

R.C.S.No 67/2017

Shri. Ramchandra Vs. Kamal & ors.

CNR No. MHWR040015322017

**ORDER BELOW EXH. 29**

(Passed on 03/02/2020)

1. Applicant / Plaintiff filed application under Order XXXIX Rule 1 and 2 read with section 151 of C.P.C. for grant of temporary injunction against non-applicants / defendant nos. 5 and 6. The plaintiff prayed to consider his plaint as part of this application. The plaintiff submitted that during the lifetime of father of plaintiff namely Mangal Ingole, mother Rangubai Ingole owned and possessed house property no. 411 at village Kelzar. After her death, the name of plaintiff is not brought on record.
2. After the death of Rangubai, the plaintiff did not mutate the suit property in his name in the office of land record. In the year 2002, the plaintiff constructed a new house on suit property from the western side keeping open the vacant land in the eastern side for use. The plaintiff has been in possession of the suit property. The half portion from the western side of suit property was recorded in the name of plaintiff vide property no.471 and remaining portion from eastern side was recorded in the name of Rangubai. After the death of Rangubai, the plaintiff is regularly paying the tax to the Grampanchayat.
3. The defendant no.1 with the help of defendant no.6 prepared fraudulent, bogus and illegal document. The defendant no.1 posing himself to be the only legal heir of deceased Mangal Ingole and Rangubai Ingole and suppressing the material facts from the government officials executed sale-deed to defendant no.5 Kamal Gujar of the land ad-measuring area 409.85 sq. meters by registered sale-deed bearing no.568/2019 on 02.04.2019. The act of non-applicants / defendants is illegal, bad-in-law. The non-applicants / defendants are trying to disturb the peaceful possession of plaintiff over the suit property and also trying to create third party interest. The plaintiff learnt that the non-applicants / defendants are trying to dispose of the property to sell against during the pendency of the suit.

Therefore, it is necessary to restrain the non-applicant nos. 1 and 2 / defendants from creating third party interest and creating multiplicity of ligations.

4. The plaintiff learnt that the the non-applicant nos. 1 and 2 / defendants want to alienate the property and create obstruction. The act of non-applicants is illegal and therefore, temporary injunction be granted against the non-applicants by restraining them from creating third party interest in the suit property during pendency of the suit. They be restrained from disturbing the possession of the plaintiff over the suit property till the final disposal of the suit.

5. The defendant nos. 5 and 6, who are the non-applicant nos. 1 and 2 in the present application have given their say to the application. In their say, they submitted that this court has already rejected the application below Exh.5 observing that the plaintiff has no prima facie case in his favour, balance of convenience also not lies in his favour and no irreparable loss will cause to the plaintiff if the temporary injunction is not granted. The plaintiff has not challenged the said order. Moreover again filed present application for temporary injunction asking the court to review its own order. The present application is also barred by section 11 of C.P.C. and therefore, the application be rejected.

6. On rival pleadings following points arise for my determination and I have recorded my findings against those for the reasons to be recorded as under;

<b>Sr.No</b>	<b>Points</b>	<b>Findings</b>
1	Whether prima facie case is made out by the plaintiff?	Partly Affirmative
2	Whether balance of convenience lies in favour of plaintiff?	Partly Affirmative
3	Who will suffer irreparable loss, if injunction is refused?	Yes.
4	What order?	As per final order

**REASONS****As to point nos. 1 to 4 :-**

7. As point nos. 1 to 4 are inter-linked, they are discussed together.

8. Heard learned advocate for plaintiff. He argued to the tune of his application. The learned advocate for non-applicants is absent when called and therefore, his reply to the application is treated as the argument for non-applicants.

9. Perused record. It appears that observing the possession of defendant nos. 1 to 4 and their names on the revenue record my then learned predecessor rejected the application. In the present application also, the plaintiff is ascertaining his possession. Learned advocate for non-applicant nos. 1 and 2 objected the application as barred by the law of res judicata. It appears that if the plaintiff was not considered in possession in the previous order then the plaintiff cannot again assert his possession and ask for temporary injunction as such is hit by section 11 of C.P.C. However, the prayer restraining the non-applicant nos. 1 and 2 for further alienating the suit property is appeared proper prayer for avoiding the multiplicity of proceedings. Moreover, the non-applicant nos. 1 and 2 have not denied specifically as they will not alienate the property. No prejudice will be caused to the non-applicant nos. 1 and 2 if they are restrained from alienating the suit property. Hence, I answer the point nos. 1 and 2 in partly affirmative, point no.3 in affirmative and in answer to point no.4 pass the following order.

**ORDER**

1. Application is partly allowed.
2. The non-applicants are hereby temporarily restrained from the alienating the suit property to any other person or creating third party interest till the final disposal of the suit.
3. Costs in cause.

Date :03/02/2020

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

**Certificate**

I affirm that, the contents of this PDF are same words for words, as per the original order.

Name of Stenographer : S.V. Made

Name of Court : C.J.J.D. & J.M.F.C., Seloo.

Upload on date : 03/02/2020