

ORDER BELOW EXH.5

The plaintiff filed suit for declaration, partition and separate possession and permanent injunction in respect of house property at mouza Sindhi Rly., Ward No.2, New Ward No.15 bearing property No.31/1. By this application plaintiff prayed for ex-parte ad-interim temporary injunction against the defendants.

2) The plaintiff/applicant submitted that, father of plaintiff and defendant No.1 and 2 and grandfather of defendant No.3 namely Maroti Kisanaji Golhar had inherited the ancestral field property from his father namely Kisanaji Golhar. Out of income of such ancestral field Maroti Kisanaji Golhar purchased suit property including the house of plaintiff. The defendant No.3 in collusion with defendant No.1 and 2 got executed the sale deed in favour of defendant No.3 on 03.01.2012 by registered document bearing No.8/2012 and defendant No.3 executed the document in respect of suit house in favour of defendant No.4 by registered document bearing No.203/2021 dated 27.01.2021. Now, the defendant No.4 is trying to mutate the above ancestral house property in his name. However, the sale deeds were executed without authority and there is no actual partition in the suit house. Therefore, the defendants be restrained by temporary injunction from disturbing, obstructing, intervening the co-ownership of the plaintiff and also alienating the suit property.

3) Defendant No.1 to 4 filed their written statement at Exh.16 and by pursis at Exh.19 adopted the same as reply to the application. In

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their reply defendants denied the suit house as ancestral property of father of defendant No.1 and 2. They denied the possession of plaintiff over the entire house. In special reply the defendants objected the suit and application for in adequate court fees. They submitted the suit property is self acquired property of Maroti Kishanaji Golhar, he himself sold 640 sq.ft. area in said property to defendant No.3 by registered sale deed dated 03.01.2012. Thereafter, the name of defendant No.3 mutated on municipal record on Khasra No.36/2A to the extent of portion 640 sq.ft.. Thereafter, defendant No.3 sold the same to defendant No.4. The plaintiff never raised any objection for at relevant time and now to harass the defendants, he filed the baseless suit barred by limitation. Hence, application be rejected.

4) On rival pleadings following points arises for my determination. I have recorded their findings along with reasons.

Point	Findings
1. Whether plaintiff/applicant has prima-facie case in his favour ?	<u>Partly Yes.</u>
2. Whether balance of convenience lies in favour of the plaintiff/applicant ?	<u>Partly Yes.</u>
3. Whether the plaintiff/applicant will suffer irreparable injuries if the application is not granted ?	<u>Partly Yes.</u>
4. What order ?	<u>As per final Order.</u>

REASONS

5) In support of application the plaintiff/applicant filed documents alongwith list at Exh.4. In reply the defendants also rely the

sale deeds on record. Heard learned Advocate at length. Learned advocate for defendants filed written notes of argument at Exh.22.

AS TO POINT NO.1 TO 3 :-

6) As these points are interlinked these are discussed together.
The house property is not disputed by the parties. Only the nature of properties is disputed by the parties. As per plaintiff the suit house properties are purchased out of income from ancestral properties and therefore, it is also ancestral one and Maroti Kisanaji Golhar, the father of plaintiff and defendant No.1 and 2 had no right alone to alienate the same. On the other hand, the defendants submitted that the suit property was the self acquired property of Maroti Kisanaji Golhar. He had every right to dispose of the same. He himself sold some portion of suit property to the defendant No.3 which was further sold to defendant No.4. Therefore, the plaintiff has no right to ask for injunction.

7) Defendants in their written notes of argument argued that, the plaintiff had knowledge regarding the execution of sale deed of suit property in favour defendant No.3. They had also knowledge regarding further execution of sale deed in favour of defendant No.4. However, the plaintiff has never raised objection and therefore, the present suit itself is barred by limitation. Learned advocate for plaintiff argued that, the defendants are trying to disturb the possession of plaintiff in the property sold to defendant No.4. However, the plaintiff had not filed on record any document showing he is in possession of suit house sold to defendant No.4. The issues raised in the application are also the issues in

the suit and cannot be decided at this stage. Thus, prima facie case is made out by the plaintiff to some extent i.e. to the extent of apprehension of alienation of suit property. The balance of convenience not lies in favour any one of party. Irreparable loss will certainly cause to the plaintiff, if the defendants are not restrained from further alienating the suit property. Hence, I answered the point No.1 to 3 in the partly affirmative.

AS TO POINT NO.4 :-

8) I have answered point No.1 to 3 in the partly affirmative. Therefore, to avoid the multiplicity of proceedings it will be appropriate to restrain the defendants from alienating the suit property or creating third party interest till decision of the suit. In decision of the application, I pass the following order.

ORDER

- 1) The application is partly allowed with costs.
- 2) The non-applicants/defendants are temporarily restrained from alienating the suit property till the decision of the suit.

Dt.28.10.2021

Sd/-
(A. G. Mhaskey)
Civil Judge, Junior Division,
Seloo.

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per the original order.

Name of Stenographer : Jitendra H. Jawale (Grade-3),
Court : C.J.J.D. Seloo
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