

Rajabhau Sutar etc 2      --      Plaintiffs

Versus

Kalinda Sutar etc 9      --      Defendants

**Order Below Exh.5 in R.C.S.No. 1642/2014**

This application is filed by the plaintiffs for seeking the temporary injunction.

**The brief outline of the plaintiff's case :-**

2]            Plaintiff no.2 is nephew of plaintiff no.1. Defendants are relatives of the plaintiffs. The agricultural land bearing Gat No. 258/1 adm. area of 7H 29R situated at village Babhulgaon taluka Barshi district Solapur was owned by Rambhau Vithoba Sutar i.e. grandfather of plaintiff no.1. After demise of Rambhau, names of his legal heirs were mutated. Land adm. area of 2H 43R was given to the father of plaintiff no.1. His name was mutated vide mutation entry No. 776 on 14/5/1991. After demise of father of plaintiff No.1, the names of his legal heirs are mutated vide mutation entry No. 838. Out of the land owned by deceased Ambrushi 1H 59R land was acquired for pond.

3]            Father of plaintiff no.1 deceased Ambrushi was suffered from Cancer. The family of the plaintiffs and defendants expended huge amount on his treatment. Considering the relation, plaintiff No.1 requested for Rs.20,000/- to defendant No.1. Defendant No.1 lend that amount with 3% interest p.m. At the same time the sale deed of the land adm. area of 72R out of Gat No.258/1 (hereinafter called 'the suit

property') dated 16/9/97 was executed in favour of defendant no.1 by the legal heirs of deceased Ambrushi except his son Suresh towards security of the said loan amount. Defendant no.1 agreed to execute reconveyance deed. According to the plaintiffs, the said land is arable and therefore, the alleged sale deed violates the law. It is further asserted by the plaintiff that there was no partition took place between the plaintiffs and his family members. The possession of the suit property was never handed over to defendant no.1.

4] In September 2014 the plaintiffs requested defendant no.1 to accept the loan amount with interest and asked for reconveyance deed. However, with malafide intention defendant no.1 demanded huge amount and also threatened to alienate the suit property. It is the contention of the plaintiff that if the defendant sold the suit property it will create multiplicity of proceedings. Therefore, they prayed for temporary injunction against defendant no.1 as not to alienate the suit property or to create any third party interest claiming prima facie case and balance of convenience.

5] Defendant no.1 resisted the application by filing his say at Exh.22. He denied the whole contentions in the plaint as well as in the injunction application. According to her, she was purchased the suit property in 1997 for consideration of Rs.20,000/- from the plaintiff and defendants. Her name is mutated in the revenue record. In 1997 the prices of the arable lands was very low. Now, she developed the suit property. The prices of the agricultural lands are increased. Therefore, with malafide intention to grab money from her the plaintiffs filed this

frivolous suit. Hence, she prayed for rejection of the application.

6] After hearing the rival contentions of both parties, the following points arise for my consideration. I have recorded my findings against each of them for the reasons stated below :-

| <u>Sr. No.</u> | <u>POINTS</u>                                                                     | <u>FINDINGS</u>    |
|----------------|-----------------------------------------------------------------------------------|--------------------|
| i)             | Whether plaintiff has made out prima facie case?                                  | Yes.               |
| ii)            | Whether the balance of convenience lies in favour of the plaintiff ?              | Yes.               |
| iii)           | Whether the plaintiff would suffer irreparable loss if the injunction is refused? | Yes.               |
| iv)            | What order ?                                                                      | As per final Order |

### **REASONS**

7] Heard learned advocate Shri.V.D.Thokade for the plaintiffs. Learned advocate for the defendant Shri.S.J.Kshirsagar has filed his written argument at Exh.27.

### **AS TO POINTS NO. 1 TO 3 :-**

8] In support of his claim the plaintiffs relied upon 7x12 extract of the suit property, mutation entries, copy of alleged sale deed and certain medical papers of deceased Amrbushi Sutar. On the other hand, defendant no.1 has not filed any documentary evidence in support

of his defence.

