

ORDER BELOW EXH.5.

(CNR No.:MHST180003202021)

The plaintiff/applicant filed this application under Order XXXIX, rule 1 and 2 of the Code of Civil Procedure for granting temporary injunction against defendants.

2. I read an application and reply/written statement of defendant no. 1 and 4 at Exh. 27, the written statement/reply of defendant no. 2 at Exh. 31 and written statement/reply of defendant no. 3 at Exh. 36.

I Perused the entire record. Heard the learned counsel for the plaintiff Adv. Shri. K.S. Kalekar and the learned counsel for defendant no. 1 and 4 Adv. Shri. J.S. Kadam. The learned counsel for defendant no. 2 and 3 is absent when called.

3. It is the contention of the plaintiff that, the agricultural land bearing field block no. 290, 1112, 1115, 342 and 1116 are the ancestral properties of the plaintiff and defendants which are situated at-Gursale, Tal-Khatav, Dist-Satara. (This is hereinafter referred as the suit properties).

It is further contention of the plaintiff that, the suit properties have not been partitioned amongst the plaintiff and defendant no.2 to 4. The real owner of the suit properties is Mahadev

Shinde. The plaintiff, defendant no. 2 to 4, Saubai and Sitabai are the sons and daughters of Mahadev Shinde. The plaintiff and defendant no. 2 to 4 are jointly cultivating the suit properties. In the month of March 2021, the plaintiff came to village Gursale for withdrawal of his pension amount. However, due to Covid-19 situation, the lockdown was declared by the government and therefore, the plaintiff was required to reside in his village Gursale. At the relevant time, the defendant no. 4 suggested to the plaintiff, that they want to laying down pipelines through agricultural field block no. 290 to field block no. 342 and therefore, they want to obtain the bank loan. They also want to mortgage the field block no. 290 to the bank. They also requested to the plaintiff to execute the mortgage deed in favour of bank in order to obtain the loan. The plaintiff, having faith upon the words of defendant no. 4, came to Vaduj on 11.08.2021 to execute mortgage deed. However, the defendant no. 4 cheated to the plaintiff and compelled to execute register sale deed of field block no. 290 in the right of defendant no.1. The plaintiff was not intending to sell the agricultural field block no. 290 to any person. The plaintiff also has not got any consideration amount from the defendant no. 1. The alleged sale deed dated 11.08.2021, is false, bogus and not binding upon the plaintiff. The defendant no. 1 and 4 cheated to the plaintiff and thereafter, they created the bogus sale deed dated 11.08.2021.

Now, the defendant no. 1, on the basis of alleged sale deed dated 11.08.2021, is intending to dispossess to the plaintiff from the field block no. 290. The defendant no. 1 demanded the partition of the suit properties towards defendant no. 2 to 4 but they denied it. Therefore, the plaintiff filed this suit for partition and

separate possession of the suit properties. The plaintiff also sought declaration that, the alleged sale deed dated 11.08.2021 is illegal, null and void and therefore, not binding upon the plaintiff. The plaintiff also claimed injunction that, defendant no. 1 to 4 shall not dispossess to the plaintiff from the suit properties, nor they shall dig or construct anything or change any portion of the suit properties till the final decision of this suit.

4. The defendant no. 1 and 4 filed the written statement/reply at Exh. 26 and opposed to this application on the ground that, the suit properties already partitioned amongst plaintiff and defendants. The plaintiff and defendant no. 2 to 4 got 1/4 share each in each field, which are the part of the suit properties. The plaintiff sold his share from the field block no. 290 to the defendant no. 1 on 11.08.2021, for the total consideration amount of Rs. 5,00,000/-. Thereafter, the plaintiff handed over possession of his share of the field block no. 290 to the defendant no. 1. Accordingly, the defendant no. 1 became the bonafide purchaser of field block no. 290. The defendant no. 1 is also came into possession in the aforesaid field block no. 290 by virtue of sale deed dated 11.08.2021. Under this circumstances, the plaintiff can not claim injunction against defendants. The plaintiff is not in possession in the field block no. 290 and therefore, prayed to reject the application.

