

ORDER BELOW EXH. 5 IN R.C.S. NO.778/2022
(CNR NO.MHAH250013122022)

This order shall dispose of an application filed by the plaintiffs under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity and convenience) for temporary injunction for restraining the defendant no.1 from alienating the properties which are more particularly described in para No.1 of the plaint (hereinafter called as 'suit properties' in short).

2. Case of plaintiff:

Plaintiff has filed a suit for partition and perpetual injunction. Plaintiff no.1 married defendant no.1 on 18/04/2009 and plaintiff no.1 is born out of their wedlock. Plaintiff no.2 was working as labourer and maintaining herself and her son. Meanwhile, defendant no.1 became a habitual drunkard and he does not used to carry any work. He has taken hand loan from many persons in the village. Plaintiff no.2 tried to make defendant no.1 understand about it for quitting the habit, however, rather defendant no.1 used to ask her for amount for drinking liquor and is she does not give amount, he used to beat her. There was no behavioural change in defendant no.1. Meanwhile, defendant no.1 and his brothers got the Gat No.479 and 708 divided between themselves in the year 2020 and both the suit properties came to be in partition in the name of defendant no.1. Since then, defendant no.1 is not carrying out any work or occupation and plaintiff no.2 told defendant no.2 i.e. her mother-in-law to tell defendant no.1 in order to make him understand, however, defendant no.2 did not tell defendant no.1. Defendant no.1 has become a loan defaulter in village and plaintiff no.2 has received a sure information that defendant no.1 is going to sell the suit properties. On 26/09/2022, plaintiff no.2 told defendant no.1 to not sell the suit properties in the interests of future of their son. Defendant no.1 did not listen to her and told her that, he wants to repay the hand loan amount to persons otherwise the persons in the village would not let him live. If the suit properties are alienated, plaintiffs will suffer irreparable loss. The suit properties have come

to defendant no.1 from deceased Kisan and the suit properties are ancestral properties and hence, plaintiffs have undivided share in it. Hence, on 01/10/2022, plaintiff asked for partition of their undivided share in the suit properties from defendant no.1, however, defendant no.1 told that, he is going to sell the suit properties and he cannot partition the suit properties. Defendant no.1 might sell or alienate the suit properties to third person and if that happens, plaintiffs will suffer irreparable loss. Balance of convenience is in favour of plaintiffs. Adjudication of the suit will take time. If defendant no.1 alienates suit properties to third persons in the meantime, then plaintiffs will suffer irreparable loss. Hence, plaintiffs have prayed for grant of temporary injunction by restraining the defendant no.1 from selling or alienating the suit properties to third persons or from creating the charge of debt over the suit properties till disposal of the suit.

3. Suit is proceeded without written statement against defendant no.1. Hence, this application has been proceeded without say of defendant no.1 vide order passed below Exh.5 dated 15/10/2024.

4. Heard learned advocate for plaintiff. Perused the record. The points for determination along with findings and reasons thereon are as under:

Sr. No.	Points	Findings
1.	Whether plaintiffs have a prima facie case for temporary injunction?	Yes.
2.	Whether balance of convenience lies in favour of plaintiffs?	Yes.
3.	Whether plaintiffs will suffer irreparable loss if temporary injunction is not granted?	Yes.
4.	What order?	As per final order.

5. Plaintiff has filed 8A extract of Gat No.479 and 708, 7/12 extracts of Gat Nos.479 and 708, copy of Aadhar card of plaintiffs, mutation extract of mutation entry no.2414 vide list of documents at Exh.3. Defendant No.1 has

not filed documentary material at this stage.

REASONS

AS TO POINT NOS.1 TO 3:

6. Plaintiffs are seeking temporary injunction to restrain the defendant no. 1 from alienating the suit properties. To grant temporary injunction, regard shall always be had to the principle of probability of success and a bonafide case. Probability of success will depend upon the material on record and a bona fide case will depend upon principles of equity. To decide a prima-facie case, the material placed before the Court need to be taken into consideration as well as it is important to peruse the facts and circumstances involved in a particular case.

7. Plaintiffs have filed suit for partition and for perpetual injunction. It is the case of plaintiffs that, defendant no.1 and his brothers got the lands Gat No.479 and 708 divided between themselves in the year 2020 and both the suit properties came to be in partition in the name of defendant no.1. It is the case of plaintiffs that, defendant no.1 has threatened to alienate the suit properties and plaintiffs are having undivided share in the suit properties. Perusal of 7/12 extract of Gat no.479 and 708 appears to mention the name of defendant no.1 on the possessor's column of the suit properties. The copy of mutation extract of mutation entry no.2414 appears to show that 77 Ares and 13 Ares Potkharaba in Gat no.479 and 25 Ares land in Gat no.708 appears to have come to the share of defendant no.1 by virtue of the partition on the basis of application filed under section 149 of Maharashtra Land Revenue Code. Considering that suit properties have come to the share of defendant no.1, plaintiff prima facie appears to have right in the suit properties.

8. It is necessary to consider that, whether plaintiffs succeed in partition of suit properties or not is a matter of adjudication however, considering that plaintiff prima facie appears to have interest in the suit properties based on the mutation extract of the suit properties, plaintiffs would face hardship if

the suit properties are alienated by defendant no.1 because, it would lead to the multiplicity of litigations and the nature of suit property might be changed. In the present case, at this stage, only the question as to whether plaintiffs are entitled to temporary injunction or not is to be considered and for that, whether plaintiffs have prima facie case, balance of convenience and whether irreparable loss would be caused to them, needs to be considered. At this stage, if the temporary injunction as regards non-alienation is refused, it might lead to alienation of the suit properties which might cause complexity in the litigations and which might lead to multiplicity of litigations. The alienation of the suit properties during the pendency of the suit would affect the status of the suit properties and hence, the status of suit properties needs to be preserved.

9. At this stage, the interest of the plaintiff needs to be protected from the alienation of suit properties. Considering the aforesaid reasons, it is seen that, plaintiffs have a prima-facie case at this stage. At this preliminary stage, it would be proper to grant temporary injunction in favour of plaintiffs for restraining the defendant no.1 to sell or alienate the suit properties or from creating charge of debt over the suit properties, till disposal of the suit. Hence, I answer point no.1 in affirmative.

10. In order to decide, who has the balance of convenience, the Court has to decide who will suffer great hardship or mischief in case temporary injunction is not granted. As far as aspect of non-alienation is concerned, prima facie case and balance of convenience lies in favor of plaintiffs. The alienation of suit properties would cause hardship to the plaintiffs and it might cause inconvenience to the plaintiffs. This is because the suit properties if alienated would cause complexity in suit for partition and hence, considering that whether plaintiffs are entitled to partition or not is yet to be proved, it is still necessary to preserve the status of suit properties, because prima facie plaintiffs appears to have a right in the suit properties. As far irreparable loss on the point of non-alienation is concerned, at this stage, the interest of plaintiffs need to be protected because, alienation of the suit

properties would cause irreparable loss to the plaintiffs, considering that they have prima facie proved their case on the point of non-alienation. Hence, I answer point no.2 and 3 in affirmative.

11. Considering the aforesaid reasons and in response to point no.4, I pass the following order:

ORDER

1. Application is allowed.
2. Defendant No.1 is restrained from selling or alienating the suit properties or from creating charge of debt over the suit properties till disposal of the suit.

(Pronounced in open Court)

Place: Parner
Date: 05/11/2024

(N. S. Sabnis)
2nd Jt. Civil Judge, Junior Division,
Parner.