



Order below Exh.7 in SPL.C.S. No.504/2023

The present application has been filed by the plaintiffs for temporarily restraining defendant Nos.4 and 5 from causing obstruction to the joint possession of the plaintiffs in the suit property and not to create third party interest in the suit property till final disposal of the suit under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure.

2. Perused the application and say of other side. Heard learned advocate of both the sides.

3. After going through the record, following points arise for my consideration and I record my findings thereon for the reasons mentioned there under :-

<u>Sr. No.</u>	<u>Points for consideration</u>	<u>Findings</u>
1)	Whether the plaintiffs have a <i>prima-facie</i> case ?	Partly Affirmative.
2)	Whether the <i>balance of convenience</i> lies in favour of the plaintiffs ?	Partly Affirmative.
3)	Whether <i>irreparable loss</i> would be caused to the plaintiffs, if application is rejected ?	Partly Affirmative.
4)	What order ?	The application is partly allowed.

REASONS

4. It is the contention of the plaintiffs that they have filed the present suit for partition, declaration and injunction. Defendant No.1 is father of the plaintiffs and defendant No.2 is a step mother. Defendant No.3 is a step brother of the plaintiffs. The property bearing Survey No.164/2 and 159/3 were given to the share of father of defendant No.1 i.e. Maruti Shivram More as per registered partition deed dated 20.06.1986. Thereafter, the property bearing Survey No.159/3 was exchanged with property bearing Survey No.209/6. The suit properties are ancestral properties of defendant No.1. The plaintiffs are having birth right in the suit properties. Mother of the plaintiffs died in the year 1988. Thereafter, defendant No.1 married with defendant No.2. The partition by metes and bound is not effected between the plaintiffs and the defendants.

5. Defendant No.1 sold the suit property bearing Survey No.164/2 admeasuring 0 H 64.33 R to defendant Nos.4 and 5 by executing a sale-deed dated 02.09.2021. The consent of the plaintiffs has not been obtained by the defendants for executing the said sale-deed. The said sale-deed is not binding on the share of the plaintiffs. The plaintiffs are having 1/2 share in the suit property. The plaintiffs sought partition of the suit properties. However, the defendants refused to make partition.

6. Defendant Nos.1 to 3 are trying to avoid the share of the plaintiffs in the suit properties. There is possibility that defendant Nos.1 to 3 will transfer the suit properties to third party by taking undue advantage of the name of defendant No.1 in the revenue record. There is no partition between the plaintiffs and the

defendants. Therefore, defendant Nos.4 and 5 do not have any right to cultivate the suit property bearing Survey No.164/2. The plaintiffs are having a prima facie case. The principles of balance of convenience and irreparable loss are in favour of the plaintiffs. Therefore, they prayed that the application be allowed.

7. Defendant Nos.2 to 5 filed their say vide Exh.30 and denied all the adverse allegations made against them in the application. It is the contention of the defendants that the plaintiffs did not mention the four boundaries of the suit properties and therefore, the property cannot be identified. The suit is not properly valued. The plaintiffs and the defendants are having immovable properties at Mumbai and Pune. However, those properties were not made suit properties in the present suit. Those properties were purchased from joint nucleus. Therefore, the suit is barred by the principle of non-joinder of necessary properties. Defendant No.1 had Cancer. The earning of defendant No.1 from the service was not sufficient to take treatment of Cancer disease. Further, defendant No.1 was retired from the service. Therefore, defendant No.1 sold the suit property bearing Survey No.164/2 for legal necessity i.e. to take treatment of Cancer disease. Defendant Nos.4 and 5 are the bonafied purchasers of the suit property. The possession of the suit property is given to defendant Nos.4 and 5 on 03.09.2021. The plaintiffs do not have a prima facie case. Further, the principles of balance of convenience and irreparable loss are in favour of the defendants. Therefore, they prayed that the application be rejected.

As To Point Nos.1 to 3 :-

8. The plaintiffs sought injunction against defendant Nos.4

and 5 that they shall not cause obstruction to the peaceful possession of the plaintiffs over the suit property and they shall not create third party interest in the suit property. Upon perusal of 7/12 extract of the suit property bearing Survey No.164/2 and the sale-deed dated 02.09.2021, it appears that the whole share of Ramchandra Maruti More is sold to defendant Nos.4 and 5. Further, the four boundaries are also mentioned in the sale-deed. The recitals in the sale-deed shows that, the possession is handed over to defendant Nos.4 and 5 on the date of execution of the sale-deed. Prima facie, the recitals of the sale-deed will prevail over the oral contentions of the plaintiffs. Therefore, prima facie I am of opinion that defendant Nos.4 and 5 are in possession of the suit property bearing Survey No.164/2. In absence of possession of the plaintiffs over the said property, the temporary injunction with respect to obstruction cannot be granted in favour of the plaintiffs. Hence, I hold that the plaintiffs do not have a prima facie case with respect to temporary injunction against defendant Nos.4 and 5 for causing obstruction to the plaintiffs over the suit property.

9. Now, the question remains with respect to create third party interest over the suit property. The plaintiffs filed present suit for partition. If the defendants failed to prove that they are bonafide purchasers and the transaction was for legal necessity, then the plaintiffs will be entitled for share in the suit property. In such circumstances, if defendant Nos.4 and 5 sold the suit property, then it will create complications in the present suit. Therefore, I hold that the plaintiffs have a prima facie case with respect to temporary injunction against defendant Nos.4 and 5 for creating third party

interest over the suit property.

10. In the present case, the principles of balance of convenience and irreparable loss are not in favour of the plaintiffs as they are not in possession of the suit property bearing Survey No.164/2 with respect to causing obstruction. However, the principles of balance of convenience and irreparable loss are in favour of the plaintiffs with respect to creating third party interest in the suit property as the present suit is for partition. Hence, I answer point Nos.1 to 3 accordingly.

As To Point No.4 :-

11. In the present case, the plaintiffs have a prima facie case to seek temporary injunction with respect to creating third party interest in the suit property by defendant Nos.4 and 5. Therefore, I am of opinion that the present application deserves to be partly allowed. The suit is at preliminary stage. Therefore, I am not inclined to impose the costs. Hence, in answer to point No.4, I pass the following order :-

ORDER

- (1) The application (Exh.7) is partly allowed.
- (2) Defendant Nos.4 and 5 are hereby temporarily restrained from creating third party interest over the suit property bearing Survey No.164/2 till decision of the suit.
- (3) No order as to costs.

Date:- 02.09.2025
Wai.

(A. A. Pacharne)
Jt. Civil Judge Senior Division,
Wai.