

ORDER BELOW EXH.NO.5 IN RCS NO.414/2014
(Ashok Eknath Mhaske & 1 other Vs. Vitthal Mamtaji Mhaske)

1) Present application is filed by plaintiffs under Order 39 Rule 1 and 2 to claim temporary injunction against defendant to restrain him from alienating his share in the suit property to third person or to create any interest on it.

2) According to plaintiffs, they have filed present application against defendant to claim temporary injunction. The property described in column no. 1 of suit is their self acquired property and plaintiffs are in peaceful possession over it. According to plaintiffs, they and defendant are resident of Savargaon, Tal. Ashti, Dist. Beed. The defendant is their uncle and he resides at Savargaon. The deceased father of plaintiff was having two brothers namely Vitthal and Ankush, apart from three sisters namely Sindhubai, Indubai and Shobhabai. The grandfather of plaintiffs namely Mamataji Krushnaji Mhaske during his life time has partitioned ancestral and joint family properties between deceased father of plaintiffs Eknath and his two brothers Vitthal and Ankush. The partition took place on 12/05/1989 of property situated at Savargaon bearing Gat no. 87-A, 88-A, 104-A, 106/1, 232, 207, on the application given by grandfather of plaintiffs. Accordingly, the entries of plaintiffs father and others was taken on revenue record by mutation entry no. 655.

3) According to plaintiffs partition between his deceased father, defendant and Ankush took place before 1989 and since then plaintiffs

and defendant are residing separately. They have no relation in between them since then. The plaintiffs are residing at Pune for business since last few years and they have their independent business. The plaintiffs are cultivating the ancestral and suit property as per their convenience. According to plaintiffs suit property bearing Gat no. 340 is purchased by them on their own income by three sale deeds bearing number 871/2009, 1178/2009 and 685/2009. Accordingly, entries of names of plaintiffs is taken on revenue record by mutation entry. According to plaintiffs suit property bearing plot no. 639/2 having plot no. 7 and 8 is purchased by plaintiffs from their self earning income and accordingly their name is registered in revenue record as per mutation entry no. 5141 and 5541. Since then the plaintiffs are having possession and ownership over the suit properties. All these suit properties are purchased by plaintiffs on their own income and they have become owners of these as per sale deed.

4) According to plaintiffs on 01/04/2014 the plaintiff no. 1 went to take the 7/12 extract of suit property, but Talathi said to come him after 4 days. On 05/07/2014 plaintiff no. 1 went along with their relative Badrinath Aute at about 2.30 p.m. The Talathi has informed about them to someone on phone and directed plaintiff to go to take xerox copy along with one unknown person. The said unknown person took the plaintiff no. 1 towards one white color Scorpio vehicle. At that time the son-in-law of defendant namely Amol Shinde was present there along with few unknown persons. They took plaintiff forcibly inside the said vehicle. According to plaintiff there is no relation with the

defendant for many years. The defendant in collusion with Talathi, Tisgaon and son-in-law of defendant namely Amol Shinde took the plaintiff no. 1 inside the said Scorpio. They have beaten plaintiff no. 1 inside the said Scorpio and have taken his signatures on blank documents, stamp paper, form and on notice books. At that time Talathi was present there. According to plaintiff he has refused to sign at that time but, he was given threat to his life. After that the plaintiff Ashok was kept at some place from 05/07/2014 to 06/07/2014. Thereafter, he was kept at one lodge. Plaintiff Ashok was give threat of his life by son-in-law of defendant and at about 5.40 to 6.00 he was dropped at Bhimgaon Kore.

5) Thereafter, after the mental stress the plaintiff Ashok has narrated said fact to his brother Machhindra. Thereafter, plaintiff Ashok has filed complaint to Pathardi Police Station on 14/07/2014. It is further stated by the plaintiff that, on 21/07/2014 at about 10.00 a.m. on Nagar-Pune road by Kedgaon the defendant, his daughter and son-in-law have given threat to plaintiff Ashok of filing false case against him if he will not withdraw the complaint given by him on 14/07/2014. On that the plaintiff Ashok has give complaint to Police Inspector, Kotwali Police Station, Ahmednagar. According to plaintiffs as per that complaint also no action was taken against the defendant and therefore he has started protest on 31/07/2014. According to plaintiff the protest was stopped by District officer by giving him letter of investigation to be carried by them. According to plaintiff before the said incidence also the defendant has attempted to record his name on the suit property as

per false document.

