

<u>CNR No.MHWS100005752018</u> 	<u>ORDER BELOW EXH.45 RCS No.29/2018</u> <u>(Rajendra Gondal Vs. Shriram Gondal)</u> (Date:- 01/08/2022)
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- 1) This is an application U/O XXXIX Rule 1 and 2, 94 , r/w section 151 of the CPC for grant of temporary injunction restraining the defendants from alienating the suit property bearing gat No.4 to the extent of 9 H 63 R. (Hereinafter referred as '*the suit property*') till the disposal of the suit.
- 2) The defendant No.1 has filed her reply at Exh.46. Defendant No.2 and 3 failed to file their reply. Hence, matter is proceeded without their say. Heard both sides at length.
- 3) Considering the rival submissions of parties, the following points arise for my determination and I record my finding thereon for the reasons given below.

No.	POINTS	FINDINGS
1	Whether the plaintiffs have made out a prima facie case in her favour ?	Yes
2	Whether balance of convenience tilts in favour of the plaintiffs ?	Yes
3	Whether the plaintiffs will suffer irreparable loss in the event of refusal of injunction application ?	Yes
4	What order ?	As per final order.

REASONS

4) Plaintiffs in support of the application filed list below Exh.27, the sale deeds executed by deceased defendant and LRs of defendants i.e. present defendant No.1 in favour of defendant No.2 and 3 respectively.

5) Per contra, defendant has not filed any documents.

AS TO POINT NO.1 TO 3 :

6) The Ld. Advocate for plaintiffs submitted that the defendant No.1 has executed the sale deed of suit property. Defendant No.1 without any hesitation of pending suit executed the sale deed in favour of defendant No.3. Plaintiffs have rights to claim partition in suit property. The suit property is ancestral property hence, prayed to restrain the defendants from further alienations.

7) The Ld. Advocate for defendants submitted that the already suit property is partitioned. Plaintiffs have no right to file this suit hence, prayed to reject the application.

8) Perused the plaint. On perusal of plaint it appears that deceased defendant Shriram Gondal has executed sale deed in favour of defendant No.2. The present defendant No.1 has executed sale deed in favour of defendant No.3. Defendant No.1 filed her written statement at Exh.43. In the reply defendant No.1 has denied the contentions of plaintiffs. She has also referred the judgment and decree in RCS No.337/1990 and appeals therefrom. As per averments of defendant No.1, the suit property is allotted to the share of her husband. He was exclusive owner and possessor of suit property. Plaintiffs have

no right to claim the partition in the suit property. Hence, prayed to reject the application.

9) 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.

10) At this juncture only *prima facie* case has to be considered. It is the submission of defendant No.1 that the suit property is separate property of defendants. On perusal of judgment in RCS No.337/1990 filed below Exh.19, it appears that this suit property had not been mentioned in the said suit. The said suit was filed by one Dipak Digamberappa Gondal. The husband of defendant No.1 was not party to the said suit. On perusal of the record it is clear that defendant No.1 has executed sale deed on 31/08/2020. If the defendants have again executed sale deeds and creates interest in favour of transferees then it will be cumbersome situation for plaintiff to add them as a party defendant. By virtue of the sale deeds, defendants may alienate the suit property. If defendants are not restrained then plaintiff may suffer irreparable loss. Hence, it is proper to restrain the defendants from further alienation. In view of above discussion I answer point No.1 to 3 in affirmative. Hence, following order;

ORDER

- 1) The application is allowed.
- 2) Defendants are restrained from alienating or making any sort of interest in favour of third person in respect of suit property till the disposal of the suit.

- 3) Cost in main cause.
- 4) Dictated and pronounced in open Court.

Malegaon
Date :- 01/08/2022

(Pravin 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:	:	01/08/2022.
Order signed by the Presiding Officer on	:	01/08/2022.
Order uploaded on	:	04/08/2022.