

MHAH180000912022



**REGULAR CIVIL SUIT NO.25/2022**

Archana Shankar Gaikwad

Vs.

Radhakisan Bhikaji Makasare and others

**ORDER BELOW EXH.5**

The plaintiff has filed the present application under O.39, R.1 and 2 of the Civil Procedure Code.

The plaintiff's case in brief is as under :-

2. This is a suit filed by the plaintiff for partition, possession, declaration and perpetual injunction. The plaintiff and defendant Nos.1 to 6 are the members of joint family. The suit properties are ancestral properties of the plaintiff and defendant Nos.1 to 6. The suit properties are not yet partitioned. The defendant Nos.1, 4 and 5 have illegally partitioned the properties and accordingly mutated the name of defendant Nos.4 and 5 in the revenue record. To the said partition, the plaintiff and defendant No.6 have not given any consent. Without having any financial necessity, the defendant No.4 has sold the 40R land out of Gat No.327/2/2 to the defendant No.7 by registered sale-deed dated 20/03/2020. Thereafter, the plaintiff No.1 has sold some land out of the Gat No.327/1/2 to the defendant Nos.8 to 11 on 11/07/2018 by

(CNR NO.MHAH180000912022)

registered sale-deed. The defendant No.1 has also sold 22R land to the defendant No.1 by sale-deed dated 25/04/2017. The names of the defendant Nos.7 to 11 are mutated in the revenue record of the suit property. For all above sale-deeds, the defendants have not taken the consent of present plaintiff and defendant No.6. Therefore, these all sale-deeds are nominal, without consideration and without possession. In December 2021, the plaintiff has approached to the defendant Nos.1 to 6 and asked them about the sale-deed at that time they have told that the suit properties are in their name and therefore they have the right to dispose of the same. All the sale-deeds executed in favour of the defendant Nos.7 to 11 are illegal and not binding on present plaintiff. The plaintiff has a prima-facie case. She has undivided share into the suit property which needs to be protected. If the share of the plaintiff is not given to the plaintiff then she will suffer irreparable loss. Hence, the plaintiff has prayed that the application be rejected and temporary injunction be granted against the defendant Nos.1, 4, 5, 7 to 11 for restraining them from creating third party interest in the suit property.

3. In spite of service of notice, the defendant Nos.7 to 11 did not appear. Hence, suit proceeded ex-parte against the defendant Nos.7 to 11. The defendant No.6 has failed to file her say.

4. The defendant Nos.1 to 5 have appeared and filed their say at Exh.23 and submitted that the contents of the

application are not true and correct. The plaintiff and defendants are not the members of Hindu Joint Family. In spite of suit property R.C.S.No.581/2000 was filed and in the said suit the parties have filed the compromise pursis and accordingly the suit is decreed on 23/12/2000. As per the said judgment and decree, the defendants have become the absolute owner of the properties and in possession of their respective shares. According to the said partition, the names of the defendant Nos.1, 4 and 5 were mutated in the revenue record. In meantime, the defendant No.4 had a accident and for recovery of the defendant No.4 huge expenses were incurred and therefore the defendant No.4 has sold the land admeasuring 40R out of the Gat No.327/2/2 to the defendant No.7. The land was sold due to legal necessity. The defendant No.1 has also sold the land due to legal necessity. After the partition, defendant Nos.1, 4 and 5 are residing separately and they have sold the lands to the defendant Nos.7 to 11 out of the legal necessity. Already partition has been took place in the year 2003 and the present plaintiff has no right to reopen it. The defendant No.1 is the father of the plaintiff. The application is not maintainable. The defendants have submitted that the application be rejected.

5. In support of her application, the plaintiff has filed 7/12 Extract of Gat No.327/2/2, 8-A Extract of Gat No.327/2/2, Mutation Entry No.9784, 7/12 Extract of Gat No.327/2/1, 8-A Extract of Gat No.327/2/1, Mutation Entry No.9780, 7/12 Extract of Gat No.327/1/2, 8-A Extract of Gat

(CNR NO.MHAH180000912022)

No.327/1/2, Mutation Entry No.9450, Mutation Entry No.9431 and Mutation Entry No.9358, the verified copy of deed of power of attorney, the certified copy of sale-deed dated 17/10/2022, the certified copy of Index-II dated 18/10/2022.

6. The defendants have filed the documents i.e. certified copy of plaint in R.C.S.No.581/2000, the certified copy of decree in R.C.S.No.581/2000, the certified copy of sale-deed No.2319/2018 dated 03/06/2022, the certified copy of sale-deed No.1062/2017 dated 03/06/2022 and the certified copy of sale-deed No.2318/2018 dated 03/06/2022.

