

ORDER BELOW EXH. 05 IN R.C.S. NO.188/2017**Passed On-13/11/2019****CNR No.MHST1600015472017**

This is an application filed by plaintiff for temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure (In short 'C.P.C') for restraining the defendant from alienating the suit property or creating third party interest therein.

02) The case of plaintiff in short is as under:-

The plaintiff submitted that the property Survey No.55 P/1A admeasuring 126 Sq. Mtr. was owned by her husband namely Damaji Gaikwad. (Hereinafter this property shall be referred as 'suit property' for the sake of convenience and brevity.) The plaintiff submitted that she married to Damaji on 01/05/1956 as per the Hindu- Budhist rits and rituals. He submitted that her husband was serving at Food Corporation, Mumbai. They have begotten two daughters namely Mangala and Ujwala. She further submitted that her husband was suffering from diabetes and asthma. Therefore, the defendant was engaged as a care taker of her husband. Her husband had opened joint bank account in the name of defendant. She submitted that the defendant has taken disadvantage of the physical condition of Damaji and took away various valuable ornaments of Damaji. Damahi died on 30/10/2015. Thereafter, the defendant by suppressing material facts got entered her name to the revenue record of suit property. She has no concern with the suit property. However, her name has been shown to the 7/12 extract of suit property.

03) The plaintiff further submitted that defendant is trying to take disadvantage of the entry of her name to the suit property and there

is an apprehension that she may alienate the suit property to someone else. Therefore, she has prayed for temporary injunction to restrain her from alienating the suit property or creating third party interest therein.

04) The suit summons is duly served to the defendant. She appeared through advocate and filed her say and written statement at Exh. 17.

05) The case of defendant in short is as under :-

The defendant has denied the contention of the plaintiff that she is a is legally wedded wife of deceased Damaji. She further submitted that she herself is a legally wedded wife of deceased Damaji and her marriage has been solemnized with Damaji as per the Buddhist rits and rituals. She is a wife of Damaji and therefore, Damaji opened joint bank account in her name. She further submitted that Damaji has constructed a Banglow in the suit property. She was residing with Damaji till his death and now the suit property is in her possession. She submitted that the plaintiff has no concern with the suit property. Therefore, she prayed for rejection of the application.

06) Considering the rival pleadings, documents produced on record and upon hearing both the sides, following points arise for my determination. I have recorded my findings thereon with reasons as under :-

Sr.No.	<u>POINTS</u>	<u>FINDINGS</u>
1)	Does plaintiff show prima facie case in her favour ?	“In the Negative”.
2)	Whether the balance of convenience lies in favour the plaintiff ?	“In the Negative”.

3)	Whether plaintiff would suffer irreparable loss if the temporary injunction as prayed is refused ?	“In the Negative”.
4)	What order?	“Application is Rejected”.

REASONS

AS TO POINT NOS. 1 TO 4 :-

07) All these points are interlinked with each other. Therefore, in order to avoid repetition, I have taken these points together for discussion. In order to show prima facie case in his favour, the plaintiff has filed her affidavit as well as the 7/12 extract of the suit property. The plaintiff has also produced tax paid receipts of the suit property below Exh.20. The defendant has not produced on record any document.

08) The learned advocate for the plaintiff Shri.P.M.Kamble has argued that the plaintiff is a legally wedded wife of deceased Damaji. Their marriage has been solemnized on 01/05/1956. They have begotten two daughters namely Mangala and Ujwala. He argued that the defendant was only a caretaker during the illness of deceased Damaji. However, she has taken disadvantage of this fact and after demise of Damaji, she entered her name to the suit property. He argued that the entry of name to the 7/12 extract of the suit property will not create any right in the suit property. He argued that the entry to the revenue record are only for fiscal purposes and that document is not a document of title. He argued that there is an apprehension that the defendant will alienate the suit property to someone else. If she succeeds to alienate the suit property, then it will create multiplicity of

the proceedings and the plaintiff will be deprived of her valuable rights. Therefore, plaintiff is entitled to temporary injunction as prayed.

09) The learned advocate for the defendant Shri.R.R.Yadav argued that there is no Ration Card, joint Bank account pass-book etc. to show that the plaintiff was residing with deceased Damaji. On the contrary, defendant is legally wedded wife of deceased Damaji. He argued that the mutation Entry No.5572 took place and the names of plaintiff, defendant and daughters of deceased Damaji have been entered to the 7/12 extract. Therefore, defendant has also succeeded suit property. Hence, now plaintiff cannot seek temporary injunction. Therefore, he argued that the application deserves to be rejected.

10) It has been admitted by both the parties that the suit property was originally owned by deceased Damaji Ravba Gaikwad. It is also admitted that said Damaji is died on 30/10/2015. Now, the plaintiff as well as defendant are claiming to be the legally wedded wife of deceased Damaji. It is not in dispute that the lady who has legally married to the deceased Damaji earlier in point of time will be the legally wedded wife of deceased Damaji. The plaintiff has stated the date of marriage as 01/05/1956. However, the plaintiff has not produced on record any document to show the date of marriage. She has not produced on record the marriage registration certificate, the joint bank account statement or any such document. The defendant also has not produced such documents. In this situation, the status of plaintiff and defendant as legally wedded wife of Damaji is itself in dispute. This issue needs to be determined after recording detailed evidence and at the time of final determination of the suit. In this situation, as there is no prima facie evidence to believe the contention of the plaintiff, I cannot express any

prima facie opinion as to who is a legally wedded wife of deceased Damaji.

11) Now, the name of plaintiff, defendant as well as daughters of deceased Damaji have been entered to the 7/12 extract of suit property. It appears that the names of plaintiff, defendant and daughters of Damaji have been entered to 7/12 extract vide Mutation Entry No.5575. If the defendant was not the member of joint family then certainly the name of defendant would not have been entered to the 7/12 extract of suit property. But her name is entered to 7/12 extract. It prima facie shows that the contention of plaintiff that the defendant was the care taker appears to be not believable.

12) The plaintiff has stated that the defendant may alienate the suit property to the third parties. However, the revenue record shows that the defendant has not been shown as exclusive owner and possessor of the suit property. In this situation, she is not in a position to alienate the suit property. If at all she alienates the suit property, then the interest of the plaintiff will be protected under section 52 of The Transfer Of Property Act. Moreover, the suit property is a dwelling house. It appears that it is belonging to an undivided family. If at all the defendant transfers her share in the suit property to third person, then that person will not get joint possession or enjoyment of the house as per section 44 of Transfer of Property Act. It is necessary to consider the fact that there is no evidence to believe that defendant is going to alienate the suit property. In this situation, I am of the view that the plaintiff has failed to prove the prima facie case in her favour. Therefore, there is no question of causing irreparable loss to the plaintiff. Hence, the balance of convenience does not lie in favour of plaintiff. Hence, I answer point

Nos.1 to 3 in the negative and in answer to point No. 4, I proceed to pass the following order-

ORDER

1. The application (Exh.05) is rejected.
2. The costs shall be cost in main cause.

Date :- 13/11/2019
Place:- Wai

(D. R. Mali.),
2nd Jt. Civil Judge, Junior Division,
Wai.