

ORDER BELOW EXH.58 IN REG.CIVIL SUIT NO.154/2012

1. The present application is filed by the plaintiffs against defendant No.1(2). Present application is filed for restraining defendant No.1(2) from creating any charge or taking any loan or transferring the suit property till decision of the suit.

2. It is contended by the plaintiffs that the present suit is filed for partition. While the suit was pending defendant No.1 expired. Defendant No.1(2) was claiming his right on the basis of unregistered will deed. Said will was nowhere proved in any of the court. But defendant No.1(2) got recorded his name as legal heir of defendant No.1 as owner in 7x12 extract of the suit property. It is to be decided as to whether said will is legal one and defendant No.1(2) is having any right in the suit property. But defendant No.1(2) is trying to alienate the suit property and is trying to create charge on it by taking huge amount of loan. If defendant No.1(2) will be successful in creating any such charge, the suit will be infructuous. Therefore the plaintiffs are praying for restraining him from creating any charge on the suit property or from taking loan or from

alienating the suit property till decision of the suit.

3. Defendant No.1(2) filed his say on this application at Exh.64. The application is strongly opposed by defendant No.1(2). It is contended by him that, defendant No.1(2) is legal heir of defendant No.1 as per her will. There were complaints with the revenue officers about making entries with respect to the suit property. The enquiry was held in those complaints and thereafter name of defendant No.1(2) was recorded as legal heir of defendant No.1 as per provisions of law. Plaintiff was obstructing defendant No.1 from cultivating the suit property. As plaintiffs were always obstructing defendant No.1, he filed a case with revenue authorities. She appointed defendant No.1(2) as his legal heir. Defendant No.1(2) was residing with defendant No.1 and was looking after her. He was taking care of defendant No.1 and hence she appointed him as her heir. Defendant No.1(2) is legal heir of defendant No.1 and he was cultivating the suit property bearing Gats No.651,645 & 752. All the properties are still in possession of defendant No.1(2). In the suit properties, defendant No.1 is taking crops of sugarcane. Said sugarcane is entered with Chhatrapati Shahu Rayat Sahakari Sakhar Karkhana.

The Development Service Society has already granted loan to defendant No.1(2) for maintenance of the suit property and other expenses. But from time to time loan is required for development of agriculture. Financial condition of defendant is not so good. Also it is necessary to take loan. The property is in possession of defendant No.1(2) and the plaintiff can not pray such type of injunction.

4. Following points arose for my determination and I am recording those points with findings for the reasons discussed below.

<u>POINTS</u>	<u>FINDINGS</u>
1) Do the plaintiffs prove that there is prima facie case in their favour ?	In the affirmative.
2) In whose favour balance of convenience lies ?	In favour of plaintiffs.
3) To whom greater hardship, irreparable loss and hardship will be caused if temporary injunction will not be granted ?	To plaintiffs.
4) What order ?	As per final order.

R E A S O N S

AS TO THE POINTS NO.1 TO 3:

5. It is the case of plaintiffs that, defendant No.1 was wife of his brother however, she never resided with his brother and so plaintiff's husband himself looked after him till his death. Defendant No.1 was getting maintenance from him. As husband of defendant No.1 was not able to work and was bed ridden, plaintiff's husband was cultivating all the agricultural lands. Defendant No.1 was never in possession of suit property. Now defendant No.1 got recorded entries of his name in the record of suit property and on the basis of those entries defendant No.1(2) is claiming that he is having right in that property.

6. It is further argued by advocate for plaintiffs that, defendant No.1(2) is trying to create charge on the suit property and is also trying to get loan of huge amount on the said property. Because of which even if the plaintiff will succeed in this suit, he will not be able to get the fruits of the decree. While advocate for defendant No.1(2) argued that, in the life time of defendant No.1 plaintiff always obstructed the peaceful enjoyment of defendant No.1 over the suit

property. Defendant No.1(2) was helping her and was cultivating the suit property. So defendant No.1 bequeathed the suit property in his favour. Even after bequeathing the property the plaintiffs are obstructing him. The financial condition of defendant No.1(2) is not so good and so it is necessary to obtain loan on the property for development. He thus prayed for rejecting the application.

7. Admittedly the property is in possession of defendant No.1(2). But he can not claim to be co-owner of said property as this case is with respect to the property which was bequeathed to him by defendant No.1. The will on which defendant No.1(2) is relying, is unregistered document and yet to be proved. It can not be decided without going into the merits of the case that the said document is legal. Defendant No.1(2) has already contended that he has cultivated crop of sugarcane in the suit properties and has registered sugarcane with sugar factory. Defendant No.1 has already taken loan on the said property.

8. Advocate for defendant No.1(2) argued that, plaintiff had filed Exh.5 against defendant No.1 restraining her from creating any third party

interest in the said properties. The said application was rejected by the court. Now again the plaintiff is praying for the same prayers against defendant No.1(2) which can not be granted.

9. Perused the order passed below Exh.5. It is clear from the said order that,my predecessor has found that,prima facie it appears that defendant No.1(2) being legally wedded wife of plaintiff's brother-in-law,is also having share in the suit property. However, now the possession is different as defendant No.1 died issueless and defendant No.1(2) is claiming ownership over the suit property on the basis of an unregistered will. The will is yet to be proved and it is also to be seen whether defendant No.1(2) is having any right in the suit property. Defendant No.1(2) has already admitted in his say that it is essential on his part to obtain loan for the development of the sit property. In these circumstances,if defendant No.1(2) will create charge on the suit property or obtain huge loan,it will be difficult for the plaintiff to get the fruits of the suit even if he will succeed in the suit. As such,the plaintiff will suffer irreparable loss if the injunction as prayed will not be granted in his favour. On the contrary,defendant No.1(2) has already cultivated crops in the suit property and he is taking income

from this property. So in this case he will not suffer any loss if injunction as prayed will be granted in favour of plaintiff. As such, I answer the points No.1 to 3 in favour of plaintiff and proceed to pass the following final order.

O R D E R

1. The application is allowed.
2. Defendant No.1(2) is hereby restrained from creating any charge or taking any loan on the suit property till disposal of this suit.
3. Cost in cause.

Dated: 27-8-2012. (Sou.P.P.Karnik)
Civil Judge, Sr.Dn., Karad.