



ORDER BELOW EXH. 136 IN SPL.C.S. NO. 15/2018

(Shankarrao Yadav Vs. Vijaykumar Yadav & Ors.)

[CNR No. MHSN050004972018]

1. By way of present application defendant No. 1 prayed for injunction against this plaintiff.

2. It is submitted that, present suit is filed for accounts, partition, possession along with permanent injunction. After framing of issues (Exh. 105) now it is pending for plaintiff's cross examination. Meantime the plaintiff filed application Exh. 116 and sought injunction against defendant No. 1 to restrain him not to create third party interest in suit properties. Said application was allowed and injunction is saddled against defendant No. 1 to restrain him from creating third party interest in suit properties. However, the plaintiff is taking undue advantage of his name in revenue record of some of the house properties and agricultural fields intending to create third party interest. This fact is just revealed to defendant No. 1 and therefore to avoid multiplicity of litigation and to protect his interest, present application came to be filed. With this submission he prayed to allow the application.

3. The plaintiff filed his Say below Exh. 147 and resisted the relief and denied all the averments of defendant No. 1. It is submitted that,

the application is devoid of merits. The application is filed on assumption and presumption, also by suppressing material facts. The suit properties are in joint possession of heirs of late Vasantrao. Therefore, in order to sell out the joint properties, all heirs are necessary. Thus, in such circumstances no possibility about creation of third party interest. Apart from it, the application filed by the plaintiff for temporary injunction Exh. 116 was allowed on merits. The plaintiff objected mutation of defendant No. 1 and to settle the score, this application came to be filed. Moreover, no circumstances were pleaded which caused apprehension in the mind of defendant No. 1 about creation of third party interest. Nothing is brought on record to support the assertions. The relief cannot be granted on hearsay facts. The application is not maintainable in the eyes of law. With this submission he prayed to reject the application.

4. Heard both sides. Perused record. In view of rival contentions of both the parties, following points arise for my determination to which reasoned findings are given thereunder :-

SR. NO.	POINTS	FINDINGS
1	Whether instant application for temporary injunction filed by defendant No. 1 against the plaintiff without counter-claim is maintainable ?	Yes
2	Whether defendant No. 1 show prima facie case in his favour ?	No
3	Whether defendant No. 1 show balance of convenience tilts in his favour ?	No

4	Whether defendant No. 1 proves that he will suffer irreparable loss in the event of rejection of application ?	No
5	What order ?	Application stands rejected.

REASONS

5. Present suit is filed for relief of partition, separate possession, accounts and permanent injunction. Defendant No. 1 filed his Written Statement wherein he denied all the allegations levelled against him. In this backdrop this application is taken into consideration.

AS TO POINT NO. 1 :-

6. It would be proper to consider the aspect of maintainability of this application; as the plaintiff has objected maintainability of application for temporary injunction filed by defendant No. 1 without counter-claim. The plaintiff submitted that, defendant No. 1 is not entitled to seek relief of temporary injunction without filing counterclaim in the suit of the plaintiff. Defendant No. 1 submitted that, the provision under Order 39, Rule 1 of the Code of Civil Procedure can be invoked for relief of temporary injunction by any party to suit. Therefore, application is maintainable.

7. I have taken into consideration submissions of both sides. The relief of temporary injunction is governed under the provision of Rule 1 and 2 of Order 39, Code of Civil Procedure. Certainly this is a suit filed by the plaintiff for other reliefs along with permanent

injunction. As mentioned above, defendant No. 1 had not filed counterclaim, does it mean that he cannot seek temporary injunction to protect his interest and right involved in the suit properties. Certainly not, as Rule 1(a) of Order 39 of CPC specifically denotes that, “wherein any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger or being vested, damaged or alienated by any party to the suit or wrongfully sold in execution of decree or, (b) -----, (c) -----, the Court may by order grant temporary injunction to restrain such act.

8. The intention of the legislature can be gathered through the words used in the provision that, during the pendency of suit, to protect the suit property as well as interest involved therein and to avoid the multiplicity of litigation or injury, injunction can be granted to restrain such act of “any party to the suit”. Therefore the provision itself makes clear that, the application filed by defendant for temporary injunction in suit of plaintiff without filing counter-claim is maintainable. Hence, Point No. 1 is answered in affirmative.

AS TO POINT NO. 2 :-

9. Defendant No. 1 has come with specific allegation that plaintiff is intending to create third party interest in the suit properties by taking advantage of his name mutated in the revenue record. It is further submitted that, already the application of plaintiff for temporary injunction is allowed and injunction is saddled on defendant No. 1 from creating third party interest in suit property. However, the plaintiff himself intended to create third party interest

in suit properties by taking undue advantage of mutation entry standing in his name as successor. Per contra, learned advocate for plaintiff submitted that, the application is filed on surmises, neither facts nor circumstances pleaded or shown to suggest that defendant No. 1 has sound information about alleged conduct of plaintiff.

