

	<u>ORDER BELOW EXH.5 IN R.C.S.19/2019</u> <u>(Sushma Gharwal Vs. Rajendrasing</u> <u>Thakur & othr.)</u> <u>(Date:- 30/06/2022)</u>
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- 1) This is an application for restraining the defendant No.1/non-applicant No.1 from alienating the suit land i.e. agricultural land situated at Bhera in gat No.16 to the extend of 2 H 79 R and house property situated at Malegaon till the disposal of the suit under Order XXXIX read with 1 and 2 of CPC.
- 2) Defendants filed reply to this application at Exh.14.
- 3) Considering the rival pleadings of parties, the following points arise for my determination and I record my finding thereon for the reasons given below.

POINTS	FINDINGS
1) Whether plaintiff has made out prima-facie case ?	Yes
2) Whether balance of convenience lies in favour of plaintiff ?	Yes
3) Whether plaintiff will suffer irreparable loss, if injunction is refused ?	Yes
4) What order ?	Application is allowed

REASONS

- 4) Plaintiffs have filed copy of 7/12 extract of gat No.16/1, mutation entry No.1398, copy of will-deed. Defendants have filed copy of will, mutation entry No.1766, 7/12 extract of gat No.16/1, Namuna No.8 of gat No.16/1.

AS TO POINT NOS.1 TO 3

5) It is the case and submission of plaintiffs that defendants No.1 is brother of plaintiffs and defendants No.2. The joint hindu family of plaintiff and defendants is governed by the a Mitakshara school. On 28/01/2019 the father of plaintiff and defendants namely Rajpalsingh was died. Plaintiffs and defendant No.2 claimed partition in the suit property at that time defendant No.1 flatly denied partition of suit property. Defendant No.1 stated that deceased Rajpalsingh executed will in his favour. It is the contention of plaintiffs that the will is forged one. The will was executed on 24/12/2018. The mental and physical condition of the deceased was not well. He did not made thumb impression. He used to sign over any document. The document is illegal and does not confer any right to defendant No.1. Plaintiffs and defendants have equal shares. The defendant No.1 are in haste to alienate the suit property. Hence, this application. The Ld. Advocate for plaintiff submitted that the alleged will is executed of the entire agricultural property. The executor being coparcener can not execute the will of entire joint family property. Hence, prayed to restrain the defendants from alienating the suit property.

6) Per contra, it is the case and submission of defendant No.1 that, he being the son tended the deceased Rajpalsingh. The deceased was mentally fit till his death. Due to love and affection deceased executed will in his favour in presence of attesting witness. The will is legal one. As the right hand of deceased was vibrating, he could not have signed over the will. There is no question of alienation of suit property. Defendant No.1 is in possession of suit property. Defendant No.1 is ready to give share to the plaintiffs and

defendant No.2. Even if defendant No.1 alienates the suit property then the transaction is hit by the law of lispendens. Hence, prayed to reject the application.

7) The term *prima facie* case means a case which involves a fair and substantial question to be tried. A triable issue is the crux of the expression *prima facie* case.

8) The relations and status of the suit property is admitted by the defendant. Even defendant No.1 has also admitted that he is ready to give the share to the plaintiffs and defendant No.2. On perusal of will it appears that father of plaintiffs and defendants namely Rajpalsingh has executed will of the entire land in gat No.16/1 situated at Bhera Tq.Malegaon. The deceased Rajpalsingh has not executed will to the extent of his share. The house property situated within the municipal limit of Malegaon is also the suit property. Prima facie it appears that plaintiffs have share in the suit property. Plaintiffs have apprehension that defendant No.1 may sale the suit property by virtue of the his name appears in revenue record.

9) The Ld. Advocate for defendant No.1 has submitted that if defendant No.1 creates any interest in favour of a third party then plaintiffs have adequate protection of section 52 of The Transfer Of Property Act,1882. I have given thoughtful consideration to this submission. Prima facie it appears that plaintiffs and defendant No.2 also have the shares in the suit property. Plaintiffs are claiming temporary injunction to restrain the defendant No.1 from alienating the suit property. Undoubtedly, plaintiffs have shield of section 52 of The Transfer Of Property Act, 1882. As soon as the transfer is made, plaintiffs have to implead the purchaser as defendant. Even purchaser have the substantial interest in the suit property. He is

bound by the decree. However, the possibility of subsequent transfer cannot be ruled out. In such situation plaintiffs have to add every subsequent transferee. Every transferor may create substantial interest in the suit property. It will become cumbersome procedure for the plaintiffs. In order to avoid multiplicity of the suit, it is just and proper to restrain the defendant No.1 from alienating the suit property. Therefore, the submission of Ld. Advocate for defendant is not at all acceptable. The protection under section 52 of Transfer of Property Act is inadequate protection. In such situation it is proper to restrain to defendant No.1 from alienating the suit property. Balance of convenience tills in favour of plaintiffs. Defendant No.1 has not shown what irreparable loss he will face if the injunction order is passed against him. On the contrary, plaintiffs will suffer irreparable loss. Hence, I answer point No.1 to 3 in affirmative hence, following order.

ORDER

- 1) Application is allowed.
- 2) Defendant No.1 is hereby restrained from alienating, creating any third party interest in any manner over the suit property till the disposal of the suit.
- 3) The cost in main cause.
- 4) Dictated and pronounced in open court.

Malegaon
Date:- 30/06/2022

(P.U.Kulkarni)
Jt.Civil Judge Jr.Dn.,Malegaon.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment/Order are same word to word, as per the original order.

Name of the Stenographer : **N. F. Syed, Stenographer (L.G.)**

Name of Court : **Jt.Civil Judge, [Jr.Divn.] &
Judicial Magistrate, First Class,
Malegaon, Dist. Washim.**

Date: : **30/06/2022.**

**Order signed by the
Presiding Officer on** : **30/06/2022.**

Order uploaded on : **01/07/2022.**