The defendant no. 2 appeared and filed the written statement/reply at Exh. 31 and admitted to the suit claim of the plaintiff. The defendant no. 2 admitted that, the suit properties have not been partitioned amongst the plaintiff and defendant no. 2 to 4.

He also admitted that, on 11.08.2021, the defendant no. 1 and 4 cheated to the plaintiff and created false sale deed. The defendant no. 1 is not in possession in the field block no. 290. The defendant no.2 also prayed to grant relief of partition and separate possession of the suit properties.

The defendant no.3 filed the written statement at Exh. 34 and admitted to the suit claim of the plaintiff. The defendant no. 3 also submitted that, the suit properties have not been partitioned amongst the plaintiff and defendant no. 2 to 4. The defendant no. 1 and 4 created false sale deed on 11.08.2021 and cheated to the plaintiff. The defendant no. 1 is not in possession over the suit properties. The defendant no. 3 also prayed to grant relief of partition and separate possession of the suit properties.

5. The following points arose for my determination and I recorded my findings thereon for the reasons given as under.

Sr. No.	Points	Findings
1]	Whether the plaintiff/applicant is having prima-facie case in his favour?	Yes.
2]	Whether the balance of convenience lies in favour of the plaintiff /applicant ?	Yes.
3]	Whether the irreparable loss will be caused to the plaintiff, if the temporary injunction is refused ?	Yes.
4]	What order ?	As per final order.

REASONS

6. In order to establish the claim against all defendants, the plaintiff produced some documents on record. The plaintiff is also relied upon the true copy 7x12 extracts of field block no. 290, 1112, 1115, 342, 1116 of village-Gursale, Tal-Khatav, Dist-Satara, the certified copy of sale deed dated 11.08.2021, the affidavit of Bhimrao Babu Hirve, Vishal Chandrakant Kokare, Iqubal Ajij Mulani and Bharat Rahu Kirdat, the certified copy of order below Exh. 1 in Reg. Cri. Case No. 99/2022, the certified copy of the police report under Section 202 of the Code of Criminal Procedure and other relevant documents.

On the contrary, the defendant no. 1 and 4, as per the list of document at Exh. 44 produced the xerox copy of consent letter dated 01.10.1996.

As to Point No.1 To 3 :-

7. It is the submission of the plaintiff that, the suit properties have not been partitioned amongst the plaintiff and defendant no. 2 to 4. They are having joint possession and cultivation in the suit properties. The plaintiff was never intended to sell any part of the suit properties. However, the defendant no. 1 and 4 cheated to the plaintiff and compelled to execute sale deed on 11.08.2021, which is illegal, null and void. The defendant no. 1 and 4 attempted to dispossess to the plaintiff. Therefore, the plaintiff prayed to grant temporary injunction.

8. Heard the counsel for the plaintiff and defendant no. 1 and 4. The learned counsel for the plaintiff Adv. Shri. K.S. Kalekar submitted that, the defendant no. 1 and 4, without having any partition in the suit properties, cannot dispossess to plaintiff from the suit properties. Therefore, he prayed to grant temporary injunction.

9. On the contrary, the learned counsel for the defendant no. 1 and 4 Adv. Shri. J.S. Kadam submitted that, the plaintiff sold his 1/4 share from the field block no. 290 to the defendant no. 1 for the total consideration amount of Rs. 5,00,000/- and thereafter, he handed over the possession of the aforesaid property to the defendant no.1. The defendant no. 1 is in possession in the field block no.290. Therefore, the plaintiff can not claim injunction.

10. I read the plaint, written statements of defendants and entire documents produced by the plaintiff and defendants. On perusal of documents, particularly, true copies of 7x12 extracts of agricultural field block no. 290, 1112, 1115, 342 and 1116. It *prima facie* shows that, the name of the plaintiff and defendant no. 2 to 4 have been entered in the revenue record of the suit properties. The true copy of 7x12 extracts of filed block no. 290 *prima facie* shows that, the entire area of the said agricultural land is divided into four equal parts and 0=59.75 area has been shown for each plaintiff and defendant no. 2 to 4.

