

ORDER BELOW EXH. 05 IN RCS NO. 51/2019.
(MHAH190002222019)

01. The suit is for partition, declaration and perpetual injunction against defendant Nos. 1 to 5 regarding land Gat No.367/1 admeasuring 01H.89R along with potkharaba 03R situated at village Devtakali, Tal. Shevgaon, Dist. Ahmednagar as described in plaint para-1 [Hereinafter 'the suit properties']. The plaintiffs have preferred an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for temporary injunction regarding the suit property against the defendants as prayed in application.

02. It is their contention that, plaintiff No. 1 is wife and plaintiff No. 2 is daughter of defendant No. 1. The defendant Nos.2 and 3 are father and mother of defendant Nos. 1, 4 and 5. The marriage of plaintiff No. 1 and defendant No. 1 was solemnized on 28/02/2016 as per Hindu rites and rituals. The plaintiff No. 2 born on 30/08/2017. The defendants have well treated plaintiff No. 1 for initial some days. After that, they have started ill-treating plaintiff No. 1 on the count of money for doing pipeline in their field. The defendants have physically and mentally harassed plaintiff No. 1 and drawn her out of their house. The defendants have not come to see the plaintiff No. 2 after her birth. The father of plaintiff No. 1 has tried to convince defendants but they have refused to accept plaintiffs in their house. Therefore, plaintiffs are residing at their parental house.

03. It is their contention that, the suit property is ancestral and joint family property of themselves and defendant Nos. 1 to 5. The plaintiffs are having 2/5th undivided share in the suit property. Meanwhile, the defendant Nos. 1 to 5 in collusion with each other have filed suit R.C.S.No.278/2018 for partition and got compromised decree behind back of these plaintiffs. It is their contention that, the said decree is not binding upon their share because the defendant No. 1 has no right to transfer the share of plaintiff No. 2 without their consent. The plaintiffs have come to know the said fact when they have started collecting documents. Immediately the plaintiffs have filed written objection for mutation on the basis of said compromised decree. The plaintiffs have demanded their undivided 2/5th share to the defendants. But the defendants have refused their request. Now the defendants are trying to create third party interest in order to deprive rights of plaintiffs. Therefore, plaintiffs have constrained to file present suit and claimed temporary injunction against defendants not to create third party interest over the suit property till disposal of present suit. Lastly, prayed that application be allowed.

04. The defendant Nos. 1 to 5 have appeared and filed their say and written statement at Exh. 13. It is their contention that, suit is not maintainable in the eye of law. The suit is bad for non-joinder of necessary properties. The is also liable to be rejected under Order 7 Rule 11 of Code of Civil Procedure. The defendants have not disputed relation with plaintiffs. But, they have specifically denied the allegations of alleged illtreatment and cruelty levelled against

them. It is their contention that, plaintiff No. 2 being grand daughter has no right to claim partition against her grand father i.e. the defendant No. 2. There was partition between defendant Nos. 1 to 5 in R.C.S.No. 278/2018. The defendant Nos. 1 to 3 have relinquished their rights from the suit property in favour of defendant Nos. 4 and 5. The defendant No. 5 has become absolute owner of the property as per section 14 of Hindu Succession Act. The plaintiff No. 1 is residing at her parental house with her own will. It is their contention that, the defendant No. 1 has borrowed money from various persons for doing pipeline in his field. But he has failed to repay the said money to the persons within time. Therefore, defendant No. 1 has accepted money from defendant Nos. 4 and 5 and relinquished his right in their favour in R.C.S.No.278/2018. Therefore, defendant No. 1 and plaintiffs have no concerned with the suit property. There is no cause of action for filing present suit. The plaintiffs have filed present suit to harass these defendants. Lastly, prayed that application be rejected with costs.

05. From the rival contentions of both the parties, following points arise for my determination along with my findings thereon for the reasons stated herein below :

Sr.No.	P O I N T S	F I N D I N G S
1	Whether the plaintiffs have prima-facie case?	... In the affirmative.
2	Whether balance of convenience lies in favour of the plaintiffs ?	... In the affirmative.

3	Whether the plaintiffs will suffer irreparable loss, if the injunction is refused ?	... In the affirmative.
4	What order ?	...As per final order.

