

IN THE COURT OF JT.CIVIL JUDGE JUNIOR
DIVISION, DIGRAS,
DISTRICT –YAVATMAL.



Rcs 68/2024
Subhash –Vs- Vijay & Ors.
CNR:MHYA13-000559-2024

ORDER BELOW EXH.06
[Passed on 14/05/2024]

The instant application is filed by plaintiff under O.XXXIX Rule III of the Code of Civil Procedure, 1908 and by way of this application plaintiff sought to restrain the defendant No.1 to 3 from selling, transferring or alienating and also creating charge or interest of third party over the suit property.

2] **The facts of plaintiffs application in brief are as under:**

The applicant contended that, the suit property i.e.residential house (Wada) bearing property No.1, situated at around 10000 sqr. ft. at Village Lingi wai, Tahasil: Digras was constructed in the year 1923 by his great grandfather i.e. Dattatray Krushnaji Kane. So also he has purchased an agricultural land at the same Village. He has contended that, the wife of Dattatray Kane namely Lakshmibai Kane has prepared her registered "Will" dated 02/04/1969 and given share in said property to the father of plaintiff. However, said Will was not

confronted to him. In the year 2024, he has found the duplicate copy of the said Will. Upon inquiry he has acquainted with the fact that, name of one of the uncle of plaintiff namely Anand Dattatray Kane only was recorded. The father of defendant No.1 to 3 has fraudulantly recorded his name on the revenue record. Therefore, he has filed the instant suit. As he has acquainted with the fact that, after demise of Anant Kane, his legal heirs i.e. defendant No.1 to 3 are trying to alienate the said house (wada). Therefore, he has filed the instant application and prayed to grant the ad-interim-ex-parte injunction under Order 39 Rule 3 of CPC.

3] Perused the application, documents filed on record. Heard.

4] The copy of "Will" prima facie reveals that, Lakshmibai Kane has given the share of property in favor of father of plaintiff namely late Shripad Dattatray Kane. The copy of proceeding register of Gram Panchayat Lingi Wai of the year 2023-2 shows that, son of late Anant Kane and plaintiff has also filed an application to record their respective names in revenue record. However, they were advised to file the succession certificate issued by the competent Court in the said context. The legal notice issued by plaintiff shows that, he has asked for the partition to defendant No.1. Lastly, the Tax assessment list of the year 2024-25 is showing the name of Anant Dattatray Kane over suit property.

5] Considering aforesaid documents filed on record, it appears to me that, on the basis of "Will" father of plaintiff appears to be entitled for his share in suit house. Plaintiff has raised an apprehension that, defendant No.1 to 3 has tried to alienate the suit

house. In that context he has filed on record the sworn affidavits of Ajabrao Shere, Vijay Sagane and Hirasingh Rathod all R/o. Wai lingi. The said affidavits suggested that, plaintiff is in possession of suit house and taking its care. However, defendants are trying to alienate the suit house. Under such circumstances, when there is a possibility of alienation at the hands of defendant, it is necessary to protect the interest of plaintiff. Under such circumstances, I am of the view that, plaintiff is entitled for grant of ad-interim-injunction against defendant No.1 to 3 till appearance and filing of Written Statement by defendant No.1 to 3. I thus allow the application and inclined to pass the following order:

ORDER

- 1] Application is allowed
- 2] The defendant No.1 to 3 are hereby restrained temporarily from selling, transferring or alienating and also creating charge or interest of third party over the suit property till appearance and filing of Written Statement by defendant No.1 to 3.
- 3] Order passed in open court.
- 4] Issue suit summons to all the defendants accordingly.

(Order passed in open court.)

Digras.
Date :- 14/05/2024

[Nitin Dhoke]
Jt.Civil Judge Junior Division,
Digras, Yavatmal.