6) According to plaintiff as the defendant failed to make false entry of his name on suit property, he has taken his signature by using force. According to plaintiff the defendant has executed the partition under Section 85 by using his false signature, it is illegal and the plaintiffs have not signed on it. The defendant has prepared illegal partition deed and they have taken signature of Tahasildar on it by order dated 25/07/2014. As per the said deed immediately mutation entry number 7951 was taken on 30/07/2014. The defendant has not issued any notice for the entry of mutation as it is taken within 5 days. According to plaintiffs the defendant has prepared false document by taking his signature forcibly and accordingly recorded the names of plaintiffs and defendant on 7/12 extract of suit property. It is contended by the plaintiff that, the order of partition i.e. Sr. no. 76/2014 is illegal and not binding on the plaintiffs. The plaintiff has given notice in news paper Dainik Punyanagari dated 29/08/2014 informing all not to purchase the suit property at the hands of defendant.

7) Thereafter, the plaintiffs have filed this suit against defendant to claim declaration and perpetual injunction. According to plaintiff the prima facie case and balance of convenience is in favour of plaintiff and if the defendant will alienate the suit property to third person it will cause irreparable loss to them. Therefore, plaintiffs prayed to grant temporary injunction against defendant restraining him

from alienating his share in suit property which is in the name of defendant on the basis of illegal entry. The defendant be restrained from alienating the suit property to any third person or to create any interest of third person on the suit property.

8) Defendant resisted the present application by filing his say vide Exh. 24. According to defendant the suit properties are not properly described, their boundary marks are not properly mentioned and hence suit properties are partially and false described. According to defendant the suit properties are purchased by plaintiffs and defendant. The suit property bearing Gat No. 340 of 1H 56R is purchased by plaintiff and defendant together by three different sale deeds. According to defendant plaintiffs and defendant are joint Hindu family members and they have jointly purchased suit properties from income of their joint family properties. The genealogy mentioned by the plaintiffs is not correct. The father of plaintiff Eknath died on 26/05/2011 and Mamtaji died on 13/08/2006. The plaintiff is falsely contending that the properties at Savargaon are partitioned amongst them. There was no partition between sons of deceased Mamataji. The mutation entry no. 655 is mentioned by the plaintiffs as mutation entry for partition. However, that mutation entry is for holding and there is no partition between parties of present suit as described by plaintiffs.

9) According to defendant the relationship between him and deceased Eknath was good till his death. After the death of Eknath defendant suggested to plaintiffs about the partition of joint Hindu

family properties between them. Accordingly, plaintiffs have consented for the partition and they have decided to file application under Section 85 of MLR code to all Tahasildar in which they hold lands. Accordingly, on 16/06/2014 the plaintiffs and defendant have filed partition deed before Tahasildar, Pathardi. According to Tahasildar as issued notice on 17/06/2014 and plaintiffs and defendant appeared before him on 22/06/2014. Accordingly, as per the application dated 16/06/2014 declaration was issued on 17/06/2014. Accordingly, Tahasildar sanctioned the partition on 23/07/2014 by taking consent of all members of partition and by taking it in writing after checking all contents as true and correct.

10) The defendant has denied that on 05/07/2014 he has taken signature of plaintiff no. 1 by threatening him and by taking him inside the Scorpio vehicle. He has denied that the plaintiff no. 1 was kept at same place and at lodge. He has stated that complaint filed by plaintiff is false. The defendant has further stated that the plaintiff has not filed any complaint against partition within time before Tahasildar. He has also denied that his son-in-law and daughter has threatened plaintiff no. 1 as alleged by plaintiffs. According to defendant the signature of plaintiff no. 1 and 2 are genuine and they have signed partitioned deed voluntarily. Defendant has denied that, he has in collusion with Talathi executed the partition deed as alleged by plaintiffs. According to defendant the plaintiffs have voluntarily executed partition as per Section 85. However, in order to get more land the plaintiffs have denied the partition executed before Tahasildar and filed appeal before

Sub-divisional officer, Pathardi bearing no. RTS 85/2014. The said appeal was decided in favour of plaintiffs on 23/11/2015. The defendant has filed appeal against the said decision of Sub-divisional officer before Collector, Ahmednagar on 07/06/2015. The said appeal is decided by Collector in favour of defendants and has upheld the partition executed before Tahasildar, Pathardi. The plaintiffs have filed appeal against said decision in appeal by Collector, Ahmednagar before Commissioner, Nasik Division bearing No. RTS 436/2016. According to defendant this Court has no jurisdiction to entertain present suit as the partition is executed as per the provision of Sec. 85 of MLR code. The dispute is within the jurisdiction of revenue authorities. Finally defendant submitted that the present application and the suit to be rejected with cost.