7. Perused the application and say. Heard the Ld. Advocate for the plaintiff and Ld. Advocate for defendants. Perused all documents produced on record. Considering rival contentions of both parties, following points arise for my determination to which I have recorded my findings for reasons stated below -

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Does the plaintiff prove that she is having prima-facie case?	In the negative.
2.	Does the plaintiff prove that balance of convenience lies in her favour?	In the negative.
3.	Whether the plaintiff will suffer irreparable loss if injunction is not granted?	In the negative.
4.	What order?	Application is rejected.

**REASONS**

**AS TO POINT NO.1 :-**

8. I have heard the Ld. Advocate of both sides. The Ld. Advocate of the plaintiff has submitted that without any sufficient cause or any legal necessity the defendants have created third party interest in the suit property. After filing of the present suit also the defendant No.1 has sold 20R land out of Gat No.327/1/2 to Mrs. Alka Sonar by registered sale-deed dated 17/10/2022. The plaintiff has filed this suit for partition, declaration, injunction and possession. Due to the act of the defendant, the plaintiff is suffering the irreparable loss. The plaintiff has prima-facie case. The balance of convenience is also in favour of the plaintiff. Hence, this application needs to be allowed and temporary injunction order needs to be passed against the defendant for restraining them from alienating the suit property till final disposal of this suit.

9. The Ld. Advocate of the defendants has argued that, the suit is partitioned in the year 04/01/2001 since then the defendants are in possession of their respective shares. Thereafter, the suit properties become the absolute property of the defendants and they have sold out the said properties for the legal necessities. This suit is filed by the plaintiff for partition and injunction. No injunction at the hands of coparcener can be issued against the Karta of a Joint Hindu Family restraining him from alienating the coparcenary property. Even though, a coparcener would have an interest in

the coparcenary property by birth but he would not be entitled to separate possession of the same unless a partition takes places. Considering the nature of the property and relations between the plaintiff and defendants, the temporary injunction order can not be passed against defendants. The application of the plaintiff is itself not tenable. Hence, be rejected.

10. I have perused the documents filed on record. I have also gone through the pleadings of the parties. This suit is filed by the plaintiff against her father i.e. defendant No.1, mother i.e. defendant Nos.2 and defendant Nos.4 and 5 who are real brothers of the plaintiff. In the year 2000, Raosaheb Fakira Makasare has filed the suit for partition in respect of the present suit properties. The said suit is decreed as per the compromise. According to the judgment and decree of the said suit, Radhakisan Bhikaji Makasare i.e. present defendant No.1 has got the land admeasuring 1 H 98R out of Gat No.327/1 and defendant No.4 Balasaheb Radhakisan Makasare has got 85R land out of Gat No.327/2 and defendant No.5 Sandip Makasare got land admeasuring 1H 27R out of Gat No.327/2. In the said judgment and decree, it is mentioned that the suit properties are ancestral properties of the present defendant. In the said suit, the present plaintiff was not a party. The said judgment and decree is still in existence and not set-aside by any higher courts till today. Accordingly, the Mutation Entry was made and names of the defendant nos.1, 4 and 5 are recorded in the 7/12 Extract. Thereafter, from the documents it prima-facie appears that defendants have sold the lands out of the suit properties to

the defendant Nos.7 to 11 by various sale-deeds. These sale-deeds have been executed in the year 2017, 2018 and 2022.

11. This suit is filed by the plaintiff in the year 2022. It is admitted fact by the plaintiff that the sale-deeds are executed in the year 2017, 2018 and 2022 and accordingly names of the purchaser are recorded in the 7/12 Extract of the suit property. It is the case of the plaintiff that the defendant Nos.1, 4, 5 and 7 to 11 be restrained from creating the third party interest in the suit property. Prima-facie from the facts of the plaintiff it appears that the plaintiff is the daughter of defendant No.1 and defendant Nos.4 and 5 are sons of the defendant No.1. As per Hindu Succession Act, Section 6, the daughters are also coparcener but the plaintiff cannot claim temporary injunction against the coparcener or karta of the family from restraining him from alienating the suit property. The plaintiff has also claimed temporary injunction relief against the defendant Nos.7 to 11 but the plaintiff has not any document to show the fact that defendant Nos.7 to 11 are trying to dispossess of the property purchased by them from defendant Nos.1, 4 and 5. Considering the dates of transaction and date of filing of this suit it appears that the plaintiff has no prima-facie case and balance of convenience does not lie in favour of the plaintiff. The judgment and decree dated 23/12/2000 is not at all challenged by the plaintiff till today. The plaintiff has not claimed any relief in respect of the judgment and decree and also she has never challenged the same till today.

