

CNR No :- MHSI100001902021**:- REGULAR CIVIL SUIT NO. 19/2021 :-****:- ORDER BELOW EXH 36 :-**

The Defendant No.1 have filed the present application under XXXIX Rule 1 and 2 of The Code of Civil Procedure, 1908 (hereinafter referred as “CPC” in short) for temporary injunction.

Defendants 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, Defendant No. 1 got 1/6th share in the suit property by way of succession and on 15.09.2008 he got 4/6th share of Plaintiff No. 1 to 4 vide the release deed. Prior to this suit, RCS No.86/2003 was instituted wherein Plaintiffs No. 1 to 4 were parties. As the suit would take time to get disposed off the registered release deed Dtd.17.01.2008 was executed. Accordingly, mutation entry No. 2059 was granted. However, despite the right of Plaintiff being extinguished after execution of release deed, they entered their name over the revenue record of suit property by mutation entry No. 3292 by taking advantage of judgment in RCS No.86/2003. It is contended that, the suit property is maintained by the defendant No. 1 on his own expenses. However, taking advantage of entries over 7/12 extract of the suit property, the plaintiff are trying to alienate the suit property. Hence, it is prayed that, Plaintiff No. 1 to 4 be temporarily restrained from alienating the suit property.

4. Plaintiffs No. 1 to 4 objected the application by filing say at **EXH 39**. It is contended that, the contents of application are false it is contended that, R.C.S. No. 86/2003 was decided on merits on 04.06.2012 and shares of Plaintiff and Defendants were defined. Its appeal bearing Regular Appeal No. 72/2014 preferred by Defendant No. 2 and 3 was dismissed. Accordingly, Plaintiff has share in the suit property by succession as well as by order of the Court.

5. It is contended that, Plaintiff No. 1 to 4 themselves

have never executed any release deed in favour of Defendant No. 1. Defendant No. 1 and 4 having hand in gloves with each other executed the illegal release deed and thereafter entered his name over the suit property vide mutation entry No. 2059. It is contended that, the said release deed is false. The Defendant No. 1 have entered in to agreement to sale 5/6 share in the suit property to Shri. Jayprakash Ramavath Morya, Shri. Vinay Jayprakash Mory and Shri. Pravin Kushvah by accepting huge amount of consideration. Hence, the Defendant No. 1 is about to sell the suit properties. Hence, it is prayed that, the application be rejected.

6. Perused the application and say. Heard Ld. Advocate for Defendants and Plaintiff. 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 Defendants has made- out prima-facie case ?	No.
2	Whether balance of convenience is in favour of the Defendants ?	No.
3	Whether the Defendants will suffer irreparable loss in the event of refusal of temporary injunction ?	No.
4	What Order ?	Application is rejected with cost.

-: REASONS :-

7. 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.

8. In support of her 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 website 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.

Points No. 1 to 3 :-

9. Ld. Advocate for Defendants 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 be allowed.

10. It is argued by Ld. Advocate for Plaintiffs No. 1 to 4 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 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. On perusal of record, it appears that, in RCS

No.86/2003, the shares of Plaintiffs and Defendants in the suit property were defined. From the record, it appears that, during pendency of RCS No. 86/2003 the Power of Attorney Dtd. 26.07.2002 was came to be executed in the name of Dr. Shri. Ramesh Dattaram Pendarkar by the Plaintiff and thereafter on 17.01.2008, the release deed was came to be executed by Dr. Shri. Ramesh Dattaram Pendarkar as the Power of Attorney holder of Plaintiff in favour of Defendant No. 1. As per the case of Plaintiff, the said Power of Attorney and release deed is false. On the other hand, as per Defendant No. 1, the same is binding upon the plaintiffs. At this juncture, it is pertinent to note that, it appears from record that, the release deed was came to be executed during pendency of RCS No. 86/2003, however, the same does not appear to be produced in the proceeding of 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. Under such circumstance, whether the 4/6th share of Plaintiff is transferred in favour of Defendant No. 1 by way of release deed Dtd. 17.01.2008 can be decided only after giving both the parties an opportunity to lead their evidence.

13. It is 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. In order to support to contention that, Plaintiffs are trying to alienate the suit property, defendant No. 1 did not produced any material on record. Thus, there does not appear any prima facie case in favour of Defendant No. 1. It is also further

pertinent to note that, 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. However, on the other hand, Defendant No. 1 have not produced any material on record showing the Plaintiffs trying to alienate the suit property. Hence, balance of convenience does not lie in favour of Defendant and the rejection of the present application would not cause any irreparable loss to the Defendants. Hence, I answer Points No. 1 to 3 in the 'Negative'.

Point No. 4 :-

14. From the discussion made in the above points, it is clear that, prima facie case, balance of convenience and irreparable loss does not co exist in favour of Defendant No. 1. Hence, the application is liable to rejected with costs. Accordingly, I proceed to pass the following :-

-::O R D E R ::-

1. Application is rejected with cost.

(Dictated and Pronounced in Open Court.)

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

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