

Order below Exh.05 in R.C.S. No.65/2024

1. The plaintiffs have filed this interim application for restraining the defendants from causing obstruction to their possession over the suit property, more particularly described in Para No.1A of the plaint only, till the disposal of the case.

2. As per the plaintiffs, in the suit for partition filed by them, they claim to be in possession of the suit property more particularly described in para No.1A of the plaint. No relief is claimed by them for the suit property described in Para No.1B of the plaint. Therefore, hereinafter the suit property for this application would mean suit property described in Para No.1A of the plaint and not the suit property described in Para No.1B of the plaint.

3. As per the plaintiffs, Jakappa Tukaram Masal died on 02.03.2021. Plaintiff No.1 is his legally wedded wife. Both of them have three daughters; Suman (Plaintiff No.2), Nanda (Plaintiff No.3) and Jayashri (Defendant No.6). Jakappa had illicit relations with Kamal (Defendant No.5). Both of them have four children; Somnath (Defendant No.1), Tukaram (Defendant No.2), Anita (Defendant No.3) and Nakusha (Defendant No.4). Jakappa owned and possessed suit properties described in para No.1A and 1B in the plaint. These properties were not his self acquired properties, but it were his ancestral properties. Therefore, Jakappa had limited interest in these properties.

4. On 26.12.2020, Jakappa executed a false gift-deed in

favour of defendant No.1 and 2 and vide this gift-deed he gifted the suit property described in para 1A of the plaint to the defendant No. 1 and 2. As the suit properties were ancestral properties of Jakappa, he had limited interest of 1/4th share in it. However, he gifted the entire property to the defendant No. 1 and 2, which is absolutely illegal and beyond his interest and ownership to transfer the suit property.

5. Plaintiff No. 2 and 3 are widows. Both of them are living with their mother i.e. plaintiff No.1. Plaintiff No.3 has a college going daughter. Even she resides with plaintiff Nos. 1 to 3. On the basis of gift-deed dated 26.12.2020 executed by Jakappa, all the defendants are disturbing the settled possession of plaintiffs' over the suit property (1A). The rights of all the parties are yet to be crystallized. The suit for partition is pending. In such circumstances, till the ownership and interest of the parties in dispute are settled, plaintiffs pray for protecting their possession at the hands of defendants. Hence, this application for restraining the defendants from causing disturbance to their possession over the suit property described in para 1 (A) of the plaint till the disposal of the case.

6. This application is proceeded without say of the defendants.

7. Heard the learned advocate for the plaintiffs. Perused the application, plaint, and the documents filed below list at Exhs.4 and 17.

8. From the pleadings, it appears that the plaintiffs are the

legal heirs of Jakappa. As per the copy of gift-deed (Exh.4/5), it appears that Jakappa has gifted vide gift-deed the suit property (1A) to the defendant No. 1 and 2. From the documents listed below Exh.17, more particularly document at Exh.17/4, it appears that the defendants are trying to obstruct and disturb the possession of plaintiffs over the suit property. From rest of the documents filed below Exh.4 and 17 it appears that plaintiffs being the legal heirs of Jakappa have interest in the suit properties. The suit properties are not yet partitioned. It also appears that the plaintiffs are in possession of the suit property as described in para No. 1A of the plaint. And defendants are disturbing the settled possession of the plaintiffs over the suit property. In the suit for partition, till the rights of parties are crystallized, protecting the interest and possession of the plaintiffs over the suit property till the disposal of the case is essential. In view thereof a prima facie case is made out in favour of plaintiffs. Balance of convenience lies in their favour. In case if the application is rejected, they would suffer irreparable loss. Hence, I pass the following order:

ORDER

1. Application is allowed.
2. All the defendants or anyone claiming through them are hereby restrained from disturbing the possession of plaintiffs over the suit property as described in Para No.1A of the plaint till the disposal of the case.

Date : 25.11.2024.

Swayam S. Chopda.
Jt. C.J.J.D., Pandharpur.

Certificate

- (a) Name of the Stenographer : Shri Landge.
Uploaded By R. M. Gogi
- (b) Court. : Jt. C.J.J.D., Pandharpur
- (c) order dictated on : 25.11.2024
- (d) signed on : 26.11.2024