

ORDER BELOW EXH. 5 IN RCS NO. 531/2022
(Ashok Korde Vs. Kacharu Korde & Ors.)

MHAH140006862022



The plaintiff has filed the present application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunction restraining the defendants from alienating the suit properties.

2. The suit properties consisting of following properties,
- Gat No. 73/1 admeasuring 0H. 30R situated at Mangalapur, Tal- Newasa, Dist. Ahmednagar,
 - Gat No. 35/3/A admeasuring 0H. 37R situated at Khedalekajli, Tal- Newasa, Dist. Ahmednagar,
 - Grampanchayat Property No. 11/1 admeasuring 28.61/308 Sq.F. situated at Khedalekajli, Tal- Newasa, Dist. Ahmednagar, and
 - Grampanchayat Property No. 14 admeasuring 26.01/280 Sq.F. situated at Khedlekajli, Tal- Newasa, Dist. Ahmednagar,
- which are described in para No. 1 of the plaint.

(Hereinafter referred as 'suit properties' for sake of convenience)

In brief, the case of the plaintiff is as under:

3. The plaintiff, averted that, defendant no.1 is his father, defendant no.2 is his step-mother, defendant no. 3 and 4 are his step-brothers and defendant no. 5 to 7 are wife and children of his deceased step-brother Deepak. The suit properties are their ancestral joint family properties. 30 to 35

years before his mother left the defendant no.1 and thereafter defendant no.1 married with defendant no.2. When he was 10 years old defendant no.1 and 2 drove him outside the house. There is no partition in suit property and he his right and share on it. However, defendants are intending to alienate the suit properties. According to plaintiff if defendants are not restrained from alienating the suit properties there would be injustice to the plaintiff and also it would cause multiplicity of the proceedings. Thus, by this application, the plaintiff prayed for temporary injunction restraining the defendants from alienating the suit properties.

4. Defendants filed their written statement and say to this application at Exh.24. They admitted their relationship with the plaintiff. They contended that, when the plaintiff was 5 years old his mother performed second marriage. Since, then the plaintiff and his mother never returned to the house. Suit property i.e. Gat no.73/, Grampanchayat property no. 11/1 and Grampanchayat property no.14 are purchased by deceased Deepak and defendant no.4. Therefore, in that property the plaintiff has not right and share. Suit property i.e. Gat no. 35/3/A is ancestral property and defendants are ready to give share to the plaintiff. Also, defendants have constructed a RCC building for the plaintiff at Naregaon. Hence, they prayed to reject the application.

5. I have heard the Ld. Advocate for the plaintiff and defendants. Also, on behalf of defendants written notes of arguments were filed at Exh. 30. On behalf of the plaintiff filed screenshot of headnote of Priya Prakash Deshmukh Vs. Gajanan B Jagwantrao Deshmukh, 2016(2) Mh.L.J.

6. Following points arise for my determination and I have recorded my findings thereon for the reasons stated as under.

Sr. No.	Points	Findings
1.	Whether the plaintiff has made out the prima facie case ?	Yes
2.	Whether the balance of convenience lies in favour of the plaintiff ?	Yes
3.	Whether the plaintiff will suffer irreparable loss if temporary injunction is refused ?	Yes
4.	What order?	As per final order.

REASONS

7. While considering an application for the temporary injunction, it is well settled principle that, the court must look into, Prima Facie, Balance of Convenience and irreparable loss. In *Colgate Palmolive (India) Ltd. Vs. Hindusthan Lever Ltd. AIR 1999 SC 3105*, the Hon'ble Supreme Court observed that,

the other considerations which ought to weigh with the Court hearing the application or petition for grant of injunctions are (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of his rights though however having regard to injury that may be suffered by the defendants by reason therefore; (iii) the Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) no fixed rules or notions ought to be had in the matter of

grant of injunction but on the facts and circumstances of each case the relief being kept flexible; (v) the issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case; (vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise

As to Point No. 1 to 3:

8. In order to avoid the repetition, all the points are taken up together for discussion.

9. The present suit is for partition of the suit properties. Accordingly the plaintiff the suit properties are ancestral and joint family properties of defendants and plaintiff. In support of his claim he filled copies of 7/12 extract of suit properties alongwith Exh.3. Defendants admitted, their relationship with the plaintiff and also that suit property i.e. Gat no. 35/3/A is ancestral property and in that property the plaintiff has right and share. Defendants contended that, other suit properties i.e Gat no. 73/1, Grampanchayat Property no. 11/1 and Grampanchayat Property no.14 are purchased by deceased Deepak and defendant no.4. However, the 8A extract of Grampanchayat Property no.11/1 and 14 shows the name of defendant no.1 and 2 alongwith deceased Deepak. Therefore, at this stage nothing is on record which shows that these properties are not ancestral properties.

Therefore, considering admitted facts and documents on record prima facie it appears that, the plaintiff has right and share in suit properties. Therefore, prima facie case in favour of the plaintiffs. If defendants succeed in alienating the suit properties, the plaintiff will certainly suffer irreparable loss. Therefore, it is necessary to protect the right of plaintiff and suit property from being alienating to third party. Also, if the temporary injunction is refused, there would be multiplicity of proceeding, if any third party interest is created in the suit properties the plaintiffs would suffer inconvenience. On the other hand, if temporary injunction is granted defendants will not suffer any inconvenience. Therefore, the balance of convenience lies in favour of the plaintiff. Hence, I answer point no. 1 to 3 in the affirmative.

As to Point No.4:

10. The above discussion shows that the plaintiff successfully established the all three ingredients i.e he has prima facie case, the balance of convenience lies in his favour and if temporary injunction is not granted he will suffer irreparable loss. Therefore, he is entitled for temporary injunction as prayed. Hence, in answer to point no.4 I pass following order.

ORDER

1.	Application at Exh.5 is hereby allowed.
2.	The defendants are hereby restrained by way of temporary injunction from alienating the suit properties mentioned in plaint at para no.1 and creating third party interest on it, till the final disposal of the present suit.

3.	costs in cause.
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Place: Newasa.
Date: 17/07/2025.

(Sandhya Y. Sul)
2nd Jt. Civil Judge, Junior Division,
Newasa, Dist. Ahmednagar.