attorney Dtd. 26.07.2002 executed in favor of Defendant No. 1 by publishing public notice in daily Kokansaad. Notice was also issued to Defendant No. 4 by RPAD, to which he replied false contentions. As such Defendant No. 1 have got transferred the share of Plaintiffs in his name using the said release deed. The said release deed is void initio and not binding upon the Plaintiff. Hence it is prayed that, the Defendant No. 1 be temporary restrained from alienating the suit property to the third person.

5. Defendant No. 1 appeared and filed the written statement cum say on this application at **EXH 20** and objected the suit and the present application. Defendant No. 1 denied the contents of the application. He admitted that, the suit properties were ancestral properties of Plaintiffs and Defendants No. 1 to 3. He also admitted the relation of the parties. It is contended that, during the lifetime of their father Ishwarappa Gurulingappa Prasadi, he got married Plaintiff No. 1 and 2 and after his death, Defendant No. 1 got married Defendant No. 3 and 4. At the time of their marriage and after their marriage, all the financial help

were made to the Plaintiff. As the Plaintiff had love and affection towards the Defendant No. 1, they had asked Defendant No. 1 to manage the entire property. Plaintiffs themselves have executed the power of attorney Dtd.24.05.2002 in the name of Defendant No. 1 in order to institute RCS No.86/2003 for partition. After their marriage, plaintiff had lost interest in the suit property, a power of attorney was executed in favour of Dr. Ramesh Dattatray Pendharkar on 26.07.2002 in order to release their share in the suit property in favour of Defendant No. 1 and accordingly on 18.01.2008 release deed in favor of Defendant No. 1 was executed. Accordingly, Defendant No. 1 became the owner of suit property. It is further contended that, the notices in respect of mutation entry No. 2059 of year 2008 were received by the Plaintiff. Accordingly, the Power of Attorney Dtd.26.07.2002 and the release deed are completely legal. Hence, it is prayed that, the present application be rejected.

6. Perused the application and say. Heard Ld. Advocate for the Plaintiffs and Defendant No. 1. Following points arise for my determination and I have recorded my findings against each of them for the reasons enumerated below :-

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the Plaintiff has made- out prima-facie case ?	Yes.
2	Whether balance of convenience is in favour of the Plaintiff ?	Yes.

3	Whether the Plaintiff will suffer irreparable loss in the event of refusal of temporary injunction ?	Yes.
4	What Order ?	Application is allowed with costs.

-: **REASONS** :-

7. In support of their case, Plaintiff relied upon documents such as certified copy of Judgment and Decree in RCS No. 86/2003 at EXH 6 and 7, certified copy of Judgment and Decree in RCS No. 72/2014 at EXH 8 and 9, photocopy of 7/12 extracts of the suit properties at EXH 4/7 to 4/20, photocopy of 8A extract of suit property at EXH 4/21, office copy of notice issued to Defendant at EXH 4/22, returned envelope showing that, Defendant refused to accept the notice at EXH 4/23, copy of paper publication notice issued by Plaintiff through their Advocate in daily news paper Tarun Bharat at EXH 4/24, copy of Bill of paper publication at EXH 4/25, office copy of notice issued to Defendant No. 4 at EXH 4/26, RPAD receipt of said notice at EXH 4/27, reply given by Defendant No. 4 on said notice at EXH 4/28, copy of paper publication notice issued by Plaintiff through their Advocate in daily news paper Kokansaad at EXH 4/29, copy of Bill of paper publication at EXH 4/30, copy of paper publication notice issued by Plaintiff through their Advocate in daily news paper Tarun Bharat at EXH 4/31, copy of Bill of paper publication at EXH 4/32, copy of advertisement about selling of suit property shown in www.realestateindia.com

websites at EXH 4/33, answer given by District Sub-Registrar at EXH 4/34, certified copy of Report, statement and panchayadi given by TILR at the time of measurement, certified copy of agreement to sale bearing registration No. 124/2008 at EXH 31/2.

8. In support of his case, Defendant No. 1 relied upon documents, such as certified copy of judgment in Mutation Entry No. 2059 with objection filed by plaintiff, certified copy of Mutation Entry No. 2059.

