

Reg.C.S.No.29/2019.

Order below exhibit- 5

None appeared for the plaintiff when the suit is repeatedly called out in first and second session. Heard learned advocate Mr. D.R.Raut for defendant no.3.

2. As application exh.5 for temporary injunction is pending, it is taken up for decision. Perused record. Suit is filed by next friend means daughter of the plaintiff on the ground that the plaintiff is mentally retarded. Relinquishment deed executed by the plaintiff and her mother in favour of defendant no.3, in respect of the suit house, is challenged and sought declaration that it is not binding on the plaintiff. In the mean while by application exh.5 temporary injunction is sought against defendant no.1 and 2 from taking mutation entry and against defendant no.3 from creating third party interest in the suit house.

3. Defendant no.1 and 2 filed written statement exh.20 and adopted it as say to exh.5. In written statement they pointed out that relinquishment deed is registered document and hence formalities of taking mutation entry have been completed. Now final sanction is not granted.

4. Defendant no.3 filed written statement as well as say at exh.22. It is denied that the plaintiff is mentally retarded. It is stated that the plaintiff is residing with defendant no.3. Their mother was also residing with them. Now the mother is dead. Before her death the mother and plaintiff executed relinquishment deed of their share in favour of defendant no.3. Plaintiff's daughter, who has no any right or interest in the suit property, has filed false suit. She denied that she is going to transfer the suit house.

5. Having considered the facts and circumstances of the case, there is no any proof at this stage to say that the plaintiff is mentally retarded. Of-course that would be decided, if required, during trial. Relinquishment deed is already registered on 2.6.2016. Defendant nos.1 and 2 or the authorities discharging their legal duties can not be restrained from performing their duties. Temporary injunction can not be granted against them, in the facts and circumstances of the instant case.

6. It is admitted fact that the plaintiff is residing together with defendant no.3 in suit house. For want of any proof to reasonably

conclude that the plaintiff is mentally retarded, the probability of executing relinquishment deed without her knowledge is rare. There are no averments regarding any transaction likely to be done by defendant no.3 with any third party, temporary injunction can not be granted against her. The facts of the case are as such that the case should go for trial and hence the plaintiff has prima-facie case. But the plaintiff as well as defendant no.2 are residing in the same house and relinquishment deed is already register long back in 2016, the balance convenience lies in favour of defendant no.3. There is no proof to show that the plaintiff shall suffer irreparable loss, is temporary injunction is not granted.

7. As noted above, the plaintiff failed to establish essential ingredients to grant temporary injunction, though there is a prima-facie case, the application is liable to be rejected. Hence :

Application Exh.5 stands rejected.

The costs would be in cause.

Place : Darwha
Date : 17/06/2019

(S. P. Kekan)
Jt.Civil Judge Sr. Dn.