ORDER BELOW EXH.05 IN R.C.S. NO. 23/2018

(Passed On 01/03/2024)

This is an application filed by plaintiffs under Order-XXXIX, Rule-1 of the Code of Civil Procedure, 1908 and prayed to restrain defendants from alienating or creating third party interest in the suit property till the conclusion of the suit. Defendant Nos. 1, 3, 4, 8, 9, 10, 11, 14 and 15 have filed their say at Exh. 74, 82, 83 and 114 and strongly opposed the application.

Brief facts of the application are as under:

02. It is the case of the plaintiffs that the suit-property Survey No. 49/1 admeasuring 20 R situated at Umarkhed, village Umarkhed, Dist. Yavatmal was owned by Mohammad Sujauddin. He died leaving behind legal heirs Mohammad Abdul, Mohammad Anwar and Mohammad Bahoodin. However, Mohammad Abdul was missing since long and, therefore, Mohammad Anwar and Mohammad Bahoddin were the only owner of the suit-property. Mohammad Bahoodin and Mohammad Anwaroddin both died in the year 2006 and 2013. The plaintiffs are legal heirs of Mohammad Anwaroddin and Mohammad Bahooddin. However, defendants have illegally occupied the suit-property and they are residing on the suit-property without any title. The names of plaintiffs are mutated to the suit-property. The plaintiffs never transferred the suit-property by any way, their names are appear as owner of the suit-property in the revenue record. The defendants illegally occupied the suit-property. The plaintiffs demanded possession from the defendants, they have given vague answers to the plaintiffs. Therefore, the plaintiffs have filed the present suit for recovery of possession and mense profit of the suit-property. The

defendants are trying to create third party interest in the suit-property. Therefore, defendants be restrained from creating third party interest in the suit-property till the conclusion of the suit.

03. On the contrary, the defendants submitted that, the allegation made in the suit are false and frivolous. The suit is barred by limitation. The plaintiffs are not the owner of the suit-property. The defendants have purchased the suit-property from Arun Agrawal by way of agreement to sale and since then the suit-property is in the possession of the defendants. They further submitted that, the defendants are the owner of the suit-property and they are enjoying the possession since long. The suit and the application is liable to be rejected with costs. They prayed to reject the application.

04. Heard Ld. Advocate for the plaintiffs Shri. S. M. Saudagar and Ld. Advocate Shri. S. B. Naik and Shri. P. P. Jain for the defendants. Defendant Nos. 9, 10, 14, 15 have filed their written argument at Exh. 115. Perused the record and documents. In view of rival pleadings of both the parties following points arise for my determination, to which I record my finding for the reasons stated there under:

SR. NO.	POINTS	FINDINGS
01.	Do plaintiffs prove that he made out *prima facie* case?	In Negative.
02.	Do plaintiffs prove that the balance of convenience lies in theirt favour?	In Negative.
03.	Do plaintiffs prove that it would sustain irreparable loss, if the temporary injunction is refused?	In Negative.

04.	What order?	Application is rejected.

REASONS

05. The plaintiffs relied on documents that is 01) Power of attorney, 02) Crop extract of Gat No. 49/1, 03) Death Certificate of Sujaudin, 04) Mutatiton entry No. 370, 05) 7/12 extract of Gat No. 49/1, 06) Death Certificate of Anwaruddin, 07) Death Certificate of Bahoddin, 08) Mutation Entry No. 6751, 09) Mutation Entry No. 6822, 10) 7/12 extract of Gat No. 49/1, 11) Map, 12) Map, 13) Map, 14) Notice, 15) Postal receipt, 16) Acknowledgment receipt, 17) Postal Pocketand 18) 7/12 extract of Gat No. 49/1.

06. Defendants relied on the following documents 01) Copy of perepatrak Survey No. 49/1 in the year 1961 to 1978, 02) Copy of agreement to sale, 03) Copy of agreement to sale, 04) No objection certificate, 05) 7/12 extract of Gat No. 48/1, 06) Copy of agreement to sale, 07) Copy of agreement to sale and 08) Copy of agreement to sale.

AS TO POINT NO. 01:-

07. So far as this point is concerned, it is to be seen as to what is a prima facie case. In establishing a prima facie case, plaintiffs need not establish their title. It would be sufficient for them to show that they have a fair question to raise as to the existence of their right and that till the question is ripe for trial a case is made out for preservation of the properties.

08. At the outset, it necessary to mention here that, the present suit is filed for recovery of possession and mesne profit against the defendants.

It prima facie shows that, the plaintiffs have admitted that, defendants are having possession over the suit-property.

