

ORDER BELOW EXH.5.
{Passed on 20.09.2022}

1] Heard both the parties. Perused the application and say at **Exh.20**. This is an application filed by the plaintiff seeking temporary injunction against defendant No.1 and 2 from disposing or selling the suit property in any manner pending the decision of the suit.

2] The learned counsel of the plaintiff submitted that the suit property i.e. 1 A Gat No.107 admeasuring 9.62 R (out of which 3.21 R) and Gat No.109 admeasuring 3.71 R (out of 1 H 23 R) situated at Policewadi, Shrigonda is the ancestral joint family property of the plaintiff and defendant No.1 and 2. The suit property 1 B i.e. CTS No.261 admeasuring 209.2 square meters situated at Belwandi Budruk, Shrigonda is the ancestral property of the plaintiff and the defendant Nos.1 and 2. The plaintiff is the son of defendant No.1 and 2. Defendant No.3 and 4 are is brothers and sisters. The defendant No.7 and 11 is the real brother of the defendant No.1. Defendant No.8 and 9 are the children of defendant No.7. Defendant No.10 is the wife of defendant No.9. The defendant No.11, 12 are husband and wife and defendant No.13 is their son. The defendant No.5 and 6 have purchased the suit property 1 A in Gat No.107 admeasuring 0 H 82 R and 0 H 40 R from the defendant No.1. The defendant No.14 is the co-owner of the Gat No.107. The plaintiff is not seeking any relief against the defendant No.7 to 14. He has filed the present suit for partition and declaration that sale deeds dated 09/09/2009 and 10/04/2013 bearing registration number 2212/2009 and 1222/2013 are not binding on his share. Partition of the suit property has

taken place between Hari Damu Pawar and his child in the year 1980. Thereafter, mutation entry No.717 was affected. Accordingly, suit property was given in the share of defendant No.1. Thereafter, the defendant No.2 has purchased the suit property 1 B from the joint family nucleus of suit property 1A. In 2008, marriage of the plaintiff took place. The defendant No.1 to 3 use to quarrel with the plaintiff and his wife. They threw him out of the house in the year 2009. Thereafter, he worked at Ahmednagar and Pune and various places and in the last five years he has come to Shrigonda. The plaintiff has share in the suit property. The defendant have given one room to him in suit property No.1 B to the plaintiff. He is residing in the said property. The defendant No.1 and 2 are under the influence of defendant No.3. The plaintiff requested for partition of his 1/5th share in the suit property, however, they refused to partition the suit property. Then one month back he requested to defendant Nos.1 to 3 to effect the partition of the suit property. However, they refused to do so. He has prima-facie case in his favour. The balance of convenience lies in his favour. He will suffer irreparable loss, if the defendant Nos. 1 and 2 sell the suit property to third person. Hence, the learned counsel of the plaintiff prayed that temporary injunction be granted against the defendant No.1 and 2 or any person through them restraining them from selling the suit property in any manner or mode to third person pending the decision of the suit.

3] To support his contention, the learned counsel of the plaintiff placed reliance upon the reported Judgment of Hon'ble Supreme Court in **Ramdas Vs. Sitabai and Ors.** (2009(2) Mah.L.R. 894 (SC)), wherein it has been held undivided share of a co sharer may be subjected matter of

sale, but possession cannot be handed over to the vendee unless property is partitioned by metes and bounds amicably and through mutual settlement of by decree of court.

4] *Per contra*, the learned counsel of the defendant No.1 and 2 submitted that the plaintiff has given wrong description of the suit property. Hence, there is barred by Order 7 Rule 3 of C.P.C and on this ground the present application be rejected. He has specifically averred that partition of the suit property has taken place before the Tahsildar in Shrigonda on 02.12.1980. Accordingly, mutation entry No.717 was affected. Thus, partition has been effected between the defendant No.1, his father Hari Pawar and defendant No.7, 8 and 11. The said partition has not been challenged till date. Hence, the suit property is are self acquired property of the defendant No.1. He had right to sell the suit properties to defendant No.5 and 6. Hence, the plaintiff cannot seek partition from the defendant No.1 and 2. He further submitted that the defendant No.2 has purchased the suit property 1B i.e. CTS No.261 by executing registered sale deed on 24.07.1990 from Mahadu Sahadu Ithape. The defendant No.2 has purchased the suit property from her own income and Stridhan. Hence, the suit property 1 B is the self acquired property of the defendants. Hence, plaintiff is not entitled to seek share from the defendants. The plaintiff is not coparcener in the suit property. He has no right in the self acquired property of the plaintiff of the defendant No.1 and 2. The plaintiff has given wrong valuation of the suit property. Hence, he is not come with the clean hands. Hence, the plaintiff is not entitled for the relief of temporary injunction as prayed.

