

ORDER BELOW EXH.6

[Passed on 23.07.2024]

This is an application by plaintiffs under Order XXXIX, Rule 1 & 2 read with Section 151 of the Civil Procedure Code for Temporary Injunction.

2] **The case of plaintiff's, in brief, is as follows ;**

i] It is submitted by plaintiffs that the subject matter of the suit is landed property bearing Gat No.1293/1/1 area 71R out of 1H.43R., situated at village Pimpalgaon, Tq. Pachora, Dist. Jalgaon, more specifically described in the plaint Para No.1 (for short "the Suit Property").

ii] According to plaintiffs, the suit property is ancestral property of themselves and defendant no.2. Defendant no.2 is husband of plaintiff no.1 and is father of plaintiff no.2 to 5. Plaintiffs further submitted that suit property Gat no.1293/1/1 is ancestral property which was in the name of defendant no.2. Defendant no.2 is alcoholic person and without any family need on 27/10/2022 sold out suit property without consent of plaintiffs to defendant no.1 for consideration of Rs.7,81,000/- as per sale deed no.6785/2022. However the possession of suit property is not handover as per the sale deed. Plaintiffs specifically contended that they are in possession of the suit property. Thus the sale deed is illegal and void and not binding on their share.

iii) Plaintiffs further submitted that they were doing agricultural operation on 29/10/2022. Defendant no.1 on

29/10/2022 obstructed their possession over the suit property. Then plaintiffs came to know about the execution of sale deed in favour of defendant no.1 by defendant no.2. Plaintiffs further submitted that the said transaction is illegal and void. Hence, plaintiffs constrained to file the present suit for declaration that the sale-deed no.6785/2022 dt.27.10.2022 is illegal and is not binding on their shares in the suit property. They further claimed partition and possession of their shares in the suit property and for perpetual injunction restraining defendant no.1 from alienation of the suit property till partition and possession of their shares. The instant application is filed for restraining defendant no.1 from alienating the suit property till final decision of the suit.

3] **The case of defendants, in brief, is as follows;**

i) Defendant no.1 filed W.S./reply at Exh.13 and contested the suit. He denied all material averments made by plaintiffs in respect of the suit property. He denied nature of suit property as "Ancestral Property". Defendant no.1 submitted that the suit property is absolute property of defendant no.2. For family needs he decided to sold out the suit property. He agreed to sale the suit property to him. The said agreement is also witnessed by his wife plaintiff no.1. Plaintiff no.1 signed as a witness on the agreement to sale. Subsequently he complied all legal formalities for registration of the said sale transaction of the suit property. Defendant no.2, thus executed the sale deed of the suit property in favour of defendant no.1. Plaintiffs especially plaintiff no.1 was fully aware of the said sale transaction. Thus defendant no.1 is *bona-fide* purchaser for consideration.

ii) Defendant no.1 further contended that due to family needs defendant no.2 executed the sale-deed of the suit property in his favour. The said sale deed is legal and valid. He further denied cause of action as pleaded. He further submitted that the suit is filed only with mala-fide intention to grab extra money from defendant no.1 by collusion with defendant no.2. On all these grounds defendant no.1 prayed for rejection of this application.

iii) Defendant no.2 served with suit summons. He appeared in the proceeding but failed to file written statement / reply. Hence the suit proceeded without written statement / reply against him.

4] Considering the material on record, the application, say and arguments of both parties, following points arise for my determination and I have recorded my findings against each point with reasons thereon as under :

Sr.	POINTS	FINDINGS
1.	Whether plaintiffs have <i>prima-facie</i> case ?	...No
2.	Whether balance of convenience lies in favour of plaintiffs ?	...No
3.	Whether plaintiffs would suffer irreparable loss, if injunction is refused?	...No
4.	What Order?	...Application is rejected.

