

ORDER BELOW EXH. NO. 05

(Delivered on 06.02.2018)

01. This is an application filed by the plaintiff for temporary injunction under order 39 rule 01 & 02 of the Code of Civil Procedure restraining the defendants from alienating the suit property till the decision of the suit.

02. It is pleaded that agricultural land bearing survey no.41 admeasuring 0 H 62 R more particularly described in application para no.1 is the subject matter of the this suit. Herein after called "**suit property**". Bhagwansingh Mansingh Thakur was grandfather of the plaintiff and defendants. He had four sons. Late Bhagwansingh owned 28 acres land. He partitioned land and 2 H 56 R land was allotted to the father of the plaintiff in the year 1950. But same land was standing in the name of Bhagwansingh Thakur. Thereafter, Lrs of Bhagwansingh Thakur executed sale deed of the land which was allotted in the partition in favour of the Mahavirsingh and plaintiff .

03. As such, Mahavirsingh got 2 H 56 R land in the partition. Prior to 20 years back

Mahavirsingh Thakur had partitioned 2 H 56 R land equally in between plaintiff and defendant No.01 Sureshsingh. Since last 20 years the plaintiff is cultivating 1 H 28 R land as per the partition. It is further pleaded that suit property 62 R land was standing in the name of Mahavirsingh Thakur but the plaintiff is in possession of the suit property. Deceased Mahavirsinh was 90 years old. He was residing with defendant Sureshsingh. The defendant got executed gift deed of the suit property vide registered No.239/2017, dated 02-02-2017 by playing fraud. It is further averted that the plaintiff has 1/3rd share in the suit property. The defendant Sureshsingh is trying to alienate the suit property. Hence, the plaintiff constrained to file present suit for partition and separate possession. It is contention of the plaintiff that he has prima facie case, balance of convenience lies in favour of the plaintiff. If injunction is not granted to the plaintiff then he would suffer irreparable loss. Therefore, the plaintiff has prayed for application be allowed.

04. By filing say (Exh.16) the defendant no.1 resisted the application. The defendant has denied all adverse allegations. The defendant has denied that 1 H 28 R land was allotted to the plaintiff. According to the defendant, 1 H 21 R land was allotted to the plaintiff, 81 R land was allotted to the defendant no.1 and 62 R land (Suit property) was allotted to their father Mahavirsingh. Thereafter, deceased Mahavirsingh was become sole owner of the suit property. Deceased Mahavirsingh has been gifted suit property to the defendant no.1 by way of the registered gift deed. On the basis of gift deed mutation entry no.545 was sanctioned. The plaintiff has not raised any objection to the mutation entry. Deceased Mahavirsingh and mother residing with the defendant no.01. The defendant has taken all care of his father. It is further contended that the defendant is in possession of the suit property. It is further contended that the plaintiff has not prima-facie case balance of convenience is not in favour of the plaintiff. Therefore, the defendant lastly prayed that the application be rejected with cost.

05. In view of rival pleadings of both the parties the following points arise for my determination. I have recorded my findings with reasons to follow it as under.

<u>POINTS</u>	<u>FINDINGS</u>
01. Whether the plaintiff has prima facie case in his favour ?	Negative
02. Whether the plaintiff prove balance of convenience in his favour ?	Negative
03. Whether the plaintiff prove irreparable loss if temporary injunction is not granted as prayed ?	Negative
04. What order ?	As per final order

R E A S O N S

POINT NOS.01 To 04:

06. I have heard learned advocate for plaintiff Smt. A.M.Raut-Narwade. She argued that the plaintiff has 1/3 share in the suit property. Mahavirsingh has not right to make gift deed in favour of the defendant no.1.

Deceased Mahavirsingh was 90 years old at the time of execution of gift deed. He was not sound mind position to execute gift deed. The plaintiff has produced on record agreement to sale. It shows that the defendant is trying to alienate the suit property. The plaintiff has proved prima-facie case, balance of convenience is in favour of the plaintiff. If injunction is not granted the plaintiff would suffer irreparable loss. She lastly prayed that application be allowed.

07. Per-contra, learned advocate for the defendants Shri Prashant Deshmukh, urged that the suit property was allotted to the deceased Mahavirsingh. He become sole owner of the suit property. He made registered gift deed infavour of the defendant Sureshsingh. Mutation entry was sanctioned on the basis of the gift deed .It shows that defendant has accepted gift deed. The plaintiff has not challenged the gift deed and mutation entry during the life time of the deceased Mahavirsingh. Mother of the plaintiff has filed affidavit and stated that Suit property was allotted to deceased Mahavirsingh. He was residing with the defendant Sureshsingh.

