

RCA No.33/2015

Arvind Ramchandra Belkhede

-Vs-Smt. Sulochana

Ramchandra Belkhede and Ors.

Order Below Application Exh.80

(Dt.22-02-2024)

This application has been filed for grant of temporary injunction under Order 39 Rule 1 & 2 of the Code of Civil Procedure by the appellants/applicants Nos.1 & 2 thereby praying to restrain Respondent nos. 1 to 4 from creating third party interest in the properties mentioned in para no.2-A and 2-B of the plaint till the final disposal of appeal.

2. Heard learned advocate for the appellants Shri R.K.Shaikh and learned advocate for the Respondents Shri M.M.Kale. Perused the application, document annexed, impugned judgment and decree and the entire record of appeal alongwith record of the suit.

3. Upon considering rival submissions and the material on record, following points arise for my consideration, findings against each of them for the reasons to follow are mentioned hereunder-

POINTS**FINDINGS**

- | | |
|--|-------------|
| 1] Whether appellants/applicants have made out prima-facie case for grant of temporary injunction? | In Negative |
| 2] Whether balance of convenience lies in | In Negative |

their favour?

3] Whether they established that they would suffer irreparable loss, if temporary injunction is refused? In Negative

4] What order? -As per final order.

- R E A S O N S -

As to Point No.01 to 03 :-

4. As these points are interconnected and require appreciation of same set of facts and material, they are taken together for the sake of convenience and for brevity and to avoid repetition.

5. It is the contention of appellants that Respondent Nos. 1 to 4 has started making changes in the house property and also tried to create third party interest the selling out the agricultural properties to third person namely one Uttarwar of Patanbori which are prescribed in para no.2-A & 2-B and thus trying to create mischief to deprive legitimate right of the appellants in the suit property. Thus, it is necessary to restrain the Respondents from creating third party interest in the agricultural properties which are described in para no.2-A to 2-D of the plaint till final disposal of the appeal. On the contrary, it is submitted on behalf of Respondents that the impugned judgment and decree is clear and precise by which the suit for partition and separate possession of the appellants got dismissed much ago, the suit is for final hearing

and they are ready to argue finally, as already property is sold out the application became in-fructuous now and in view of specific provisions of Maharashtra Land Revenue Code and Specific Relief Act in view of peculiar facts and circumstances crystallized, no injunction can be claimed considering the status at present, the trial court has dismissed the suit by giving precise reasons thereby by appreciating entire facts and material in detailed and correct perspective, the main reason for dismissal of the suit is that the suit properties were partitioned they got much ago, in view of entire material collected during the suit no prima-facie case is made out by the appellants and in view of entire facts and circumstances and stage of this appeal, this application does not attract any merits and substance and moved with ulterior motive and became infructuous. They prayed to reject this application.

6. Upon considering the rival submissions and the impugned judgment and decree, the appellants have not got any relief of separate possession and share and thus partition as prayed from the learned civil court. The learned trial court has given precise reasons in detail in its judgment as revealed from the said judgment. It appears that when the hearing was taken place on previous date, some of the suit property is appeared to be sold out as per the document index-II submitted by the appellants on behalf of their advocate.

7. I have carefully gone through the entire record, evidence and documents adduced during the trial of the Civil Court. In its judgment by referring the various material and

evidence brought on record, the learned Civil Court has given findings against the appellants. At present as per the documents submitted on record, the suit property as per index-II is appeared to be sold out. As per the judgment of learned Civil Court and as per the submissions of respondents the shares in the properties were already given to the plaintiffs much prior to the filing of the suit. The respondents are ready for final arguments and the appeal is ready for final arguments as appeared from the record. Thus, in the light of all attending facts and circumstances and particularly the evidence available on record in my opinion, no prima-facie case is made out by the appellants for grant of temporary injunction. As no prima-facie case is made out, in view of overall facts and material on record no balance of convenience lies in favour of appellants considering the peculiar, precise evidence on record and nature of lis. When no prima-facie case is made out and no balance of convenience lies in favour of appellants, they have not established the case of suffering irreparable loss, if the temporary injunction would be refused. Whether the appellants are having rights and shares in the suit properties and whether the trial court has committed any error, illegality or mistake in coming to the conclusions and while giving findings in the said judgment would be decided on merits after final hearing of both the parties. Remedies and options as prescribed under law would be available to the appellants, if they would succeed to overturn and to modify/cancel the decree by getting relief as prayed in their favour in this appeal on merits after final hearing. Thus no prejudice or loss would cause to them in the event of rejection of this application. Considering overall material brought on record during the trial of the suit, in the light of stage of appeal and all attending

facts and circumstances and above discussion, I answered point Nos.1 to 3 in negative. Hence, this application is liable to be rejected. As a result the following order-

ORDER

1. The application Exh.80 is hereby rejected.
2. Both parties are directed to cooperate to expedite the disposal of this appeal on merits.
3. Both parties to take note.

Sd/-

Date: 22/02/2024

(A.M.Deshmukh)
District Judge-2,
Kelapur.