

R.C.S. No.77/2021

Order below Exh.23.

Advocate Shri S. V. Patil for the defendant No.2 present. Plaintiff, defendant No.3 and their advocates are absent when called out repeatedly. Plaintiff and defendant No.3 have not filed say to present application. Hence, application is proceeded without their say, as per order below Exh.23, dated 23.02.2022.

2. Heard advocate Shri Patil for defendant No.2. None appeared on behalf of plaintiff as well as defendant No.3 when called out repeatedly for the argument.

3. It is argued by advocate Shri Patil for the defendant No.2 that the plaintiff and defendant No.3 are trying to alienate the suit property, mentioned in para No.1 of the suit. If, that is happened, then rights of the defendant will be in question and there will be multiplicity of proceedings. The present suit is for partition. Defendant No.2 has undivided share in the suit property. In such circumstance, plaintiff and defendant No.3 require to be restricted from alienating the suit property.

4. Perused the application, say and the documents filed on record. The 7/12 extract of gat No. 472/2 shows the claim of the present defendant, on it. Further, it shows that, the defendant prima facie establishes the suit property as his joint family property. Ferfar No.13777 supports the claim of the present defendant prima facie. In such circumstances, if the plaintiff and defendant No.3 alienate the suit property, then definitely there will be

multiplicity of proceedings and unnecessary further technicalities will arise. Therefore, at this stage, it is necessary, to restrain the plaintiff and defendant from alienating the suit property.

5. As it is a partition suit, and defendant No.2 is also demanded her share as per written statement Exh.19. Therefore, she can file the present application as per Order 39 Rule 1 and 2 of the C.P.C., against the remaining defendant and plaintiff. Therefore, application is also tenable.

6. Defendant No.2 prima facie establishes that there is apprehension of alienation of the suit property, at the hands of plaintiff and defendant No.3. As per mutation entry and 7/12 extract filed along with list Exh.4, balance of convenience lies in favour of present defendant. If application is not allowed, then she will suffer irreparable loss. Hence, the application is required to be allowed. Hence, I pass the following order.

-: O R D E R :-

1. Application is allowed.
2. Plaintiff and defendant No.3 are hereby restrained from alienating suit property mentioned in para No.1 of the plaint, till disposal of the suit.
3. Costs in cause.

Date : 02.11.2023.

(M.R.Kamat.)
Jt. C.J.J.D. Pandharpur.

Certificate

- (a) Name of the Stenographer : Rajiv M. Gogi
- (b) Court. : Jt. C.J.J.D., Pandharpur
- (c) Date of order : 02.11.2023