

ORDER BELOW EXH. 5

(Date 13.01.2023)

This is an application filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, to temporarily restrain the defendant from creating any third-party rights or alienating suit properties.

2. It is contended that the plaintiff has filed the suit for partition and separate possession against the defendant. Only the name of the defendant was mutated on the 7/12 extract. The plaintiff has an apprehension that the defendant may create third-party interest in the suit properties. The balance of convenience is in favour of the plaintiff. If the relief of injunction is granted to the plaintiff it would not cause any loss to the plaintiff. Hence, the plaintiff through this application has prayed to temporarily restrain the defendant from alienating or creating third-party interest in the suit properties.

3. The defendant filed his written statement cum say to this application at Exh. 18 and contended that Gat No. 255 is the self-acquired property of the Ambadas Kumbhar. He partitioned Gat no. 255 amongst Utterashwar, Murlidhar, Yuvraj, and the defendant by way of oral partition in the year 1990. After the death of Ambas Kumbhar, the names of Utterashwar, Murlidhar, Yuvraj, and the defendant was mutated on the 7/12 extract vide Mutation entry number 507. Accordingly, land at Gat No. 255/3 admeasuring about 6 H 52 R came in the share of the defendant.

The plaintiff has knowledge about it. Therefore, the present suit is not within limitation. The plaintiff has spent approximate 10 lacks amount and constructed house property on the land at gat No. 255/3.

4. Land at Gat No. 255/1 is the property of Uttereshwer. He died on 21.04.2008 and his wife dies on 26.12.2008. After that, the defendant requested the plaintiff to mutata their name on Gat No. 255/1 and Gat No. 267/1/A/1. However, the plaintiff told the defendant that she relinquish her share in the property and she did not want any share in the property. Therefore the defendant mutated his name on the land at Gat No. 255/1.

5. Land at Gat No. 267/1/A/1 is not included for partition in the suit, therefore the suit is not maintainable. The claim of the plaintiff is false. The suit is heated by a non-joinder of the necessary party. Therefore, the prima facie case, the balance of convenience is in favour of the defendant. If the temporary injunction application is allowed it would cause irreparable loss to the defendant. The plaintiff has not come before court with clean hands. Hence prayed for the rejection of the application.

8. Following are the points for determination along with my findings thereon for the reasons to follow:

No.	Points	Findings
1.	Whether the plaintiff has a prima facie case?	No.
2.	Whether the balance of convenience lies in favour of the plaintiff?	No.
3.	Whether the plaintiff would suffer irreparable loss if the application is rejected?	No.

4.	What order?	The application is rejected.
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REASONS

AS TO POINTS NO. 1 TO 3:

9. Before proceeding to consider these points, it appears necessary to mention that there is no dispute between the parties about the relationship. I have heard learned advocates for the plaintiff and the defendant. Learned advocate for the plaintiff submitted that the suit property is the ancestral property of the plaintiff and the defendant. The defendant mutated his name on the 7/12 extract and now trying to alienate the suit property. On the other hand, the learned advocate for the defendant submitted that the Gat No. 255/3 is the separate property of the defendant. Therefore the plaintiff has no right over the land at Gat No. 255/3. He further submitted that the plaintiff has orally relinquished her share in the land at Gat No. 255/3. Therefore, the claim of the plaintiff is not maintainable.

10. The plaintiff is the sister of the defendant. The plaintiff has filed a present suit for partition and separate possession against the defendant. Land at Gat No. 255/1 admeasuring about 02 H 00 R and Gat No. 255/3 admeasuring about 06 H 52 R of village Morvanchi, Taluka Mohol, District Solapur more particularly described in plaint para I, is the suit property. As per the plaintiff, the suit property is the ancestral property of the Utterashwer Ambadas Kumbhar. He died on 21.04.2003 leaving behind

Kavirabai (widow), the plaintiff (daughter), and the defendant (son). Kavirabai as well died on 26.12.2008. The plaintiff by ill-will muted his name on the 7/12 extract by joining hands with revenue authorities. She came to know about the said entry in the year November 2020.

11. On the other hand, it is the case of the defendant that the land at Gat No. 255 is the self-acquired property of the Ambadas Kumbhar. He partitioned Gat no. 255 amongst Utterashwar, Murlidhar, Yuvraj, and the defendant, by way of oral partition in the year 1990. After the death of Ambadas Kumbhar, the names of Utterashwar, Murlidhar, Yuvraj, and the defendant was mutated on the 7/12 extract vide Mutation entry number 507. Perusal of the same it appears that the names Utterashwar, Murlidhar, Yuvraj, and the defendant were mutated as per the occupancy of the land vide Mutation entry number 507. As per the entry, the land at Gat No. 255/1 admeasuring about 2H 00 R came in the share of Utterashwar Ambadas Kumbhar and land at Gat No. 06 H 52 R came in the share of the defendant. It is submitted by the learned advocate for the plaintiff that it is nowhere written that Ambadas Kumbhar has partitioned suit property and accordingly suit property came in the share of the defendant. The nature of the suit property is an ancestral property. Therefore, the plaintiff has a right over the suit property.

12. Admittedly the defendant is the Karta of the family. At this stage, even if it is assumed that the suit property is the ancestral property of the plaintiff and the defendant, but as per the settled position of law, the injunction cannot be granted against the Karta.

Karta enjoys wide discretion in his decision over the existence of legal necessity and as to in what way such necessity can be fulfilled. The exercise of powers given the rights of the Karta on fulfilling the requirement of legal necessity or betterment of the estate is valid and binding on other co-parceners. Therefore, the plaintiff has no prima facie case. So far as the alleged alienation is concerned, there is nothing on record to substantiate that, the defendant is trying to alienate the suit property or create third-party interest. The case of the plaintiff is based on assumption only. Thus, there is absolutely no apprehension as alleged. For this reason, also, the plaintiff has no prima-facie case.

13. So far as the balance of convenience and irreparable loss is concerned, although the power of disposition of ancestral property has been conceded to the Karta of a joint Hindu family, the law raises no presumption as to the validity of his transactions. His acts could be questioned in a court of law. The plaintiff has a right to have the transaction declared void if it is found not to have been justified. Hence, I answer points no. 1 to 3 in the negative, in the result, and in answer to point no. 4, I pass the following order:

ORDER

1. The application at Exh. 5 is rejected.
2. Costs in Cause.

Solapur

Date: 13.01.2023

(R. R. Jadhav)

2nd Jt. Civil Judge Junior Division,
Mohol.