:: REASONS ::**As to point No.1 to 3 :-**

5] I have gone through pleadings of both the side as discussed above as well as documents filed on record by them. As discussed above, it is case of plaintiffs that the suit property is ancestral property of themselves and of defendant no.2. Defendant no.2 is husband of plaintiff no.1 and father of plaintiff no.2 to 5. The suit property was in the name of defendant no.2. Defendant no.2 is addicted person. Without any family need and necessary he sold out the suit property to defendant no.1 for consideration of Rs.7,81,000/- on 27/10/2022. The suit property is ancestral property of plaintiffs and even though without their consent defendant no.2 executed the sale deed. Plaintiffs further came with case that sale deed no.6785/2022 in favour of defendant no.1 is illegal and void. They further came with case that actual possession of the suit property is not handover to defendant no.1 and they are in possession till today. They further came with case that on 29/10/2022 defendant no.1 obstructed their possession and thereafter they got knowledge of the sale deed. Hence they further claimed partition of their shares from suit property. On these allegations they preferred this suit. They sought declaration that the sale deed no.6785/2022 is illegal and not binding upon their share. They further sought temporary injunction restraining defendant no.1 from alienating the suit property till final decision of the suit. Plaintiffs also relied on various documents in order to boost their case.

6] On the other hand, defendant no.2 came with case that the suit property is not ancestral property as claimed. He came with specific case that the suit property is absolute property of defendant no.2 and he entitled to dispose of the property as per his wish. He further came with case that plaintiff no.1 wife of defendant no.2 was fully aware about the transaction of sale deed. He further came with case that agreement to sale of the suit property is executed between parties on 27/04/2016. Plaintiff no.1 as an witness signed the said agreement. Thus defendant no.1 is *bona-fide* purchaser for consideration and the sale transaction is legal and valid.

7] At this interim stage there is no iota of evidence pertaining to the nature of suit property as ancestral or absolute property of defendant no.2. Hence, before proceeding further, this court guided by observations in authority- ***Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde reported in 2008 (2) Mh.L.J. 819.*** Hon'ble High Court observed as “*at the stage of temporarily injunction Court can refer to documents which are produced on record without formal proof*”.

8] Considering factual aspects as pleaded by rival parties and observation *supra*, I have carefully gone through their pleadings and also documents relied upon by them. Plaintiffs relied upon copy of 7/12 extract of Gat no.1293/1/1, copy of sale deed no.6785/2022 dt.27/10/2022 and public notice. On perusal of 7/12 extract it *prima-facie* reveals the suit property inherited by defendant no.2 Sanjay from his mother Dhanabai Dasharath Khatik. There is no document even *prima-facie* showing that defendant no.2 inherited the suit property from male ancestral. There is no document showing

the suit property to be ancestral property of parties.

9] Plaintiffs further came with case that defendant no.2 alienated the suit property in favour of defendant no.1 as per sale deed no.6785/2022 on dt.27/10/2022 without their consent as the suit property is ancestral property. On the other hand Ld. Counsel D.P. Lohar specifically pointed out that plaintiff no.1 who is wife of defendant no.2 was fully aware about the sale transaction. Ld. Counsel invited my attention towards copy of agreement to sale dt.27/04/2016 in respect of the suit property. Ld. Counsel further submitted that the said agreement is executed between defendant no.1, defendant no.2 and late Dhanabai. Ld. Counsel further submitted that plaintiff no.1 Sunita is witness to the said agreement and lastly submitted that contentions of plaintiffs are false.

10] Considering the arguments I have carefully gone through copy of agreement to sale dt.27/04/2016 vide list Exh.24. Admittedly the said agreement to sale is not registered instrument. However at this interim stage can relied only as relevant factor of the disputed transaction. The said agreement is witnessed by plaintiff no.1 and therefore their contention as to execution of sale deed no.6785/2022 without their consent is found baseless and false.

11] Apart from that I have carefully gone through sale deed no.6785/2022 registered on dt. 27/10/2022 in respect of the suit property in between defendant no.1 and 2. The sale deed is registered by following due process of law as per the Registration Act, whereby defendant no.2 alienated the suit property to defendant no.1 for consideration. The transaction is *prima-facie* found legal and

valid. Further, there is no *prima-facie* evidence indicating any attempt of alienation of the suit property on part of defendant no.1.

12] Therefore, considering all above facts, this court come to conclusion that plaintiffs have no *prima-facie* case and balance of convenience is not lies in their favour. Considering this position, I did not find that any irreparable loss will cause to plaintiffs, if the injunction so sought, is rejected. Hence, the application is liable to reject. **With these observations this court pass the following order :-**

:: O R D E R ::

- 1) Application Exh.6 is rejected.
- 2) Costs in main cause.

Date: 23.07.2024.

(G. B. Aundhakar)
Civil Judge (Jr.Dn.)
Pachora.