

Order Below Exh 36 in R.C.S. No.06/2017

[Bhimu Basling Mangsuli V s Mallikarjun Jabgonda and other]
[CNR NO. MHSN080000382017]

1. This application is filed by plaintiff u/s 39 rule 1 and 2 of the Civil Procedure Code restraining defendants from changing nature of property by himself or through any other person.
2. According to plaintiff, suit is filed for partition and separate possession. Defendants have knowledge that suit is likely to be decreed and they have no give share to the plaintiff. Therefore, defendants have started changing nature of suit property. Defendants have brought stones in the suit properties and trying to change its nature. According to plaintiff, if this will happen then it was cause complications in separating share of plaintiff at the time of actual partition. Plaintiff has prima-facie case and balance of convenience lies in his favour. If this application is not allowed, then irreparable loss would be caused to plaintiff not compensated in terms of money. Hence prays for allowing this application.
3. Heard advocate for plaintiff. He submitted that suit is for partition. Plaintiff has share in the suit properties. If nature of suit properties is changed by the defendants, then it would cause irreparable loss to the plaintiff not compensated in terms of money. Advocate for plaintiff has relied upon following citations.

1. AIR 1969 GOA, DAMAN AND DIU 90

(Jose Caetano Vaz, Vs. Julia Leocadia Lucretia Fernandas)

“A co-owner, in possession of the joint property, has no right to change the user of that property without the consent of the other co-owners. If he does so by starting digging operations with a view to erect a house on joint property and the aggrieved co-owner comes to the court with due promptness for restraining him from raising a building, the court can very legitimately decree prohibitory injunction. If in the meantime any structure has been raised a decree for mandatory injunction can also be granted.”

2. Punjab and Haryana High Court

(Saroop Singh and others Vs. Harbant Singh and another) (12 Aug. 2009)

“It is settled proposition of law that a co-sharer can seek injunction against the other co-sharer with regard to the property which is in his exclusive possession.”

4. Advocate for defendant has filed say at exh.38 and submitted that application is cryptic. It is silent on point of nature of charge which defendants are going to be made in the suit properties and further complications which are likely to be face by plaintiff in the future. This application is filed only to prolong this matter. Gat no.699/1 is not Joint Family Property of plaintiff and defendants. Gat no.699 is not in existence. Therefore, description of suit properties given in para no.1(A) and B of the plaint is incorrect. Therefore, plaintiff has no prima-facie and balance of convenience doesn't lies in his favour.

5. This suit is filed for partition, separate possession and mesne profits. It is rightly pointed out by advocate for defendant that application is cryptic. Moreover, documentary evidence or photos are not filed on record to show that defendants have changing nature of suit properties by putting stones in it. Defendants are also co-sharer in

the suit properties. Therefore, without any strong evidence or specific contention, if temporary injunction is granted then defendants can't do his regular work of harvesting suit properties. This will definitely caused irreparable loss to defendants. Therefore, without specific case and specific pleading, if temporary injunction is granted then it would amount to one kind of harassment to the defendant in his day to day work. Therefore, I hold that plaintiff has prima facie case, but balance of convenience doesn't lie in his favour and by passing temporary injunction more loss will be caused to defendants. Hence, I proceed to pass following order.

ORDER

1. Application is rejected.
2. Cost shall follow costs in cause.

Jath
Date : 25.01.2019

Sd/-
(Sou.S.R. Patil)
Civil Judge (J.D.), Jath.

I affirm that the contents of this P.D.F. file judgment are same word for word as per original judgment.

Name of steno : Shri. S.B.Yadav,
Name of court : Sou. S.R. Patil
Civil Judge (J.D.) & J.M.F.C., Jath.
Date : 25.01.2019
Judgment signed by Presiding Officer on : 30.01.2019
Judgment uploaded on : 01.02.2019