

MHAH200003332022



Gaurav Akolkar +1

Vs.

Chandrakant Akolkar +1

R.C.S. NO.47/2022

ORDER BELOW EXH.05

(Passed on 31/03/2023)

This application is filed by plaintiffs to restrain defendant no.1 from creating any third-party interest in the suit property.

2. Description of the subject matter of the suit:

Agriculture land admeasuring area of 1 Hector 04 Ares bearing gat no.705 situated at Nivdunge, Tal- Pathardi, Dist- Ahmednagar. (*Hereinafter referred as "the suit property"*)

Plaintiff's case:

3. Plaintiff no.1 is the son of the defendant no.1, whereas plaintiff no.2 is the wife of defendant no.1. Defendant no.2 is daughter of plaintiff no.2 and defendant. no.1. The suit property is ancestral joint family property of the plaintiffs and defendants. Defendant no.1 is having habit of consuming liquor and playing lottery. Defendant no.1 is in preparation to sell out the suit property. Therefore, plaintiff no.1 requested defendant no.1 to give him his share, but defendant no.1 denied to do so. Hence, plaintiffs filed the present suit for partition and separate possession. By this application, plaintiffs prayed to restrain defendant no.1 from creating any third-party interest in the suit property.

4. Despite service of summons, defendants failed to appear. Hence, the present application is proceeded without say of the

defendants.

5. Heard learned advocate Shri N.A. Waybhase for plaintiffs. Perused the record and documents.

6. On hearing and on perusal of the record, following points arise for my determination, on which I have recorded my findings for the reasons stated thereunder.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether plaintiffs have made out <i>prima facie</i> case?	Yes
2.	Whether balance of convenience lies in favour of plaintiffs?	Yes
3.	Whether plaintiffs will suffer any irreparable loss, if temporary injunction as prayed is not granted?	Yes
4.	What order?	The application is allowed.

REASONS

7. In order to entitle for the relief of temporary injunction, it is on the part of the plaintiff to make out the prima facie case, prove balance of convenience lies in his favour, and also to prove that it would cause irreparable loss, if temporary injunction is not granted in his favour. These are the three essential pillars to get relief of temporary injunction. If any one of these will not be proved, then the relief of temporary injunction cannot be granted.

Point no.1 to 3: -

8. As the point no.1 to 3 are interlinked with each other, they are taken into consideration simultaneously. In order to substantiate their claim, plaintiffs have filed 7/12 extract of the suit property and photocopy of mutation extract bearing no. 881. It appears from said mutation extract that, the suit property is ancestral joint family of the plaintiffs and defendants.

9. It further appears that, plaintiff no.1 has high chance of getting share in the suit property, unless contrary is proved. Apparently, there is nothing on record which suggests anything contrary with the version of the plaintiffs. Therefore, plaintiffs have succeeded to made out prima facie case in their favour. Balance of convenience also tilts in favour of the plaintiffs. Furthermore, if any third-party interest will be created in the suit property, it will invite multiplicity of judicial proceedings and plaintiffs would suffer irreparable loss. Hence, I answer point no.1 to 3 in the affirmative.

Point no. 4: -

10. In the light of aforesaid discussion, plaintiffs are entitled to get relief of temporary injunction. Hence, I am inclined to pass following order:-

ORDER

1. The application is allowed.
2. Defendant no.1 is hereby temporarily restraint

from creating any third-party interest in the suit property till further orders or till final decision of the suit.

2. Parties are directed to proceed with the suit expeditiously.
3. Cost in cause.

(Self-typed and pronounced in the open Court.)

Pathardi
Date: 31.03.2023

(Mayursingh D. Gautam)
2nd Jt. Civil Judge (J.D.),
Pathardi.