

**Haseenabano Sattar and Ors.**

**V e r s u s**

**Begumbi Sattar and Ors.**

**Order passed below Ex. 5 in Reg. Civil Suit No. 711/2015**

1. Perused application, affidavit along with it, W.S. cum say filed by defendants at Ex. 13 and documents on record. Heard both the parties at length.
2. Present application has been filed by the plaintiffs for temporary injunction restraining defendants from alienating suit properties or creating any charge, encumbrance thereon.
3. Plaintiff No.1 is second wife of Abdul Sattar and plaintiffs no.2 to 5 are their issues. Whereas, defendant no.1 is first wife of Abdul and other defendants are their issues. As per plaintiffs, all suit properties came to Abdul Sattar in partition and those properties are ancestral and joint family properties of plaintiffs and defendants. Abdul Sattar passed away on 27/11/2009. Out of suit properties namely 70 Ares of G.No.194, G.No.68/2/A and G.No.73/4 were purchased out of joint family income. Suit properties have not been partitioned till today. But, as family arrangement deceased Abdul got entered names of some defendants into record of rights of some suit properties. Whereas, some defendants illegally got entered only their names to remaining suit properties. Plaintiffs being wife and daughters of Abdul were/are entitled to equal share in suit properties. On 24/09/2015, plaintiffs demanded their share from the defendants, but they flatly refused for same and threatened to alienate suit properties. Defendants by taking undue advantage of their

names to record of rights of suit properties are trying to transfer suit properties to third person. If the suit properties are transferred, the plaintiffs will suffer an irreparable loss. Therefore, the plaintiffs have prayed that the defendants be temporarily restrained from transferring suit properties or creating any charge, encumbrance thereon.

4. The defendants filed their say to the present application at Ex. 13 and denied all allegations leveled against them. Fact that plaintiff no.1 is second wife of deceased Abdul Sattar and other plaintiffs are their daughters is specifically denied by defendants. As per them, original name of plaintiff no.1 is Hemlata Khare, she was not married to Abdul as per Muslim rites and rituals. She was keep of Abdul and other plaintiffs born out of their relationship are their illegitimate daughters. That means, plaintiffs are not legal heirs of Abdul, nor they are residuary or even distant kindrid as per Mohammedan Law. Therefore, they are not having any right in the suit properties. Abdul Sattar in his lifetime on 10/09/1972 partitioned some of suit properties and gave in share of some defendants. Some suit properties subsequently purchased by defendant nos.1, 5. Under Mohammedan Law there is no concept of joint family. On these grounds, defendants prayed for rejection of application.

5. From the application, say of defendants, documents on record and after hearing both parties at length, following points arise for my consideration they are produced below together with my findings thereon.

	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiffs have made out prima-facie case ?	<u>No.</u>

2	Whether the balance of convenience lies in favour of plaintiffs ?	<b><u>No.</u></b>
3	Whether the plaintiffs will suffer irreparable loss, if injunction is not granted in their favour ?	<b><u>No.</u></b>
4	What order ?	<b>Application Ex. 5 is rejected.</b>

### **Reasons**

#### **As to Points No. 1 to 3 :-**

6. Points No. 1 to 3 are interlinked with each other. Therefore, I have discussed them together. The plaintiff No.1 is claiming to be second wife of deceased Abdul Sattar and other plaintiffs are claiming their daughters. Per-contra as per defendants, plaintiff no.1 is not legally wedded wife of Abdul, but is his keep and other plaintiffs are their illegitimate children. That means, defendants are not denying that plaintiffs no. 2 to 5 are issues of deceased Abdul and Plaintiff No.1. Importantly, plaintiffs have filed on record verified copies of their Aadhar Cards, Voter Identity Cards alongwith Exh.24, wherein Abdul Sattar is shown to be husband of plaintiff no.1 and father of other plaintiffs. Therefore, at this stage, it cannot be said that plaintiff was keep of Abdul and other plaintiffs are their illegitimate daughters. For these reasons, as per me, prima-facie plaintiff no.1 being second wife of deceased Abdul and other plaintiffs being their daughters are his legal heirs and at least at this stage it can be said that plaintiffs are having interest in suit properties.

7. According to plaintiffs, suit properties are joint family properties of plaintiffs and defendants. Moreover, as per them some suit properties have been purchased out of Joint Family Income. But, both parties are Mohammedan and as rightly contended by defendants, under Mohammedan Law, there is no concept of Joint Family like Hindu Law. Hence, at this stage contention of plaintiffs that some suit properties have been purchased out of joint family income, cannot be considered and accepted.