5] To support his contention, the learned counsel of the defendant placed reliance upon the reported Judgment of Delhi High Court in **Sachin and Anr. Vs. Jhabbu Lal and Anr.** (dated 24/11/2016) wherein it has been held that in para 16 "in my opinion in a case such as the present one where the appellants/defendant Nos. 3 and 4 have led no evidence to prove that it waived self acquired or co-ownership in the suit property whereas respondent/plaintiffs No. 1 and 2 have proved their case on the basis of documentary evidence i.e. copies of General Power of Attorney, Agreement to Sell, Receipt possession letter Affidavit etc., the learned trial Court was justified in decreeing the suit which was upheld by the First Appellate Court." He also placed reliance upon the reported Judgment of Bombay High Court in **Dada Tangaji Wani Vs. Bhagaji Tangaji Wani and Ors.** (2021(6), Mh.L.J. 706), wherein it has been held that even if there is no direct document of partition, yet when by the Act of oral partition is allowed when it can be proved through other supporting documentary evidence. He also placed reliance upon the reported Judgment of Hon'ble Supreme Court in **Beereddy Dasaratharami Reddy Vs. V. Manjunath & Anr.**(2021 ALL SCR (ONLINE) 760), wherein it has been held that Karta of joint Hindu family has power to alienate joint family property for legal necessity or benefit of estate.

6] From the contentions of the parties and documents on record, the following points arises for my determination and my findings thereon with reasoning are as follows :

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiff has prima-facie case for grant of temporary injunction in his favour ? No.
2	Whether balance of convenience lies in favour of plaintiff ? No.
3	Whether the plaintiff would suffer irreparable loss, if temporary injunction is not be granted in his favour ? No.
4	What order ?	...The application is rejected.

REASONS

AS TO POINT NOS. 1 TO 3:-

7] The plaintiff has to show that he has prima-facie case, that they would suffer irreparable loss if injunction not granted & the balance of convenience lies in their favour. On perusal of 7/12 extracts of suit property Gat No. 107 filed along with list at **Exh.3**, the name of the defendant no.1 is shown as owner of the suit property. On perusal of 7/12 extracts of suit property Gat No. 109 filed along with list at **Exh.3**, the name of the defendant no.1 along with the other co-owners are shown as owner of the suit property. The name of the plaintiff does not appear in the 7/12 extract of the suit property. Thus, it is clear that the defendant No. 1 is in prima facie possession of the suit property. Further, the mutation entry No. 717 reveals that defendant no.1 received the suit property in partition on 02/12/1980.

8] Now, it is to be seen whether the plaintiff has prima facie proved that the defendant No.1 and 2 are trying to sell the suit property to

third person. Admittedly, sale deeds dated 09/09/2009 and 10/04/2013 bearing registration number 2212/2009 and 1222/2013 were executed by defendant No. 1 and 3 in favour of defendant No. 5 and 6. The plaintiff has filed the present suit in the year 2021. There is nothing on record to show that the defendants are trying to sell suit property. There is no public notice in the newspaper issued regarding the defendants selling the suit property to third person. Hence, mere apprehension of the plaintiff that the defendants are selling the suit property is not sufficient to prima facie grant temporary injunction in his favour. Further, the plaintiff has come with case that partition of the suit property has not been effected between the parties. In this regard, it is necessary to refer the judgment of Hon'ble Bombay High Court in **Prakash S. Akotkar and Others Vs. Mansoorkha Gulabkha [AIR 1996 Bombay 36]** wherein it has been held that, once it is found that the possession of co-owner is for and on behalf of other co-owners, the other co-owner cannot claim injunction of this nature so as to exclude the other co-owners from exercising their right as co-owners. Thus, the plaintiff is not entitled for the relief of injunction against the defendant No.1 and 2.

9] Further, the case law relied upon by the defendant counsel in **Beereddy Dasaratharami Reddy (supra)** it has been held that Karta of joint Hindu family has power to alienate joint family property for legal necessity or benefit of estate. Furthermore, the case law relied upon by the plaintiff counsel in **Ramdass (supra)** it has been held that undivided share of a co-sharer can be a subject matter of sale. Thus, the plaintiff has not brought any evidence on record to show his possession over the suit property and that the defendant Nos. 1 and 2 are trying to sell the suit

property to third person. Hence, on this background, it is clear that plaintiff does not have a prima-facie case in his favour. Thus, balance of convenience also does not lie in the favour of the plaintiff. Accordingly, no irreparable loss will be caused to the plaintiff. Hence, point Nos. 1 to 3 are answered in the negative and the following order is passed.

ORDER

- 1] The application is rejected.
- 2] Costs in cause.

Date : 20.09.2022
Place: Shrigonda

(N. S. Kakade)
Jt. Civil Judge, Senior Division,
Shrigonda.