

**ORDER BELOW EXH.76 & 116 IN REG.CIVIL SUIT NO.113/2000 :-**

1- The plaintiff's have filed this suit for the partition and separate possession of their share in the suit property.

2- It is the contention of the plaintiff's that below **Exh.76** the ad-interim injunction was granted restraining the defendant's from creating third party interest in the suit property, till filing of their say. During the pendency of application, on 10/05/2013 defendant no.3 has alienated the suit property through registered conveyance on 07/01/2014. They have also threatened of alienating other suit properties. As there is an apprehension of alienation of suit properties, it is prayed that defendant's be restrained from creating third party interest in the suit property.

3- Defendant's have resisted the application by filing the say below **Exh.119** and **Exh.124**. It is also prayed that say below at **Exh.84** be also considered. It is their contention that as the application below Exh.6 is disposed off, the remedy available with the plaintiff's is to file revision and not the same application, again. It is contended that after the death of son of defendant no.1, Pandharinath was given the independent possession of some suit lands for plaintiff's and defendant no.3. Some lands were cultivated by the defendant's. Thereafter, plaintiff's started residing separately. Block no.729 is kept by defendant no.1 for himself. It's adjoining owners are continuously encroaching and carrying out obstruction. Huge medical expenses are required to be incurred for the treatment of defendant no.1. Hence, due to the financial crises and as plaintiff's and defendant no.3 are neglecting, it is become

necessary to alienate the lands in the possession of defendant no.1 for his treatment. Thus, the lands which are sold be given in the share of defendant no.1. Hence, prays for rejection of the application.

4- The points for determination along with my findings thereon are as under -

<b>S.N.</b>	<b><u>POINT</u></b>	<b><u>FINDING</u></b>
1	Whether the plaintiff's have made out prima-facie case in their favour ?	In the Affirmative.
2	In whose favour balance of convenience lies ?	The plaintiff's
3	To whom irreparable loss would be caused ?	The plaintiff's
4	What order ?	As per final order.

### **REASONS**

#### **AS TO POINTS NO.1 TO 4**

5- Read the application and say. Heard the rival submissions. It is a matter of record that the plaintiff's had filed an injunction application restraining the defendant's from creating any third party interest in the suit property. The said application came to be filed on 29/02/2000. Thereafter, again below **Exh.76** such application was filed wherein ad-interim injunction was granted till the filing of say of defendant's.

6- The injunction application below Exh.116 disclose that the suit property has been alienated by defendant no.3 on

10/05/2013. No doubt, this is the third injunction application. However, the cause of action of all the three applications are different. In the say (**Exh.84**) the defendant's had specifically contended that to meet the medical expenses of defendant no.1 it has become necessary to alienate the suit property and the alienated the suit property be put in his share. However, on 10/05/2013, as a sale-deed is executed, the application (**Exh.116**) is came to be filed. The suit is for partition. Admittedly, the suit properties are the ancestral properties. Therefore, the plaintiff's have share, right and interest, therein. as such, the plaintiff's have made out the prima facie case in their favour. Thus, the balance of convenience also lies in their favour. If the suit lands are alienated, irreparable loss will be caused to the plaintiff's. Hence, points 1 to 3 are answered in the affirmative and in answer to point no.4 the following order is passed -

- **ORDER** -

- 1 The applications (**Exh.76 & 116**) are granted.
- 2 The defendant's or anyone on their behalf are temporarily restrained from alienating the suit properties or creating any third party interest therein of whatsoever nature, till the decision of the suit.
- 3 Cost in cause.

Place : Sangamner.  
Date : 05/04/2014.

( Kum.R.N.Merck )  
2<sup>nd</sup> Jt.Civil Judge Jr.Dn.,  
**Sangamner**