9] The plaintiffs came with specific case that the alleged sale deed was executed towards security of loan amount of Rs.20,000/- taken by them from defendant No.1 for medical treatment of deceased Ambraushi and to meet the domestic needs. After going through the medical papers filed by the plaintiffs it is seen that the deceased Ambrushi was suffered from cancer and was taking treatment in Cancer Hospital. The said documents fortified the case of the plaintiffs.

10] It is argued by learned advocate for the plaintiffs that the partition between the family members of the plaintiff and defendants No.2 to 9 did not take place and therefore the separate possession of the suit property did not hand over at the time of execution of deed. It is difficult to give possession of undivided property to the purchaser. In support of his view he placed his reliance on **Ramdas vs. Sitabai and others, reported in 2009, AIR ,(S.C.), 2735.** Carefully perused the above case cited supra. Hon'ble Apex Court held that co-sharer could not have sold by registered sale deed more than his share, nor could have delivered possession till the property is partitioned by parties amicably or through intervention of the court. Furthermore, it is also held that a co-sharer cannot put vendee in possession although such a co-sharer may have a right to transfer his undivided share.

11] According to the plaintiffs, the alleged sale deed was executed without giving knowledge to his diseased brother Suresh. Perusal of document dated 16/9/97 shows that the deceased Suresh was

not party to that transaction. He was brother of plaintiff No.1. Admittedly his consent was necessary for that transaction. Now, the legal heirs of deceased Suresh challenged that deed. Prima facie it is seen that the suit property is not partitioned till today and without any partition the plaintiffs and other members of his family sold the suit property to defendant no.1. However, as per the directions of Hon'ble Apex Court in the case law cited supra a co-sharer cannot put a vendee in possession. Defendant no.1 herself is responsible for her act in purchasing undivided share of the suit property without the knowledge and consent of deceased Suresh.

12] It is not a case of the defendant no.1 that she was purchased the suit property which was partitioned and allotted to the share of the defendants. By filing this suit the plaintiffs challenged the deed dated 16/9/1997 and prayed for partition. The written statement of defendant no.1 is silent about the previous partition of the suit property. In addition to this, defendant No.1 purchased 72R arable land which is not permissible by law. The said transaction violates the rules of Consolidation and Fragmentation Act. Learned advocate for the plaintiffs repeatedly stressed that the transaction dated 16/9/1997 is not a sale transaction. It is nothing but a security towards loan amount. Considering the documents filed and theory put up by the plaintiffs, it shows that the plaintiffs have made out the prima facie case and balance of convenience.

13] So far as the irreparable loss is concerned, if the defendant No.1 succeeds to alienate the suit property, it will create multiplicity of

the proceedings. Moreover, defendant No.1 does not claim the specific irreparable loss if injunction is granted. The trial will take its own course. No irreparable loss would be caused to defendant No.1 if injunction is allowed. Therefore, I answer points no.1 to 3 accordingly and in order to answer point no.4, following order is passed-

**ORDER**

1. Application Exh.5 is allowed.
2. Defendant no.1 is temporarily restrained from alienating the suit property or creating any third party interest in the suit property till final disposal of this suit.
3. Costs in cause.

Date : 18/09/2017

( **B.S.Sankpal** )  
3<sup>rd</sup> Jt.Civil Judge, J.D. Barshi.

Certificate

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

|                                                   |        |                             |
|---------------------------------------------------|--------|-----------------------------|
| Name of Stenographer                              | :      | R.H.Lasane.                 |
| Court                                             | :      | 3rd Jt CJJD & JMFC, Barshi. |
| Date:                                             | :      | 18/09/2017                  |
| Judgment/Order signed<br>by the presiding officer | :<br>: | 18/09/2017                  |
| Judgment/Order<br>uploaded on                     | :<br>: | 19/09/2017                  |