

Yuvraj Murlidhar Kalbhor.
Vs
Ashok Kashinath Kalbhor dead through Lrs., and others.

ORDER BELOW EXH - 5

This is an application filed by plaintiff under Order 39 Rule 1 and 2 of Code of Civil Procedure for temporary injunction to restrain defendant no.1 to 4 from creating third party interest in suit properties and disturbing his possession. By filing pursis at Exh.80 plaintiff has confined relief of temporary injunction only against defendant no.1 to 4. Read application and say filed. Perused record and heard both sides.

2. According to plaintiff, suit properties are joint family properties and there is no partition of the same. Plaintiff had filed R.C.S.No.4270/2000 for partition which came to be dismissed in default on 14.08.2017. Plaintiff has filed Civil M.A.No.132/2018 for restoration of said suit which is pending. Defendant no.1 to 4 are intending to create third party interest in suit properties. Consequently, suit has been filed for permanent injunction. Case is made out to grant interim relief as prayed. Hence, requested to allow the application.

3. On the other hand, defendant no.1 to 4 have objected to the application. They have denied all the adverse contentions raised in application. They contended that, suit properties are not joint family properties. Suit for simplicitor injunction is not maintainable. Suit is barred by the provision of Order 2 Rule 2 (2) of Code of Civil Procedure. The boundaries of suit properties are not disclosed in plaint. Case is not made out to grant temporary injunction as prayed. Hence,

urged to reject the application.

4. Considering application following points arise for determination to which I have recorded findings along-with reasons as under :-

Sr. No.	Points for determination	Findings
1	Whether plaintiff has made out a prima facie case ?	Negative.
2	Whether balance of convenience lies in favour of plaintiff ?	Negative.
3	Whether plaintiff will suffer irreparable loss if temporary injunction is not granted ?	Negative.
4	What order ?	Application is rejected.

: REASONS :

5. According to plaintiff, suit properties are joint family properties and he has share therein. On the other hand, defendant no.1 to 4 have denied said fact. In support of contention both sides have filed various documents on record. I have considered said documents.

6. In support of contention plaintiff has relied on **Anathula Sudhakar Vs P. Buchi Reddy, MANU/SC/7376/2008, T.V. Ramkrishna Reddy Vs M. Mallappa and others, MANU/SC/0608/2021, State of Maharashtra and others Vs National Construction Company, Bombay and others, MANU/SC/0597/1996 and Pratibha Singh and others Vs Shanti Devi Prasad, MANU/SC/1098/2002.** On the other hand, defendant no.1 to 4 have relied on **Asma Lateef and another Vs Shabbir**

Ahmad and others, Civil Appeal No.9695 of 2013 and Jharkhand State Housing Board Vs Didar Singh and another, AIR 2018 SC (Supp) 1159.

7. I have gone through the above cited authorities. These authorities are on the point that, where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession with or without a consequential injunction, is the remedy. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simplicitor. Where the plaintiff's title is not in dispute, a suit for injunction could be decided with reference to the finding on possession. When the cause of action on the basis of which the previous suit was brought, does not form the foundation of the subsequent suit, and in the earlier suit, the plaintiff could not have claimed the relief which he sought in the subsequent suit, the plaintiff's subsequent suit is not barred by Order 2 Rule 2. The defect of description of property is capable of being cured. If the court is of the opinion at the stage of hearing the application of interim relief that, the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but, can most certainly assign such opinion for refusing interim relief. Suit for mere injunction cannot lie when title of plaintiff over property itself disputed.

8. Copy of letter dated 28.09.1978 issued by father of defendant no.1 to the father of plaintiff shows that, their family possess joint family properties having equal share to all and there is no partition of the same. However, copy of order below Exh.1 in

R.C.S.No.4270/2000 shows that, suit filed by plaintiff for partition of suit properties was dismissed in default. Admittedly, said civil suit is not yet restored. Present suit is for simplicitor injunction to restrain defendants from alienating suit properties and disturbing possession of plaintiff till partition of suit properties. An interim relief can be granted as an aid to final relief. It appears that, the main relief which plaintiff wants is the partition and till partition is effected, plaintiff claims injunction. Present suit is not for partition. In such situation, it will not be just and proper to grant interim relief as an aid to final relief of partition particularly when suit for partition is not in existence.

9. Copy of sale deed dated 03.05.2018 shows that, Sunita Dilip Kalbhor sold some portion of land in gut no.341 to the Savita Rajendra Choudhary. Similarly, copy of sale deed dated 24.05.2018 shows that, Nalini Sharad Kalbhor sold portion of land in gut no.342 to the Aabaso Dinkar Kalbhor. Plaintiff has neither joined said persons as parties to the suit nor deducted the area of land sold by them from suit properties. Similarly, plaint shows that, four boundaries of suit properties are not mentioned. The four boundaries are necessary to identify the property. From this conduct also, plaintiff does not deserve for discretionary relief of temporary injunction.

10. Similarly, even if it is accepted that, suit properties are joint family properties and there is no partition. Then, in that case, a co-sharer has right to sale his undivided share. A co-sharer has also right to enjoy the possession of property and possession of one co-sharer can be treated as possession of all. Granting interim relief will amount to put

restriction on the rights of co-sharers which cannot be done unless suit is for partition. So, in this view also plaintiff is not entitled for interim relief.

11. Considering facts and circumstances, plaintiff has neither prima facie case nor balance of convenience lies in his favour. Similarly, plaintiff will not suffer irreparable loss which cannot be compensated in terms of money, if interim relief is not granted. Therefore, plaintiff is not entitled for temporary injunction as prayed. Hence, I answer point no.1 to 3 in negative and pass following order.

ORDER

1. Application Exh.5 is rejected with costs.

Place:Pune
Date : 15.04.2024.

(V. M. Mankhair)
8th Jt. C.J.S.D., Pune.

CERTIFICATE

“ I affirm that the contents of this PD.F file Order are same word for word as per original Order.

Name of Steno :- A.I.Patel (Stenographer Grade-III)

Court Name :- Shri. V. M. Mankhair
8th Jt.C.J.S.D.Pune.

Date of Order :- 15.04.2024.

Order signed by presiding officer on :- 15.04.2024.

Order uploaded on :- 15.04.2024.