REASONS

AS TO POINT NOS. 1 TO 3 :-

06. Learned advocate Mr. S. B. Bhosale for the plaintiffs has submitted that, the plaintiff No. 2 born on 30/08/2017 and the defendants have filed R.C.S.No. 278/2018 for partition in order to deprive the rights of the plaintiffs. The defendant No. 2 has received the suit property in partition. Therefore, the suit property is ancestral property and the plaintiffs are having 2/5th undivided share in it. The defendant No. 1 has no right to transfer the share of plaintiffs behind their back. Now the defendant Nos. 1 to 5 are trying to create third party interest over the suit property in order to deprive the rights of the plaintiffs. The plaintiffs are having prima facie case and balance of convenience. If injunction is not granted against defendants, then plaintiffs would suffer heavy irreparable loss which cannot be compensated in terms of money. Lastly prayed that, application be allowed.

07. On the contrary, learned advocate Mr. D. N. Kakade for defendants has submitted that, already partition was effected between defendant Nos. 1 to 5 regarding the suit property in R.C.S.NO.278/2018. Therefore, the suit is not maintainable. The defendant No. 1 has relinquished his share. In such situation, the

plaintiffs have no concerned with the suit property. The defendant No. 5 has become absolute owner of her share in view of section 14 of Hindu Succession Act. The plaintiffs have filed false suit to harass and to get money from the defendants. The plaintiffs have not come with clean hands. The plaintiffs are not having prima facie case and balance of convenience. If injunction is granted, to the plaintiffs then defendants would suffer heavy irreparable loss which cannot be compensated in terms of money. Lastly, prayed that application be rejected.

08. Thus, having consideration of the above submission, I hold that, in order to decide the present application, it is required to be seen whether plaintiffs have made out prima-facie case or not ? On perusal of 7/12 extract of property Gat No. 367/1, 8A abstract in the name of defendant No. 2 and mutation entry No.1266 filed along with list Exh. 3, it shows that, the defendant No. 2 has received suit property in partition in the year 1985. The name of defendant No. 2 also appeared on 7/12 and 8A extract of the suit property. Prima facie it shows that, the suit property is ancestral property of the plaintiffs and defendants.

09. So far as contention of compromised decree in R.C.S.No.278/2018 is concerned, it shows that, the said decree was passed on 23/10/2018. The plaintiff No. 2 born on 30/08/2017. It prima facie shows that, the defendant Nos. 1 to 5 have obtained alleged decree behind back of the plaintiffs. The plaintiffs are not

party to the said decree. In such situation whether defendant No. 1 has right to transfer his share along with the share of plaintiffs behind their back ? Whether defendant No. 5 has become absolute owner by virtue of said decree ? Whether said decree is binding on plaintiffs or not ? All these issues are required to be decided after evidence of both parties.

10. But, prima faice it shows that, the plaintiffs are not residing along with defendants. It also shows that, the plaintiffs were not party to the alleged decree. At one hand, the defendants have come with the case that, the defendant No. 1 has relinquished his right. On the other hand, defendants have stated that, defendant No. 1 has sold out his share to the defendant Nos. 4 and 5. Both contentions are contrary to each other. This fact cast doubt about the intention of the defendants. The plaintiffs being the member of Hindu joint family and as per amended section 6, the plaintiff No. 2 has every right to claim partition. Considering the above discussion, it prima facie shows that, the plaintiffs are having undivided share in the suit property and defendants have refused to give their share. It shows that, the plaintiffs are having prima facie case in their favour. The balance of convenience lies in favour of the plaintiffs.

11. So far as irreparable loss is concerned, the defendants have got compromised suit behind back of the plaintiffs. If the names of defendants Nos. 4 and 5 are mutated over the suit property, then there is every possibility of creating third party

interest over the suit property in order to deprive the rights of plaintiffs. In such situation, I am of the view that, the rights and interest of the plaintiffs are not adequately protected by Section 52 of the Transfer of Property Act. Therefore, I hold that plaintiffs have succeeded to establish prima facie case and balance of convenience in their favour. If injunction is not granted against defendants, then it will cause irreparable loss to the plaintiffs which cannot be compensated in terms of money. Hence, I answer point No. 1 to 3 in the affirmative. Therefore, I pass following order in answer to point No. 4.

ORDER

01. Application Exh. 5 is allowed.
02. The defendants are hereby temporarily restrained from creating third party interest over the suit property i.e. land Gat No. 367/1 admeasuring 01H.89R potkharaba 03R situated at village Devtakali, Tal. Shevgaon, Dist. Ahmednagar till disposal of the suit.
03. No order as to costs.

Date : 16/03/2021.

[Manoj C. Nepte]
Civil Judge, Junior Division,
Shevgaon.