11. The true copy of 7x12 extracts of filed block no. 1112 *prima facie* shows that, the names of the plaintiff and defendant no. 2 to 4 have been entered in the revenue record of the suit properties

and its entire area is shown in the joint possession of the plaintiff and defendant no. 2 to 4.

12. The true copy of 7x12 extracts of filed block no. 1115 *prima facie* shows that, the names of the plaintiff and defendant no. 2 to 4 have been entered in the revenue record of the suit properties and its entire area is divided in 4 equal parts and 0=01.50 is shown for each plaintiff and each defendant no. 2 to 4.

13. The true copy of 7x12 extracts of field block no. 342 *prima facie* shows that, the names of the plaintiff and defendant no. 2 to 4 have been entered in the revenue record of the suit properties and its entire area is divided in four equal parts and 0=31.25 is shown for the plaintiff and each defendant no. 2 to 4.

14. The true copy of 7x12 extracts of field block no. 1116 *prima facie* shows that, the names of the plaintiff and defendant no. 2 to 4 have been entered in the revenue record of the suit properties and its entire area is divided in four equal parts and 0=03.50 is shown for the plaintiff and each defendant no. 2 to 4.

15. So, on perusal of entire documents, it *prima facie* appears that, each agricultural land which is the part of the suit properties is equally divided amongst plaintiff and defendant no. 2 to 4.

16. The defendant no. 1 and 4 submitted that the suit properties have been partitioned amongst the plaintiff and defendant

no. 2 to 4 in the year 1982 and each one got 1/4 shares in the entire suit properties and they are separately cultivating the suit properties.

17. The defendant no. 2 and 3 admitted to the claim of the plaintiff and narrated that, suit properties have not been partitioned. On the other hand, the defendant no. 4 denied the claim of the plaintiff and asserted that, the suit properties have been partitioned. The issue of partition and separate possession will be decided on the merits of case. Whether the sale deed dated 11.08.2021 is legal or illegal will be decided on the merits of the case.

18. However, it *prima facie* appears that, the plaintiff is one of the legal heirs of Mahadev Shinde. The plaintiff is also appears to be entitled for claiming partition and separate possession of the suit properties. The plaintiff may claim that he is entitled for 1/4 share in the suit properties. The defendant no. 1 is the stranger. The defendant no. 1 alleged that, he purchased 1/4 share of the plaintiff from field block no. 290. But, the field block no. 290 is *prima facie* shown as of ancestral or joint family property. The defendant no. 1 can not obtain possession of the area which is the part of the sale deed until its' partition amongst plaintiff and defendant no. 2 to 4. The defendant no. 1 to 4 can not dispossess to the plaintiff from his ancestral property. The plaintiff may also claim that, he can not dispossess from the suit property as it is the ancestral property and it is not partitioned.

19. The plaintiff is having strong *prima facie* case against defendants. The balance of convenience also lies in favour of the

plaintiff. Therefore, the irreparable loss will be caused to the plaintiff, if the injunction is refused. On the contrary, no irreparable loss will be caused to the defendant, if the injunction is granted in favour of the plaintiff. I found substance in the application. In the result, I answered to point no. 1 to 3 as affirmative.

20. In view of the above discussion, findings and reasons, I am of the opinion that, the plaintiff is entitled for temporary injunction. Hence, I proceed to pass the following order.

ORDER

- 1) The application at Exh.5 is partly allowed.
- 2) Defendant no. 1 to 4 or any other person shall not dispossess to the plaintiff from the field block no. 290 till the final decision of this suit.
- 3) Defendant no. 1 or any other person shall not alienate field block no.290 which is the part of the suit properies till the final decision of this suit.
- 4) The plaintiff is further directed to adduce his evidence (If any) immediately.
- 5) Parties to take note of it.

Vaduj.
Date:04.09.2023
(R.S. Phadatare) Stenographer

(D.D. Fulzele)
Civil Judge Sr.Dn., Vaduj.