

Order below Exh. 6 in Regular Civil Suit No. 146/2018**(Vishwajit Khot V/s Ranjana Hawaldar)**

1. Plaintiffs have filed this suit for perpetual injunction and declaration in respect of suit property bearing Gat No. 123/5 admeasuring 0.35 R situated at village Ashta, Tal.- Walwa, District-Sangli. Plaintiff is also praying for temporary injunction restraining the defendant from alienating and creating third party interest in the suit property. According to plaintiff suit property was initially owned by Jagannath Budhaji Khot, who is the father of plaintiff no. 1 to 3. Jagannath has expired on 24.04.2004. Thereafter, vide M.E.No. 2255 the name of plaintiff no. 1 & 2 was entered on record of rights and both being minors their mother Sunanda Jagannath Khot was shown as their guardian. Subsequently, the mother of the plaintiff Sunanda also expired on 28.05.2016. Subsequently, the sister of Sunanda is taking care of plaintiffs as their guardian. After the death of mother of plaintiffs vide M.E.No. 4072 the names of plaintiffs were mutated on the record of rights.

2. Subsequently, plaintiffs came to know that during the lifetime of their mother Sunanda, the defendant is claiming that an agreement was executed by their mother on 30.05.2011 in respect of the suit property vide consideration of Rs. 35,200/- , which according to the plaintiffs is not binding upon them. Therefore, plaintiffs have prayed for cancellation of the agreement and perpetual injunction. But the period for decision of suit would be long, hence, they have prayed for restraining the defendant from alienating and creating third party interest in the suit property.

3. The defendant has appeared and filed his written statement below Exh. 18 alongwith counter claim below Exh. 19. It the contention of defendant that during the lifetime of mother of plaintiff namely Sunanda Jagannath Khot, she had, for family requirements, education and day to day expenditure of the children, executed an agreement on 30.05.2011 in favour of the defendant and said agreement was executed by her willfully. Further more, according to the defendant another agreement was executed by Sunanda in favour of the defendant and suit property was given in possession of defendant. So also due to technical reasons the sale deed could not be executed and registered. Hence, the defendant has prayed that inspite of his willingness and readiness to get the sale deed executed, the mother of the plaintiffs had not executed the sale deed, hence, they have prayed for specific performance of the agreement dated 30.05.2011 and also prayed that the temporary injunction application of plaintiffs be rejected.

4. I have heard both the Advocates for plaintiffs and defendant. Perused documents and the pleadings. After considering the same following points arise for my determination to which I am recording my findings with reasons there on.

Sr. No.	POINTS	FINDINGS
1.	Do Plaintiffs prove that they have prima facie case ?	In the affirmative.
2.	Whether the balance of convenience lies in favour of plaintiffs ?	In the affirmative.

3.	Whether the plaintiffs would suffer irreparable loss, if injunction is not granted in their favour ?	In the affirmative.
4.	What order ?	As per final order.

REASONS

AS TO POINT NOS. 1 TO 3

5. It is the contention of the plaintiffs that suit property was initially owned by their father Jagannath and subsequently, was mutated in the name of their mother. This fact has not been denied by the defendant. Further more, according to the plaintiffs after the death of their mother Sunanda their names were mutated on the record of rights vide M.E.No. 4072. Plaintiffs have filed on record the copy of Mutation Entry alongwith 7/12 extract, which shows that the names of the plaintiff is appearing on the record of rights. On the other hand the defendant has made counter claim for specific performance of agreement dated 30.05.2011 and it is his contention that the mother of the plaintiffs had given possession to him. The same is also mentioned in the agreement under question. The plaintiffs have challenged the said agreement. On the other hand it is the contention of the defendant that he is in possession of the suit property on the basis of the agreement. Therefore, the documents filed by the plaintiffs show that they are having prima facie case, at the same time the possession of the suit property seems to be in dispute, the same can be decided at trial. At the present stage the plaintiffs are only praying for restraining the defendant from alienating the suit property . If the said prayer is not allowed plaintiffs

will suffer irreparable loss as the record of rights of the suit property is standing in their name. Due to these reasons the balance of convenience is also in favour of plaintiffs, and if injunction is not granted to the plaintiffs they would suffer irreparable loss. Hence, I answer point Nos. 1 to 3 in the affirmative.

AS TO POINT NO. 4

6. Considering affirmative findings in point nos. 1 to 3, I proceed to pass following order which according to me would meet end of justice.

ORDER

1. Application is allowed.
2. Defendant is restrained from alienating or creating third party interest in suit property bearing Gat No. 123/5 admeasuring 0.35 R situated at village Ashta, Tal.- Walwa, District- Sangli, till the conclusion of trial.

Islampur.
Date:- 10.06.2019.

Sd/xx
(N.D.Jadhav)
3rd Jt. Civil Judge Jr. Dn., Islampur.