10. At the outset of submissions it is made clear that plaintiff denied prima facie case of defendant No. 1 to claim injury to the rights by creating third party interest.

11. At the cost of repetition it needs to mention here that, this is a suit for accounts, partition, possession and declaration. Therefore, the relationship and nature of suit properties is undisputed. However, defendant No. 1 claims that he received rights by way of Will against which the plaintiff seek declaration.

12. It is true that, injunction needs to be granted when party to suit by affidavit or otherwise satisfactorily show that the other party is going to cause injury either to right or property. However, in the present case the defendant No. 1 made stray statements that plaintiff is intending to create third party. But nothing is mentioned in entire application as to how this information is perceived to him. No documents were produced on record which suggest the ulterior conduct of the plaintiff about creating third party interest. Defendant No. 1 stressed on his statement made on oath that plaintiff is creating third party interest, without filing any supportive document. Thus, the sole statement of defendant No. 1 though made on oath would

not be sufficient to show that prima facie injury likely to be caused to his rights involved in the suit properties. Therefore, I come to the conclusion that defendant No. 1 failed to show prima facie injury to right, or conduct of the plaintiff which would amounting to injury to his rights. Thus, answer in the negative.

AS TO POINT NO. 3 :-

13. This is a discretionary relief wherein evidence of party is not warranted to substantiate his relief. Therefore, at the time of consideration of balance of convenience, it is equally necessary to consider balance of inconvenience as well. Thus, it is incumbent on the part of defendant No. 1 to show that to protect his interest involved in the property, injunction order is the only relief; if rejected, it will cause prejudice to him; this is balance of convenience.

14. To show the balance tilts in his favour, defendant No. 1 must satisfactorily show, *firstly*, the plaintiff is going to create third party interest with intention to cause injury to defendant No. 1, *lastly*, such creation of third party interest would amount to interference in the enjoyment of defendant No. 1 in suit properties.

15. As mentioned above, nothing is brought on record by defendant No. 1 to satisfy that the plaintiff is creating third party interest other than his statement on oath. Therefore, defendant No. 1 failed to show satisfactorily that the plaintiff is about to create third party interest with underlined interest to cause injury to him.

16. Apart from it, nothing is brought on record that the whatsoever attempt to create third party interest, as alleged by defendant No. 1, would cause interference in the joint enjoyment of suit properties. Certainly defendant No. 1 has come with a case that his father bequeathed his right involved in suit properties, however, plaintiff denied the same and seek partition. Therefore, at this juncture the suit properties are supposed to be in joint possession. My view is cemented with the assertions made in the instant application by defendant No. 1 that the plaintiff allegedly creating third party interest by taking undue advantage of his name as co-owner. However, nothing is brought on record that such creation of third party interest would cause hardship or impediment or obstruction in his actual possession. Therefore, for the above reasons I come to the conclusion that defendant No. 1 failed to show balance of convenience lies in his favour. Thus, I record my answer in negative.

AS TO POINT NO. 4 :-

17. The relief of injunction is protect the party from loss which cannot be accounted in terms of money, i.e. protection from irreparable loss.

18. As mentioned above, the suit properties are subject matter of a partition suit and defendant No. 1 also claim that plaintiff intended to take benefit of his name as co-owner. However, nothing is brought on record which suggest that such creation of third party interest would amount to irreparable loss or which cannot be compensated in terms of money. In fact the alleged fear shown by defendant No. 1 is

transfer of right involved in immovable properties and it will certainly rule under the provisions of Transfer of Property Act and therefore the consideration of instrument and other aspects are available to account the quantum of loss. Defendant No. 1 has not pleaded that plaintiff is trying to disturb his possession and to have fruits from the agricultural field. Therefore, I come to conclusion that defendant No. 1 has failed to show that the attempt to create third party interest by the plaintiff would constrain him to suffer irreparable loss. Thus, I answer this point in negative.

AS TO POINT NO. 5 :-

19. Defendant No. 1 failed to show prima facie infringement or violation of his rights involved in suit properties at the hands of plaintiff; even it is not satisfactorily shown that act of plaintiff would cause irreparable loss to him and consequentially failed to show balance of conveniences lies in his favour. Thus, for the above reasons I come to the conclusion that defendant No. 1 is not entitled for temporary injunction. Accordingly following order is passed.

ORDER

- (1) Application stands rejected.
- (2) No order as to costs.

Islampur
Date : 26/10/2023.

(M.M. Chitale)
Joint Civil Judge Senior Division,
Islampur