11) After hearing the submissions and going through written arguments filed by both the parties following points arises for my determination for which I have recorded my findings along with their reasons therewith :-

Sr. No.	Points	Findings
1)	Whether plaintiffs prove prima facie case in their favour ?	... In the affirmative.
2)	Whether balance of convenience lies in favour of plaintiffs ?	... In the affirmative.
3)	Whether irreparable loss will cause to the plaintiffs if the present application is rejected ?	... In the affirmative.
4)	What order ?	As per final order.

REASONS

As To Point No. 1 to 3 :-

12) As all the three points are interconnected I have taken them together for discussion and reasons in order to avoid repetition of facts and evidence.

13) Present suit is filed for declaration and for perpetual injunction by plaintiffs against the defendant. I have gone through various documents filed and exhibited on record. Relationship between plaintiffs and defendant is not disputed. According to the plaintiffs the suit properties described in the suit are their self earned properties. According to the plaintiffs the ancestral and joint properties between their deceased father and defendant and his brother were partitioned by their grand father on 12/05/1989 and since then they are residing separate from defendants. According to the plaintiffs they are totally separate and independent from defendant who is their uncle. Further it is also mentioned by the plaintiffs that, the suit properties are purchased by them after getting separate from defendant. According to them they have purchased suit properties by 3 different sale deeds and accordingly their name is registered on revenue record through mutation entry no. 5141 and 5541. Since then the suit properties are in their possession.

14) I have gone through the documents of sale deed filed on record. Prima facie it shows that suit properties are purchased in the name of plaintiffs. It is the case of plaintiffs that on 01/07/2014 he

went to take the 7/12 extract of suit properties. However, he was called after few days by the Talathi Wadekar and thereafter the plaintiff no. 1 was forcefully taken in the Scorpio vehicle in which the defendant, his son-in-law and others has forcefully taken signature of plaintiff no. 1 on blank stamp papers, documents, forms and on notice book. Basing on which the defendant has taken order of partition from Tahasildar, Pathardi as per Section 85 of Maharashtra Land Revenue Code. According to the plaintiffs the mutation entry no. 7951 is illegal and it is not binding upon them and it is taken after forcefully taking signature of plaintiff no. 1 on partition deed.

15) According to plaintiffs the partition executed through Tahasildar is illegal and therefore the entries taken in the name of defendant of suit property are illegal and not binding upon the plaintiffs. The plaintiffs have also stated that they have filed paper publication against defendant in order to restrain him from alienation suit property in his name to third parties. The said paper publication is given by plaintiffs on 29/08/2014. Therefore, the case of plaintiff is that the partition executed by Tahasildar, Pathardi on 25/07/2014 is illegal and not binding upon them. By present application the plaintiffs want to restrain the defendant from alienating the share in the name of defendant to any third person of suit properties till the final disposal of present suit.

16) Looking in to the case of defendant it transpires that, defendant has denied all the allegations of separation from the

plaintiffs, separate purchase of suit property by plaintiffs, that there was partition between plaintiffs and defendant. It is also denied by defendant that, the plaintiffs have purchased suit property independent and without income from joint properties owned by plaintiffs and defendant. It is case of defendant that, the plaintiffs have consented for the partition and accordingly application were filed at each Tahasildar in which the plaintiffs and defendant were holding properties. According to defendant the partition executed before Tahasildar, Pathardi as per Section 85 is voluntarily executed by plaintiff and there was no force used by the defendant. He has rejected all the contentions of use of force by him against plaintiff no. 1 in order to get his signature of blank stamps and documents.

17) Further it is contended by the defendant that plaintiff has filed appeal against the partition executed before Tahasildar by plaintiffs before Sub-divisional officer, Pathardi. The said appeal is allowed in favour of plaintiffs and the appeal against it is rejected by collector, Ahmednagar by upholding the partition executed by Tahasildar, Pathardi. It is also contended by defendant that the plaintiff has filed appeal against decision of appeal before Collector, Ahmednagar, before Commissioner, Nasik. Both the Ld. Advocates for plaintiffs and defendant have filed their written arguments contending these similar facts mentioned in present application and its say. I have carefully going through all the submissions made in written arguments.

