

R.C.S.No.401/2010

(CNR No.MHST10-000105-2009)

Order Below Exh.104

In a suit for partition and separate possession, plaintiff is seeking interim injunction under O.39 R.1, 2 of C.P.C. restraining the defendant Nos.1 and 2 from carrying out any sort of construction in the suit properties.

2) Facts in brief are as under -

That the plaintiff is sister of defendant No.1. Properties mentioned in plaint para (1) are ancestral joint family properties of the parties. Defendant No.2 is son of defendant No.1. Taking undue advantage of illness, defendant No.2 has got executed sale-deed and mutated his name to the record of rights. By virtue of order below Exh.5, defendant No.1 and 2 are restrained from alienating the suit properties. Meanwhile, present defendants are trying to change the nature of suit properties by initiating construction thereupon. Hence this application.

3) Defendant resisted the application by filing say at Exh.109. They denied the application. It is contended that, the application is filed in the month of October-2017 mentioning a cause of action in month of November which is unnatural. That the defendants have acquired right, title and interest by virtue of valid will-deed. In the alternative, plaintiff will get developed property in case decree is passed. That other contents in the application are false. With this, it is prayed to reject the application with costs.

4) Heard Mr.S.S.Chorage and Mr.U.H.Sanas, learned

Advocates appearing for the plaintiff and defendants respectively.

5) Following points arose for my determination to which I record my findings alongwith the reasons to follow.

POINTS	FINDINGS
(1) Whether plaintiff has prima facie case ?	Yes
(2) Whether plaintiff will suffer irreparable loss if injunction is refused ?	Yes
(3) Whether balance of convenience tilts in favour of plaintiff ?	Yes
(4) What order ?	As per final order

REASONS

As to Point No.1 to 4 :-

6) Mr. Chorage, learned Advocate for the plaintiff submitted that, the defendants are not obeying the orders of the Court. In spite of injunction, defendant No.2 has alienated the suit properties. That the revenue proceedings in respect of will-deed are not conclusive. With this, he submitted to allow the application.

7) Per contra, Mr.Sanas, learned Advocate appearing for the defendants filed copies of various conveyance-deeds alongwith Exh.114, 116, decisions of revenue authorities (Exh.122 to 125). By invoking my attention towards statement given by the plaintiff before revenue authorities, he submitted that, the plaintiff has, in no uncertain terms admitted the will-deed. That she has not uttered about forged signature in various proceedings. That she is now estopped from raising any dispute about will-deed or as exclusive right, title and interest of defendant No.2. In all, he submitted to

reject the application.

8) No doubt, plaintiff has given one statement before the revenue authorities about dispute will-deed. It also appears that, revenue authorities have discarded her version but judgment in revenue proceeding shows that, those are subject to decision of this suit (Ex. 122). Hence, at this stage, these documents are not helpful to the defendants. Moreover, defendants have raised similar stand in their written statement. It was considered by my learned predecessor at the time of deciding interim application (Exh.5). He has clarified in the order dated 24/12/2010 that, revenue proceeding is in respect of revenue entries and it does not make title to any title. Considering the defence of defendant, he has restrained defendant No.1 and 2 from alienating the properties. It is not shown that, this order is challenged by the defendants. Obviously, parties are bound by this order. Despite that, record apparently discloses that, defendant No.2 has executed sale-deeds viz. On 11/12/2012, 18/07/2013 and 04/08/2016. He has also executed development agreement on 08/02/2017. It is pertinent to note that, these transactions are done by the defendant No.2 after prohibitory order dated 24/10/2016. For this purpose, plaintiff rightly relied upon **“Keshrimal Jivji Shah & Anr. Vs. Bank of Maharashtra & Ors., 2004(3) Mh.L.J. 893”** wherein it is held that, transfer of immovable property in violation of order of injunction or prohibition is no transfer.

9) Above position shows that, already it is observed by my learned predecessor that, plaintiff has some interest in the suit property. Conduct of the defendant shows that, he has alienated the

suit property despite prohibitory orders of the Court. In such circumstances, chances of construction at the hands of developer cannot be ruled out. It will definitely cause prejudice to plaintiff's right which are apparently prima facie. Per contra, no benefit can be shown in favour of defendant No.2, who has executed development agreement in spite of prohibitory order. Hence, I hold that, plaintiff has prima facie case in context of this application.

10) Since, plaintiff has prima facie case, balance of convenience tilts in her favour. As defendant No.2 has entered into a development agreement on his own risk, it cannot be said that, he will suffer irreparable loss if injunction is granted. Per contra, it will change the nature of suit which will cause multiplication of proceedings. Hence, I answer this issue in the affirmative. Ultimately, application deserves to be allowed. Hence, I pass following order.

ORDER

- (1) Application is allowed.
- (2) Defendant Nos.1 and 2 and/or any person claiming under them, are restrained from changing the nature of suit property and/or carrying out any sort of construction in the suit properties till final decision of the suit.
- (3) Costs in cause.

Date : 01/01/2018.
Mahabaleshwar.

(P.A.Kumbhojkar)
Civil Judge, Junior Division,
Mahabaleshwar