8. As per plaintiffs, defendants are trying to alienate the suit properties, but in the entire plaint, the plaintiffs have nowhere mentioned as to when, how and with whom the defendants are negotiating or to whom they are going to transfer suit properties. It is simply mentioned that they learnt that defendants are trying to alienate suit properties, but except this averment, 1, there is absolutely no material on record to show that defendants have taken any steps for transferring suit properties. Therefore, in my considered opinion, the said apprehension of plaintiffs is not well founded.

9. Further, the present suit is for partition of the suit properties. Therefore, if at all any transfer is made, it will be subject to decision of suit, as contemplated under Sec. 52 of the Transfer of Property Act. Question is, when protection u/s 52 is available whether T.I. should be granted? In this context following judgments are important. Hon'ble Bombay High Court in case of **Kacchi Properties, Satara V/s Ganpatrao Shankarrao Kadam & Ors., reported in [2010(5) Mh.L.J., 903]**, has held and observed as under :

*" Rule 1 of Order XXXIX of the Civil Procedure Code enabling Court to grant temporary*

*injunctions to restrain transfers pendente lite is only an enabling provision, recognizing the power in the Court to issue such injunction and does not imply that because there is power, it must be exercised. The provision could be invoked only if protection provided by section 52 of the TP Act is shown to be inadequate".*

10. However, in case of **Pralhad Jagannath Jawale and others V/s Sitabai Chander Nikam and others, reported in [2011 (4) Mh.L.J. ],137** after discussing it's earlier judgment of Kacchi Properties, it is held and observed by the Hon'ble Bombay High Court as under :

*" Where there is an apprehension established that the defendant may create third party rights and all three ingredients are satisfied, if temporary injunction is not granted, it may result into multiplicity of proceedings inasmuch as the alienee pendente lite may apply for impleadment, which will result in delay in proceedings of the suit. The provision of Sec. 52 of the Transfer of Property Act does not put fetters on the powers of Civil Court conferred by Rules 1 and 2 of Order 39, Civil Procedure Code and temporary injunction can be granted in appropriate cases"*

11. But in para 28 of said judgment it is held by Hon'ble Court that in a given case, while exercising discretionary powers, the Court can always come to the conclusion in peculiar facts of the given case, that in view of provisions of Section 52 of the said Act of 1882, equitable relief of temporary injunction need not be granted. That means as per this judgment also court can refuse to grant temporary relief in view of provision under Section 52 of T.P. Act. Recently in case of **Prakash Ahuja V/s Ganesh Dhonde, reported in [2013 (7) Bom. CR, 595]**, Hon'ble Bombay High Court considered and discussed it's earlier judgments in case of Kacchi Properties and Pralhad Jawale and reiterated that protection under Sec. 52 of Transfer of Property Act is adequate and the plaintiff can protect his

interests by registering the suit in a manner provided under Sec. 52 of the Transfer of Property Act (Maharashtra amendment), though registration is not compulsory. That means as per Hon'ble Bombay High Court Section 52 of Transfer of Property Act provides adequate remedy to a party to the suit.

12. Apart from this, it is pertinent to discuss what will happen if injunction is granted in favour of the plaintiffs restraining defendants from alienating the suit property and in spite of it defendants alienate the suit property. This issue is dealt with by Hon'ble Apex Court in **Thomas Press (India Ltd.) V/s Nanak Builders Pvt. Ltd, AIR 2013 SC 2389**, wherein after discussing many earlier judgments, it is held and observed by the Hon'ble Court that -

*" There is, therefore, little room for any doubt that the transfer of the suit property pendete lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the Plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor "*

13. That means as per above judgment of Apex Court even if injunction is granted in favour of plaintiff, transfer executed by defendant is not void but will be subject to final decision of the court. If that is so, I do not think that any purpose will be served by granting interim injunction in favour of the plaintiffs and as per me protection u/s 52 of T.P. Act is adequate for protecting his interests. However, if the plaintiffs

want that people at large should have notice of pendency of this suit and should not claim to be transferee without notice, they can register the suit (as held by Hon'ble Bombay High Court in Ahuja's case). Further, as discussed earlier, apprehension of plaintiffs that defendants are trying to alienate suit properties is not well founded and therefore in my opinion interim injunction is not necessary and warranted.

14. Considering all above factual and legal aspects, I have come to the conclusion that the plaintiffs have failed to make out prima facie case, balance of convenience does not lie in their favour and they will not suffer an irreparable loss if injunction is not granted in their favour. Hence, I answer point Nos. 1 to 3 in the Negative.

**As to point No. 4 :-**

15. In view of my findings on points No. 1 to 3, I hold that the plaintiffs are not entitled for the relief of temporary injunction. Hence, application deserves to be rejected. In the result, I proceed to pass the following order.

**Order**

- 1 Application Ex. 5 is rejected.
- 2 Cost in cause.

( A. G. Deshingkar )  
3rd Jt. Civil Judge,J.D.

**Newasa**

**Dt/- 19/08/2016**