09. It is the case of the plaintiffs that, the defendants have illegally, unauthorized and without any title occupied the suit-property, which is owned by the plaintiffs. The plaintiffs filed 7/12 extract of the Gat No. 49/1 at Exh. 3 Sr. No. 5, wherein the names of Mohammad Anwaroddin, Mohammad Bahoddin, Mohammad Anwaroddin appear in the holder column. It is reflected from the mutation entry No. 6751 that, Anwaroddin died on 08/11/2013 and the names of the plaintiffs Nos. 1 to 7 and 14 are mutated to the revenue record of the suit-property. It is reflected from the mutation entry No. 6822 reflected that Mohammad Bahooddin died on 19/01/2006 and the names of the plaintiff Nos. 8 to 13 are mutated in the revenue record of the suit-property as legal heirs of deceased. The 7/12 extract of Gat No. 49/1 filed on Exh. 3 Sr. No. 10 reflected that, the names of the plaintiffs are appear in the owner column of the suit-property. It is the case of the plaintiffs in the application para No. 7 that, they are the owner of the suit-property and their names are appear in the revenue record as a owner of the suit-property. They have neither transferred the suit-property by any mode nor created any third party interest in the suit-property. Prima facie it appears that, the names of the plaintiffs are mutated in the revenue record of the suit-property.

10. The plaintiffs come with the specific case that, the defendants have illegally occupied the suit-property. The plaintiffs have proved that, their name are mutated to the revenue record of the suit-property. On the contrary, the plaintiffs have prayed to this Court to restrain the defendants from crating third party interest in the suit-property. The plaintiffs

themselves submitted that, their name are appears as owner of the suit-property in the revenue record of the suit-property. The defendants come with the case that, they have purchased the suit-property by way of agreement to sale. The defendants have failed to file any registered instrument on record which shows their interest in the suit-property. Moreover, as per Section 54 of the Transfer of Property Act 1882, 'a contract for the sale of immovable property does not itself, create any interest in or charge on such a property'. It shows that, the defendants have failed to prove their interest in the suit-property. In these circumstances, the names of defendants are not appears in the revenue record to the suit-property. There is no any documents filed by the plaintiffs to show that, the defendants are having title in the suit-property by which they are going to alienate or crate third party interest in the suit-property. The plaintiffs have contrary prayed to this Court to restrain the defendants from creating third party interest in the suit-property. There is no any registered instrument with the defendants nor their names are mutated in the revenue record therefore, how can they create third party interest in the suit-property. In this circumstances, the plaintiffs fails to prove prima facie case in respect of restrain the defendants from creating third party interest in the suit-property. In this circumstances, plaintiffs have failed to prove prima case. Moreover, the protection of Section 52 of the Transfer of Property Act 1882 is available to the plaintiffs to save his interest in the suit-property. I concluded that, the plaintiffs have failed to prove prima facie case is in their favour. Thus, I answer point No. 1 in negative.

AS TO POINT NO. 02 :-

11. 'Balance of convenience' means the comparative mischief or inconvenience to the parties. In arriving at the balance of convenience, the

court has to weigh the mischief likely to be caused applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted.

12. As regards the balance of convenience and inconvenience, the plaintiffs have failed to prove that, defendants are going to create third party interest in the suit-property. In view of discussed supra, I am of the considered opinion that the balance of convenience not lies in favour of the plaintiffs, thus, I recorded my finding to Point No.2 in the '*Negative* '.

AS TO POINT NO. 03 :-

13. "Irreparable injury" means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the applicants in case of success in the suit would not place them in the position in which they were before the injunction was refused. The plaintiffs failed to prove that, the names of defendants are appears in the revenue record or they have registered instrument by which they are going to create third party interest in the suit-property. Therefore, irreparable injury will not cause to the plaintiff if injunction is refused. In these circumstances in absence of a prima facie case, it would not just and proper to grant vague injunction against the defendants. Thus, in my opinion, defendants would more suffer an irreparable loss or injury, if a temporary injunction is granted as prayed than the refuse. Therefore, I record my finding to point no.3 in the '*Negative* '.

AS TO POINT NO. 04 :-

14. On applying all principles required for granting the temporary injunction, as per Order XXXIX Rule 1, the plaintiffs have failed to prove

prima facie case, the balance of convenience and irreparable loss thus they are not entitled to the discretionary relief of injunction. Resultantly, I hold that plaintiffs are not entitled to the relief of the temporary injunction. Hence, I pass the following order :

ORDER

The application Exh. 05 is rejected with costs.

Sd/-

Umarkhed
Date: 01/03/2024

(Aarish S.Shaikh)
2nd Jt. Civil Judge (Jr.Dn.), Umarkhed