Points No. 1 to 3 :-

9. It is argued by Ld. Advocate for Plaintiff that, the Defendant No. 1 fraudulently took signatures of Plaintiff on second power of attorney dated 26.07.2002. That the RCS No.86/2003 was decided in year 2012. However, despite the same, release deed was not produced in the matter. It is argued that presently, Plaintiff has entered their names over 7/12 extracts of the suit property. However, Defendant No. 1 has tried to sell the suit properties. Hence, it is prayed that the Application be allowed.

10. Ld. Advocate for Defendant argued that, RCS No.86/2003 did not declare any rights of Plaintiff. Plaintiffs executed the release deed on their own will. Since 2002 – 2019, Power of attorney was not terminated. It is also argued that Defendant No. 1 himself developed properties. Hence it is prayed that the Application is rejected.

11. The relations of parties is admitted. It is also admitted that the properties were ancestral properties of Plaintiffs and Defendant No. 1. It is further admitted that Plaintiffs and Defendant No. 1 filed RCS No. 86/2003 in Savantwadi Civil Court which was came to be decreed and its appeal filed by Defendants no. 2 and 3 were dismissed.

12. From Judgment and decree in RCS No. 86/2003 at EXH 6 and 7 respectively, it appears that the Plaintiffs and defendant No. 1 got 2/12th share each in these suit properties. Hence there appears no substance in argument of Ld. Advocate for Defendant No. 1 that Judgment of RCS No. 86/2003 did not declare any rights of Plaintiff. On perusal of record, it also appears that the earlier Plaintiffs executed the power of attorney dated 24.05.2002 in the name of Defendant no. 1 for the purpose of RCS No.86/2003. However, there appears another power of attorney dated 26.07.2002 executed in name of Dr. Shri. Ramesh Dattaram Pendarkar. It is the case of the Plaintiffs that Defendant No. 1 fraudulently got executed the said power of attorney from Plaintiffs by misleading them. From record, it appears that the Dr. Shri. Ramesh Dattaram Pendarkar as POA of Plaintiffs executed the release deed dated 17.01.2008 in favour of Defendant. It appears that the said power of attorney is executed during pendency of RCS No.86/2003. However, from available material on record, it appears that the said release deed has not been produced in RCS No.86/2003. It is the case of Plaintiff that they never wanted to release their share in the suit property in favour of Defendant No. 1. On the other hand, as per the

Defendant No. 1, the said release deed is valid and legal and now the Plaintiff cannot deny the same.

13. Whether the power of attorney dated 26.07.2002 executed in favour of Dr. Shri. Ramesh Dattaram Pendarkar and release deed Dtd.17.01.2008 are illegal and void or are valid will be able to decide only after considering the evidence of both the parties. However, considering the admitted fact that the suit properties were ancestral properties of Plaintiffs and Defendant No. 1 and that in RCS No. 86/2003 Plaintiffs were apparently allotted shares in the suit properties, there appears prima facie case in favour of the Plaintiffs. Hence the balance of convenience is in favour of Plaintiffs. Plaintiff has produced on record the copy of agreement to sale which appears to be executed by Defendant No. 1 in favour of Jaiprakash Mourya, Devesh Kumar, Vinay Mourya and Pravin Kushwaha. On perusal fo the same, it appears to be in respect of suit property at Sr. No. 1 i.e. Survey No. 23 Hissa no. 9. As such Defendant No. 1 appears to be alienating the suit properties. Hence, if the suit properties are alienated, then it would cause irreparable loss to the Plaintiff. Hence I answer Points No. 1 to 3 in the '**Affirmative**'.

Point No. 4 :-

14. From the discussion made in the above points, it is clear that, the Plaintiffs are entitled to get relief of temporary injunction as prayed. Hence, the application is liable to be allowed. Accordingly, I proceed to pass the following :-

-:: ORDER ::-

1. Application is allowed with costs.
2. Defendant No. 1, his family members, agent or anyone on his behalf is hereby temporarily restrained by way of temporary injunction by creating any third party interest or alienating the suit property without following due process of law till final disposal of the suit.

(Dictated and Pronounced in Open Court.)

Place : Dodamarg.
Date : 09/11/2023.

(Y. P. Bavkar)
Civil Judge (Junior Division),
Dodamarg.