

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION,**KARAD AT :KARAD**

(Presided over by : Sabina A. Malik)

Spl.C.S. No. 307/2018**Order Below Exh.5****CNR No. MHST05-000613-2018**

Suman Jagadale & ors. --- Plaintiffs

Vs.

Kushank Chavan & ors. --- Defendants

ORDER BELOW EXH.5

1) In this suit for partition, plaintiffs have preferred application stating interim injunction against the defendant nos. 1 and 2.

2) It is submitted that plaintiff nos. 1 to 3 and defendant no.3 are real sisters. Defendant no.2 was the wife of their deceased brother Avinash and defendant no.1 is the son of their deceased brother Avinash. Their father Sampatrao expired in 2004 and mother Shakuntala expired in 2015. The suit property an agricultural land at Kumbhargaon and a house are the ancestral property from their father. The plaintiffs and defendant no.3, after death of their father and before death of their mother, relinquished their right in their father's property in favour of their brother late Avinash. On the death of their mother in 2015, the plaintiffs, defendant no.3 and their deceased brother Avinash came to acquire equal share in their mother's property. Hence, share of their mother in the properties at Kumbhargaon came to the plaintiffs and the

defendant no.3 along with their brother late Avinash. Nobody is residing in the house at Kumbhargaon after their mother and the brother of the plaintiffs and shifted to Agashivnagar, Karad. Hence as nobody is residing in the house at Kumbhargaon, the plaintiffs also acquired an equal share, rights in their mother's share in the house property.

3) It is submitted that the defendant no.2 separated from the brother of the plaintiffs before his death and married Dilip Keshkamat with whom she went to reside. As she separated from late Avinash, before his death defendant no.2 has no share in the property.

4) The plaintiffs and defendant no.3's father was a Class-I Officer with the Zilla Parishad and he along with the plaintiffs and defendant no.3 has raised the capital for the construction business of late Avinash who purchased the plot described in para 2A of the plaint with that capital. With the income from their mother's '*Stridhan*', Kumbhargaon property and money from plaintiffs and defendant no.3, the construction in the plot at Malkapur was started. Hence, the property described in para no.2 of the plaint is not the self earned property of the Avinash. Only for the sake of business, the plaintiffs, defendant no.3 and their mother registered the sale-deed and the construction in the name of Avinash. Hence, defendant no.1 cannot claim succession only on the basis of the mutation entries. The plaintiffs submit that the defendant no.1 is intending to transfer the suit property. Hence, they have filed this suit for partition and permanent injunction against the defendants. As a long time would go in conducting the suit and the defendant nos. 1 and 2 are intending to transfer the rights in the suit property,

the plaintiffs are seeking interim injunction against them restraining them from transferring the property, entering into such agreement for transfer or creating any lien on the property.

5) The defendant nos. 1 and 2 have filed their written statement at Exh.30. It is stated that all the properties mentioned in para 1 and 2 of the plaint are the self acquired property of late Avinash. The plaintiffs, defendant no.2 and defendant no.3 do not have any concern or right in it. The defendant no.2 divorced late Avinash in 2006 and was residing with his father at Kolhapur. The plaintiffs and the defendant no.3 have relinquished all their rights in favour of late Avinash. The defendant no.1 is his only legal heir. Hence, defendant nos. 1 and 2 have denied the claim of the plaintiffs.

6) The defendant no.4 has also filed his written statement at Exh.36, wherein he is submitted that he is the partner of deceased Avinash. They had registered Firm by the name 'Raj Developers'. The properties mentioned wherein survey no. 193/2 was purchased by the Firm. It is mortgaged with Shamrao Patil Nagari Sahakari Patsanstha. Hence, the property is not liable to be partitioned.

7) On the basis of the pleadings and the documents filed on record, following points arise for determination and findings recorded thereon with reasons are as under :-

Sr.No.	POINTS	FINDINGS
1.	Whether plaintiffs are having prima facie case?	... In affirmative

2.	Whether balance of convenience lies in favour of plaintiffs ?	... In affirmative
3.	If injunction refused, will plaintiffs suffer irreparable loss ?	... In affirmative
4.	What order?	As per final order

REASONS

AS TO POINT NOS.1 TO 3 :-

8) The genealogy that the plaintiffs have shown in the plaint is admitted and accepted by the other defendants. The documents on record show the properties in the name of Avinash Sampatrao Chavan. Bracket to the name of Sampatrao Parashram Chavan is also seen, which means that Avinash has got these properties from Sampatrao Chavan. It is admitted fact that the plaintiffs have relinquished their rights in their father's property. But, there is nothing on record to show that they have relinquished their rights in their mother's property. Proper evidence would have to led and consider to come to any just conclusion. In the mean time as the properties stand only in the name of late Avinash, his legal heir defendant no.1, could transfer, alienate or create third party interest in the suit property. Hence, the plaintiffs have prima facie case to seek interim injunction against the defendant no.1. The defendant no.2 is not claiming any right in the properties as per her written statement at present.

9) If the relief as sought by the plaintiffs is not granted, there is likelihood of all the properties being alienated,

transferred or third party rights being created, which would create complications. Hence, the balance of convenience is in favour of the plaintiffs.

10) If the relief as sought is not granted, plaintiffs would be put to irreparable loss not compensated in terms of money would be caused to the plaintiffs. Hence, I answer point nos.1 to 3 in the affirmative.

AS TO POINT NO. 4 :-

11) In consonance with the discussions herein above, point no.4 is answered as per final order.

ORDER

- 1} Application is allowed.
- 2} The defendant no.1 or anyone else on his behalf are hereby restrained from transferring, alienating and creating any third party right or interest in the suit property.
- 3} Costs in cause.

Karad

(Sabina A. Malik)

Date : 03rd Oct., 2019

Civil Judge Sr.Dn., Karad