

MHAH230008862023



**ORDER PASSED BELOW EXHIBIT-5
IN REGULAR CIVIL SUIT NO.324/2023**

(Shahaji Ashok Kale vs. Alka Panditrao Ghongade)

1. The plaintiff filed suit for cancellation of sale deed dated 13.08.2012, executed by his parents, in favour of the defendant. The plea is that at the time of sale deed the plaintiff was minor and it is executed without permission of the court. It is in respect of 01 R hence the transaction is hit by the provisions of the Prevention of Fragmentation and Consolidation Act. The land is purchased for the way to the land of the defendant. Sale deed is obtained by taking advantage of his illiterate parents. So the sale deed is termed to be *void ab-initio* and prayed to be cancelled with grant of *mesne profits*.

2. Application exhibit-5 is filed, reiterating averments of plaintiff, and praying to grant temporary injunction restraining the defendant from alienating suit land, in any manner, to third party.

3. The defendant filed written statement denying all adverse pleas in the plaint, contending that the sale deed is legal, valid instrument executed for lawful consideration. The parents of the plaintiff sold land for legal necessity i.e. for education expenses of the plaintiff. The land is used for the way

to the land of the defendant, which is to the south of the land gat no.93-subject matter of the suit. It is specifically denied that the defendant is trying to or going to alienate the land. In the written statement itself say to exhibit-5 is given and prayed to reject the said application.

It needs to be mentioned here that the defendant filed counter claim for permanent injunction restraining the plaintiff from creating obstruction in the way passing from the land purchased by her.

4. Heard Shri.D.B.Zarad, learned advocate for the plaintiff and Shri.R.K.Acharya, learned advocate for the defendant. On the basis of submissions and record, following points arise for determination against which findings have been recorded for the reasons stated in ensuing paras :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiff has made out <i>prima-facie</i> case ?	...No.
2)	Whether the balance of convenience lies in favour of the plaintiff ?	...No.
3)	Whether the plaintiff would suffer irreparable loss, if temporary injunction is not granted ?	...No.
4)	What order ?	...Application rejected.

Reasons

Point nos.1 to 4 :

5. Learned advocates for the respective parties pointed out relevant pleadings and the documents placed on record. In their submissions they advanced the material grounds raised in plaint/exhibit-5 and written statement-cum-say at exhibit-17.

6. On careful consideration and perusal of sale deed dated 13.08.2012, it is noticed that it is registered sale deed executed by the parents of the plaintiff. On the day of transaction age of the plaintiff was 17 years and the land was standing in the name of his mother. However, the father is also joined in the sale deed as consenting party and there is endorsement of receipt of entire consideration amount before the Sub-Registrar, by putting exact consideration amount on it. The plaintiff not joined his parents as party to the suit. The land is sold for legal necessity of the plaintiff i.e. for his education. The plaintiff attained majority in the year 2013. The period of limitation for filing suit was up-to year 2020, however, the suit is filed on 25.09.2023, almost five years after the expiry of limitation. He put-forth reason that due to his education and then due to his joining as **police constable** in Bombay, he had no knowledge about sale deed until before two months of filing of the suit. *Prima facie* such explanation is unacceptable in view of Article 60 of the Limitation Act, as the limitation runs from the

date of the sale deed.

7. As per settled legal position *Karta* of the joint Hindu family, has discretion to sell coparcenary property for legal necessity or for benefit of the estate, including property of the minor member. The plaintiff even failed to state in the plaint also as to whether his father or his mother was *Karta* of his family. But the fact is that both mother and father of the plaintiff are joined in sale deed.

8. As the disputed portion is **01 R land** (14.70 feet X 74 feet) admittedly adjoining to the south side of the land of the defendant bearing gat no.91, there is no bar for the transaction, as no fragment would be created by the said transaction.

9. On plain reading of the sale deed, it is valid and legal instrument. There are no details of the likely transfer of the disputed land, pleaded either in plaint or exhibit-5. On vague statements, no relief of temporary injunction can be granted that too against true owner. On the contrary, the disputed land is purchased and used for the access to the land of the defendant as well as for taking crops and there is no possibility of transfer of the said land.

10. As the plaintiff has no *prima facie* case and also he failed to prove that the balance of convenience lies in his favour or irreparable loss would cause to him. So, point nos.1 to 3 are answered in the negative, resulting in passing order as under :

Order

- i) **Application exhibit-5 stands rejected.**
- ii) **Costs in cause.**

Date : 17/02/2026

Civil Judge, Senior Division,
Shrigonda.