

ORDER BELOW EXHIBIT-05 IN R.C.S.No.371 of 2021

Plaintiff has filed this application seeking injunction against the defendants with respect to non alienation of the suit property.

2. Plaintiff stated that, the suit property was owned and possessed by Sajjan Khan Pathan. After his demise plaintiff and defendants were legal heirs as per Muslim law plaintiffs and defendants are tenants in common in the suit property. They have 2/12th share in the suit property except defendants Nos. 5 & 6 having 1/12th share. Accordingly, plaintiff requested defendants Nos. 1 to 4 for partition of the respective shares on 15/07/2021 but they denied.

3. As per Muslim Law defendants Nos. 5 & 6 are having 1/12th share i.e. 13.41R area in the suit property. But defendant No. 5 in collusion with defendant No. 1 to 4 executed sale deed to the extent of 23 R on 30/11/2018 in favour of defendant Nos. 1 to 3 vide sale deed No. 519. Plaintiff never consented to the said sale transaction. Defendant No. 5 was never owner of 23 R area. He illegally registered his name vide M.E. No. 621 which is illegal. On the basis of the said entry he is in attempt to alienate the suit property to third party. Hence, this application.

4. Defendants filed their say vide Exh. 28, they denied the contents in the application and contended that, suit property was acquired by them through heirship from mother Shanurbi and father Sajjan Khan Pathan. After their demise plaintiff and defendants names were entered as legal heirs. Plaintiff was doing the centering work and defendants helped him for the said work. Considering the said fact and

relation between them, plaintiff gave his undivided share to defendant Nos. 1 & 3 by oral gift on 18/10/2019 before 2 witnesses Shaukat Pathan and Shakil Shaikh. Accordingly, defendant No. 1 & 3 became owner and possessor of the suit property. Defendant No. 5 was unable to cultivate her undivided share. Due to which, she sold her share to defendant No. 1 & 3 on 30/11/2018. Accordingly, defendant No. 1 & 3 are in ownership and possession of their undivided share, share given by plaintiff through oral gift and share sold by defendant No. 5. Presently, plaintiff is insolvent and addicted to alcohol, has filed false application on the basis of false entry in the 7/12 extract. Hence, prayed that, the application be rejected.

5. Perused the application and say, it prima facie reveals that, there is name of the plaintiff in 7/12 extract. Defendant No. 5 has executed sale deed in favour of defendant Nos. 1 & 3. The contents of the sale deed shows, alienation of 23 R undivided share which corroborates the plaintiffs pleading. As per the plaintiffs averment, defendant No. 5 is not having share of 23 R land but 13.41 R. However, he has illegally sold 23 R land despite not having authority to sell excess area. The said fact is as per the plaintiffs averment. The legality or extent of legal share of respective parties will be decided at the later stage after conclusion of the evidence. However, defendant No. 5 has executed sale deed to the defendant No. 1 & 3. But going forward it will not be proper to allow further alienation to third parties besides plaintiff and defendants in order to avoid multiplicity of litigation. Therefore, in the background of the above facts, i am of the opinion that, application deserves to be allowed. Hence, I pass the

following order:-

ORDER

1. Application below Exh. 5 is allowed.
2. Defendant Nos. 1 to 4 are hereby temporarily restrained from alienating suit property by way of sale deed or in any manner to any third party till final decision of the suit.

Date : 05.03.2022.

(J. A. Zari)
Jt. Civil Judge (J.D.),
Barshi.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	B.B.Salvade
(b)	Court	:	J.A.Zari, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order signed by P.O. on	:	05/03/2022
(d)	Judgment /Order uploaded on	:	05/03/2022