

**ORDER PASSED BELOW EXH. 66 IN R.D. NO. 36/12**

1. This is an application filed by decree holder praying for temporary injunction against judgment debtor nos. 1 to 5 by restraining them from alienating suit properties.

2. Perused application and say. Heard advocate Shri. V.P. Dhere for decree holder and advocate Shri. P.K. Gaikwad for judgment debtors 1 to 5.

3. The following points arise for my consideration and my findings thereon as under :-

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether decree holder proves prima- facie case in his favour?	In the affirmative
2	Whether decree holder proves balance of convenience in his favour?	In the affirmative
3	Whether decree holder proves that irreparable loss will be caused if application is rejected?	In the affirmative
4	What order?	As per final order.

**REASONS**

4. Decree holder filed copy of sale-deed in order to support his case.

5. **As to point nos. 1 to 3 :-**

Advocate for decree holder argued that the proceeding of partition is pending before Tahasildar. In spite of that, judgment debtor no. 4 sold out land bearing Gat no. 35/2A out of suit property to Prashant Babanrao Kirdat and Hemant Sampatrao Kadam on 27<sup>th</sup> July, 2012. If judgment debtors sold out remaining suit properties, there is likely disturbance and hindrance in the work of partition. On the contrary, advocate for judgment debtor nos. 1 to 5 argued that decree holder has no concern with property at village Karate, Tahasil Patan. Judgment debtor nos. 1 to 3 & 5 have never alienated any property. He further argued that the decree holder had filed R.C.S. No. 403/1998 and he has filed R.D. No. 19/2011 in the court of the Hon'ble Civil Judge Senior Division, Karad and the said proceeding is transferred for partition to the Tahasildar, Patan. Accordingly, the proceeding bearing no. 25/2012 is pending before Tahasildar. Therefore, the civil court has no jurisdiction to pass any order. The appropriate order can be sought before Tahasildar. This court has no jurisdiction to entertain this application. Judgment nos. 1 to 3 and 5 are not intending to sell any property.

6. From the sale-deed filed on record, it prima-facie clear that judgment debtor no. 4 has sold land in Block no. 35/2/A as asserted by decree holder. This fact is not denied by judgment debtor nos. 1 to 5. It is clear that judgment debtor no. 4 has sold property during the pendency of this Darkhast. It is clear that if the property is sold during the pendency of this proceeding, the complications are likely to arise.

7. Advocate for judgment debtor argued that this court has no power to this application. He relied on following observations in Kisan Bhikaji Dalvi, since deceased, through L.Rs. V/s Krishnabai Maruti Dalvi

"12. When there is declaration of share in the partition suit with respect to lands, assessable to land revenue, the job of the Civil Court comes to an end by making such a declaration; and all further proceedings regarding effecting partition, may be by first preparing a final decree and then by executing the same is to be carried out by the Collector as per the provisions of section 54, C.P.C. That was rightly done in the present matter. The contention of the petitioner that the decree was only a preliminary decree and, therefore, it could not be executed without final decree is misconceived. The further steps in such a suit are required to be taken by the Collector and for that purpose, the Civil Court has to transmit the papers to the Collector. Thereafter, the Collector has to take

appropriate steps for partition, as per the directions issued in the decree."

8. The observations are in respect of the work to be carried on by the collector after passing of preliminary decree. It is clear the the executing court cannot interfere the work of partition by the collector. But there is nothing in above observations in respect of bar of jurisdiction of civil court in passing temporary orders in order to preserve the properties. Hence, the above case law is not applicable to present case.

9. In case of property being in danger of alienation, civil courts have power to grant temporary injunction. In the case in hand judgment debtor has already sold part of suit property. It means the suit property is in danger of alienation. Hence, in my view civil courts have power to restrain judgment debtors from alienating suit property. Considering all this, decree holder has prima facie case and balance of convenience in his favour. Further, if the temporary injunction order is not passed, there are likely complications in the proceedings and the work of the same is likely to be delayed. Hence, the decree holder is likely to suffer losses, if this application is rejected. Hence, point nos. 1 to 3 are recorded in affirmative and following order is passed.

**O R D E R**

1. Application is allowed.
2. Judgment debtor no. 1 to 5 are hereby restrained from alienating suit property till disposal of this proceeding or any other order if passed earlier.
3. Costs in main cause.

Place : Patan

(Shashikant R. Mokashi)

Date : 08.10.2012

Jt. Civil Judge, J.D., Patan.