

Smt.Aruna Kiran Nikam.Plaintiff.

Shrirang Dnyanu Nikam etc.Defendants

2) The brief facts giving arise to the present application are such that, the plaintiff No.1 is wife and Plaintiff No.2 is daughter of deceased Kiran. Defendant No.1 is father-in-law, defendant No.2 is mother-in-law, defendant No.3 is husband-in-law and defendant No.4 is sister-in-law of plaintiff No.1. According to the plaintiff, the suit properties are of Joint Hindu family property and yet partition by metes and bounds is not taken place in between them. Name of defendant No.1. is mutated in the 7/12 extract as manager of joint family property. Due to harassment of defendants, husband of the plaintiff No.1 committed suicide. Thereafter also defendants were harassing plaintiffs and gave threat to kill her. It is alleged that, the defendant No.1 is taking undue advantage of his name in the 7/12 extract and try to sale out the suit

properties. The plaintiffs have undivided share in the Hindu Joint family property. In such circumstances the plaintiffs have filed present suit for partition and separate possession and by this application claimed interim relief in terms of prayer clause.

3) In order to substantiate the contention in the application the plaintiffs have mainly relied upon the following documents filed vide list of document Exh.3.

- 1) 7/12 extract of Gat No.23/3 of village Shere at exh.10.
- 2) 7/12 extract of Gat No.22/1/4 of village Shere at exh.11.
- 3) 7/12 extract of Gat No.23/16A of village Shere at exh.12.
- 4) 7/12 extract of Gat No.112A/10 of village Shere at exh.13.
- 5) 7/12 extract of Gat No.112B/7 of village Shere at exh.14.
- 6) 7/12 extract of Gat No.113/6 of village Shere at exh.15.
- 7) 7/12 extract of Gat No.115/5 of village Shere at exh.16.
- 8) 7/12 extract of Gat No.146/6 of village Shere at exh.17.
- 9) 7/12 extract of Gat No.151/A/9 of village Shere at exh.18.
- 10) 7/12 extract of Gat No.151/B/2 of village Shere at exh.19.
- 11) 7/12 extract of Gat No.152/2 of village Shere at exh.20.
- 12) 7/12 extract of Gat No.153/6+7+8+9 of village Shere at exh.21.
- 13) 7/12 extract of Gat No.203/7 of village Shere at exh.22.
- 14) 7/12 extract of Gat No.208/3B of village Shere at exh.23.
- 15) 7/12 extract of Gat No.208/3D+4+5 of village Shere at exh.24.
- 16) 7/12 extract of Gat No.216/1A of village Shere at exh.25.
- 17) 7/12 extract of Gat No.23/1A of village Shere alongwith list exh.3.

4) The defendant Nos.1 to 4 by filing their written say vide Exh.31 have resisted the suit claim. They have denied entire averments set forth in the application. It is contended that, there was no identification of suit properties by giving boundaries. The genealogy given in the plaint is totally false. It is also contended that necessary parties are not involved in the suit. Quarrel took place in between plaintiff and her deceased husband due her disbehaviour. The plaintiff had filed this suit only to grab the suit properties. No cause of action arose to file this suit and present application. The balance of convenience is also lies in favour of defendants. Therefore it is prayed that, the present application may be rejected.

5) I have heard the arguments canvassed by ld.advocate Shri.A.R.Desai for the plaintiffs and ld.advocate Shri.S.D.Patil for the defendants.

6) After considering the pleadings of both parties, I have framed the following points to which I recorded my findings with reasons thereon as under.

S.No

POINTS

FINDINGS

1 Do plaintiffs prove that, they have prima-facie case for granting relief of interim injunction ?

In Affirmative

2 In whose favour the balance of convenience and irreparable injuries lies ?

**In favour of
plaintiffs**

3 What order ?

As per final order

REASONS

AS TO POINT No.1 to 3:-

7) At the out set it is relevant here to state that, admittedly the the relationship between plaintiffs and defendants is not denied by the defendants. More so, suit properties are ancestral properties of plaintiffs and defendants is not disputed. Therefore, by this application the plaintiff prayed to restrain the defendants from any kind of alienation of the suit property.

8) It is the case of the plaintiffs that, suit properties are of joint Hindu family property and yet partition is not taken place in between them. So in such circumstances, it is the contention of the plaintiffs that the suit properties are joint family properties and being a member of joint family their rights and interest are involved in it. This fact is not denied by the defendants. After perusing the 7/12 extracts it is seen that the name of defendant No.1 is mutated as joint family manager. More so, taking into account the relationship in between plaintiffs and defendants, prima facie it seems that there is interest of the plaintiffs is involved in the suit properties. Therefore, their interest can be protected by applying law. The plaintiffs are also contended that the name

of defendant No1 is mutated in the 7/12 extract and in that pretext by taking undue advantage, the defendants are trying to sale out the suit properties, without any legal necessity. Therefore, considering the nature of the suit properties, it is just and proper to protect the interest of the plaintiffs till the partition is not taken place by metes and bounds. Moreover, during the pendency of the suit, the nature of the property by way of mortgage, sale etc. should not be changed. More so, considering the relief claimed by the plaintiffs, if defendants are restrained from any kind of alienation of suit property, there will be no prejudice to the rights of the defendants and consequently they will not suffer any loss. But on the contrary, if injunction is not granted then the plaintiffs would suffer irreparable loss. So balance of convenience lies in favour of the plaintiffs. Considering this fact and circumstances of the case, I answer the point Nos.1 to 3 in favour of the plaintiff.

AS TO POINT No.4:-

09) In the facts and circumstances of the case, I do not find any impediment in the way of plaintiffs in seeking discretionary relief of injunction. Therefore I answer point No.4 accordingly and proceed to pass the following order.

ORDER

- 1) The application Exh.5 is hereby Allowed.
- 2) The defendants or their agents, servant or anybody acting on behalf of them are hereby temporary restrained from creating third party interest in the suit properties, which is more particularly described in plaint para-1 by way of sale, mortgage etc. till the decision of the suit.
- 3) Considering the facts of the case, no order as to costs.

Date : 09/12/2013
Place : Karad

(S.D.Kurane)
5th Jt.Civil Judge, Jr.Dn.Karad.

(Gurav H.S.)
Steno