The gift deed is valid one. The defendant has become owner of the suit property on the basis of the gift deed. Therefore, injunction cannot be granted against the true owner. Therefore, the plaintiff has failed to prove prima-facie case, balance of convenience is not in favour of the plaintiff. Therefore, injunction can not be granted. He lastly prayed that application be rejected with cost.

08. Relationship is not disputed. It is not disputed that 2 H. 56 R. land was allotted to the deceased Mahavirsingh. Partition had been taken place in between the plaintiff, the defendant and their father 20 years back. It is pleading of the plaintiff that he received equal share in the partition .1 H.28 R land was allotted to him and 1 H 28 Land was allotted to the defendant Sureshsingh. On the other hand, it is case of the defendant that 1 H 21 R land was allotted to the plaintiff, 81 R land was allotted to the defendant No.1 and suit property was allotted to their father. BhiKubai Mother of the plaintiff and defendants and Sushilabai sister of the plaintiff and defendant No.01 have filed affidavits (Exh.24) and stated that suit

property was allotted to deceased. 7/12 extract (Exh.28) shows that suit property is standing in the name of the deceased and the deceased was in possession of the suit property. It further shows that the plaintiff is in possession of the 1 H 21 R. These surrounding circumstances go to prima-facie shows that suit property was allotted to the deceased in partition. It prima facie proved that deceased Mahavirsingh was sole owner of the suit property.

09. It is not disputed that on 02-02-2017 deceased Mahavirsingh made gift deed in favour of defendant Sureshsingh. The plaintiff has produced on record copy of the gift deed. It shows that deceased Mahavirsingh has made registered gift deed of the suit property without consideration in favour of the defendant Sureshsingh in presence of two witnesses. The recital of gift deed shows that possession was handed over to the defendant Sureshsingh. 7/12 extract (Exh.29) shows that the defendant is in possession of the suit property on the basis of the gift deed. It prima-facie shows that the defendant Sureshsingh accepted gift deed. The Gift deed is a registered document. The

plaintiff has challenged the gift deed. In the case of **Vimal Chand Ghevarchand Jain & Ors. ..Vs.. Ramakant Eknath Jajoo, reported in 2009 (4), SBR 343,** wherein Hon'ble apex court held that a registered documents carries a presumption of genuineness of the transaction. In present case gift deed is a registered document. It carries a presumption of genuineness of the transaction. On the basis of sale deed mutation entry No.545 (Exh.31) was sanctioned. Name of the defendant Sureshsingh was entered in the revenue record of the suit property. Till today the plaintiff has not challenged this mutation entry. The plaintiff has not offered any explanation about it. It prima-facie proved that the deceased Mahvirsingh was owner of the suit property. He made gift deed of the suit property infavour of the defendant Sureshsingh without consideration. The defendant No.1 has accepted the gift deed. It shows that the gift deed is valid one as per section 123 of the Transfer of the property Act.

10. Learned advocate for the plaintiff urged that deceased Mahavirsingh was 90 years old at the time of making gift deed. He was not

capable to making gift deed. The plaintiff has produced on record medical papers and affidavits of the witnesses. The gift deed shows age of the deceased was 80 years old at the time of making gift deed. The gift deed was made on 02-02-2017 .The deceased Mahvirsingh was died December-2017.He died after 10 months. Wife of deceased Bhikubai filed affidavit and stated on oath that at the time of making gift deed the deceased was sound mind and he was capable for making deed. A wife has every knowledge of her husbands health. Thus, from the affidavits Bhikubai and circumstances it prima facie proved that deceased was capable in making gift deed. In such circumstances, I do not find any substance in the argument canvanced by the learned advocate of the plaintiff.

11. The gift deed executed in favour of defendant no.1 is registered. So by way of said transaction defendant no.1 has become owner of the suit property. As the defendant no. 1 and deceased were in possession of the suit property, the possession was parted to the defendant no.1. Therefore, the title was passed from deceased to defendant Sureshsingh. It has

been prima-facie proved that the defendant No.1 is legal owner of the suit property. Therefore, affidavits filed by the plaintiffs to show that the plaintiff is in possession of the suit property are not relevant at this stage. Considering all above reasons I do not find any substance in the contentions of the plaintiffs. The plaintiff has failed to prove prima-facie case.

12. Considering all above reasons, I find that the plaintiff has failed to prove prima-facie case, balance of convenience lies in his favour. Therefore, the plaintiff is not entitled for temporary injunction. Considering all above reasons, I record answer point No. 01 to 03 in negative and in reply point No.4 I proceed to pass the following order.

ORDER

01 The application (Exh No.05)
stands rejected with costs.

Sd/-

(D.D.Suryawanshi)

Date:06.02.2018 Joint Civil Judge (J.D.)
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