

RCS No. 46/2021

Usha +3 Vs. Shankarao +1

CNR No. MHWR040010172019

ORDER BELOW EXH.5

(Date : 07.04.2021)

Applicants by application prayed for temporary injunction under Order 39 Rule 1 and 2 and section 151 of C.P.C. It is contentions of applicants that non applicant no. 1 Shankarrao Govind Raut, who is husband applicant no. 1 and father of applicant no. 2 to 4 had inherited field survey number 78 /a ad-measuring area 0.84 H.R. Non applicant no.1 was not in good mental condition and non applicant no. 2 Pushpa Ambadas Mangade taking the disadvantage of mental condition of non applicant no.1 got executed the sale deed of survey number 78/a ad-measuring area 0.84 H.R. survey number 78/a being the ancestral property the applicants are also entitled for share in it. The non applicant no.1 without consent of applicants cannot execute sale deed of survey number 78/a. Survey number 78/a is yet to be partitioned and without partition sale-deed cannot be executed. Applicants are in possession and cultivating the survey number 78/a therefore Non-applicants be restrained from disturbing the possession of applicants till the decision of suit on merit.

2 The non applicant no. 1 filed written statement cum reply and submitted that the non applicant no.1 was in possession of field survey number 78/a and he was of sound mind at the time of execution of sale deed. In-fact non applicant no. 1 is living separately from his family since last 20 to 23 years. He used to stay in the hut in the field survey number 78/a. He is about 70 years old and

unable to cultivate the field. He was in dire need of money to repay the loan amount taken from time to time from various people. therefore he sold the property in favour of applicant no. 2 for good consideration. Non applicant no. 1 being the absolute owner of survey no. 78/a had every right to sold the same. after sale-deed the non applicant no.2 is in possession of field survey no. 78/a. and the applicants are well aware about this. The present application is filed which intention to harass the non applicants and therefore application be rejected with cost

3. Following points are for my determination and I have recorded my findings with reasons are as under:

Sr.No.	Points for determination	Findings
1	Whether prima facie case is made out by the plaintiff?	No.
2	Whether balance of convenience lies in favour of plaintiff?	No.
3	Whether plaintiff will suffer irreparable loss if the injunction is not granted?	No.
4	What order?	As per final order

REASONS

4. Heard learned advocates for plaintiff and defendant. They argued to the tune of their application and reply. The applicants relied upon documents filed along with list. The non applicant relied upon sale-deed.

As to point nos. 1 to 3 :-

5. As point number 1,2 and 3 are interlinked, to avoid the repetition of discussion these are discussed together. whether the field survey no. 78/a is ancestral property of applicants and non

applicant no.1 is to be decided on merit. whether the non applicant no.1 had are had not right to execute the sale deed cannot be decided at this stage. At the time of deciding the application of for temporary injunction only the factum of possession is to be looked into. From 7/12 extract on record only the non- applicant no.1 was appeared in possession and cultivation of field survey no. 78/a. Applicants have not filed on record any documents showing tthey are in possession of survey number 78/a ad-measuring area 0.84 R. Thus prima-facie case is not made by the applicants, the balance of convenience also not lies in their favour and accordingly they will not suffer any repairable loss if the application is rejected. Hence the order.

Order

1. Application at Exh.5 is rejected.
2. Costs in cause.

Date :07.04.2022

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