18) Looking into the above mentioned facts and evidence on

record at first though relationship between plaintiffs and defendant is admitted, but there is dispute between them about partition. According to plaintiffs there was partition between plaintiffs and defendant along with other family members of their ancestral and joint family properties. Per contra the defendant has denied that there was any partition between him and the other member including the deceased father of plaintiffs. Secondly, there is dispute between plaintiffs and defendant over the purchase of suit properties. According to plaintiffs suit properties are independently purchased by them out of their own income and without the income from joint family properties. Per contra the defendant has raised his case that the suit properties were purchased in the name of plaintiffs out of income from joint family properties.

19) Thirdly, the plaintiffs have filed present suit for declaration for the partition executed before Tahasildar, Pathardi is illegal as it is executed by forcefully taking his signature and also by-passing all the necessary legal requirements of issuing notice and others. Per contra the defendant has mentioned that, the whole procedure of partition executed between him and plaintiffs was voluntarily and without any force used by him against the plaintiff. However, perusal of documents on record reveal that there are complaints filed by plaintiff no. 1 against defendant and defendant against plaintiffs on record about the alleged threatening by each others for getting the signature on partition deed etc. This shows that, plaintiffs have challenged the voluntariness and the illegal methods followed for execution of partition deed by defendant in case of the suit properties.

20) Fourthly, there are serious allegations made by plaintiff against defendant about use of force by defendant and his nearer relatives in order to get the signature of plaintiff no. 1 on partition deed. Fifthly, it is further on record that the plaintiff has filed appeal against teeh partition deed executed by them before Tahasildar, before the sub-divisional officer who has rejected partition carried before Tahasildar, Pathardi. Against the said order of appeal the defendant has went in appeal before Collector, Ahmednagar who has rejected the order passed in appeal before sub-divisional officer, Pathardi. There again the plaintiff has filed appeal before the Commissioner against the order of Collector. Sixthly, the defendant has filed on record certified copies of Special Civil Suit no. 02/2015 filed by defendant and his other members against plaintiffs and their mother for partition including the suit properties in present suit before Hon'ble C.J.S.D., Beed which is pending for adjudication.

21) If the facts described from first to sixth are taken into consideration, it transpires that all these facts are the real dispute between the parties and all are part and parcel and dependent on evidence adduced by plaintiffs and defendant. As these facts are based on evidence, it is not necessary of comment upon them without any evidence adduced by plaintiffs or defendant. By the present application the plaintiff is seeking mere restriction of alienation on the defendant of the share mentioned in the name of defendant of the suit properties to third persons till the final disposal of present suit. Looking into the facts

mentioned above prima facie it appears that the prima facie case is in favour of plaintiffs so also the balance of convenience lies in favour of plaintiffs. On the contrary if the plaintiff is granted the temporary injunction claimed by the plaintiff there seems no loss to the defendant as he is merely restrained from alienating the suit properties in his name till the final disposal of present suit. Per contra if the plaintiffs are not granted the temporary injunction as claimed, prima facie there seems loss of plaintiffs as they have challenged that the suit properties are there self acquired properties and partition is effected by-passing necessary process of law. Per contra there seems no loss to the defendant, however he is temporarily restrained to alienate the suit property.

22) As per the record the suit properties are in question before revenue authorities as well as before this Court for determination of legality and illegality of partition which is a matter of evidence which can be decide after evidence by both the parties. Till then if the defendant alienates the suit property in his name there is always possibility of multiplicity of suits between the parties. Apart from that the suit properties are in question before various authorities. It is necessary to preserve the suit property from further alienation till the final disposal of present suit. As discussed earlier there seems no loss to the defendant if he is restrained from alienation. Moreover, if the defendant succeeds in alienating the suit property in his name and if he is not restrained there is always possibility of further complications in the suit which will not be helpful for the final disposal of the present

suit. Therefore, in view of above discussion, facts and circumstances along with the reasons cited I am of the view that the present application needs to be allowed. In the end following order :-

ORDER

- 1) Application below Exh. 5 is allowed.
- 2) Defendant is restrained from alienating his share in the suit property till the final disposal of present suit.
- 3) Cost in cause.

Date : 12/09/2017

(Dr. D. G. Patwe)
Jt. Civil Judge Junior Division,
Pathardi.