12. The Ld. Advocate of the plaintiff has relied on the following case-law.

**1) Vineeta Sharma Vs. Rakesh Sharma and others reported in Civil Appeal No.Diary No.32601/2018 Supreme Court of India.**

In this case, the Hon'ble Supreme Court of India has held that -

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 09-09-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20<sup>th</sup> day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 09/09/2005.

In view of above case-law prima-facie it appears that present plaintiff has coparcenary right in the suit property. But, in the present case, the suit property is partitioned by judgment and decree passed in ROG No.581/2000. No this application is filed for granting temporary injunction. The dispute in respect of the rights of the plaintiff finally can be adjudicated after taking evidence of both side.

13. The Ld. Advocate of the defendants have filed the following case-laws -

1) ***Ramlal Maniram Navdhinge Vs. maniram Patiram Navdhinge and others, 2008(1)Mh.L.J., 860.***

2) ***Vaishali Satish Ganorkar and another Vs. Satish Keshavrao Ganorkar and others, 2012(3) Mh.L.J., 669.***

I have gone through the above case-law. Facts of the present application are different from the facts of the above case-law. This matter is not pending for final adjudication. The rights of the plaintiff can be decide only after having evidence on both side on record. By filing this application, the plaintiff is seeking interim relief till disposal of the suit. For the said interim relief only prima-facie evidence can be taken into consideration.

14. The Ld. Advocate of the defendants relied on the case-law of ***Hon'ble Surinder kaur and others Vs. Gursharan Singh and another, RSA No.2371 of 2011 (O & M), 22/02/2012.*** In this case, the Hon'ble High Court of Punjab-Haryana High Court has held that -

15. It is thus, well settled that no injunction at the hands of a coparcener can be issued against the Karta of a Joint Hindu Family restraining him from alienating the coparcenary property. Even though, a coparcener would have an interest in the coparcenary property by birtyh but he would not be entitled to separate possession of the same unless a partition takes places. The Karta of a Joint Hindu Family would certainly have a right to manage the Joint Hindu Family property and such

right would include the right to sell or mortgage ancestral property, if, the legal necessity so arises. A coparcener would also have a remedy to challenge the alienation of coparcenary property on the ground that the same was not for any legal necessity or was not an act of good management.

16. In the present case, prima-facie it appears that the defendant No.11 is Karta of the family. Being a karta, he has power to alienate the joint family property for legal necessity or for the benefit of the estate or for meeting debts. Considering the ratio laid down in the above case-law and above facts this application for restraining temporarily the karta from alienating suit property is not maintainable.

17. In the present case, the plaintiff has also failed to establish prima-facie case against the other defendants also. Hence, I answer Issue No.1 in the negative.

**As to Point Nos.2 & 3 :-**

18. While determining the balance of convenience the prima-facie aspect of consideration is the inconvenience likely to be caused to the either party after adjudication of the present application. As the plaintiff has failed to establish the prima-facie case, I do not found that the balance of inconvenience lies in favour of the plaintiff.

19. As prima-facie case is not established by the plaintiff, no irreparable loss will cause to her. Rather, if the

temporary injunction is granted, then there is every possibility that the defendants may suffer loss as the defendants prima-facie appears to be in possession of the suit property. Therefore, I answer Point Nos.2 and 3 in the negative and record my findings accordingly.

**AS TO POINT NO.4 :-**

20. Considering the above all facts, it prima-facie appears that if the temporary injunction order may be passed then there is possibility of loss to the defendants more than the plaintiff. In view of above findings, I do not find just and proper grounds to allow the present application for restraining the defendants from creating any interest in the suit property till disposal of this suit. Hence, I proceed to pass following order.

**ORDER**

The application is rejected.

Dt.27/03/2023

**(A. S. Wadkar)**  
Civil Judge Junior Division,  
**Rahuri.**

## C E R T I F I C A T E

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original Order.

Name of the Stenographer	:	R. M. Aragade
Court	:	C.J.J.D. & J.M.F.C. Court, Rahuri.
Order Date	:	27/03/2023
Order signed by the Presiding Officer on	:	29/03/2023
Order uploaded on	:	29/03/2023