

**ORDER BELOW EXH. 24.**  
**{Passed on 20.09.2022}**

1] Heard both the parties. Perused the application and say filed at **Exh.28**. This is an application filed by the defendant No.1 and 2 seeking the relief of temporary injunction against the plaintiff restraining him from committing encroachment or taking illegal possession of the suit property.

2] The learned counsel of the defendant submitted that he has filed counter claim in the present case. The suit property is in the name of defendant No.1 after partition was effected before the Tahsildar, Shrigonda on 20.01.1981. Accordingly, mutation entry No.717 was effected. Thereafter, the plaintiff No.1 has become owner of the suit property. The suit property is self acquired property of the defendant No. 1. Hence, the defendant No.1 sold the suit property to defendant No.4 and 5. The plaintiff has no right to seek cancellation of the sale deed as the same is barred by law of limitation. The plaintiff was not born when partition took place between defendant No.1, his brothers and his father on 20.01.1981. Hence, the plaintiff is not coparcener in the suit property and he has no right to seek partition from the plaintiff. The defendant No.2 has purchased the suit property 1B from her own income and Stridhan and money taken from her parents. She purchased the suit property 1B on 24.07.1990 from Mahadu Sahadu Ithape. Hence, the suit property 1B is self acquired property of the defendant No.2. The plaintiff has no concern with the suit property. The suit property 1B is not the ancestral property of the plaintiff. There is no right of the plaintiff to seek partition of the suit property. The plaintiff is trying to commit encroachment to the suit property. They have prima facie case in their

favour. Balance of convenience lies in their favour and they will suffer irreparable loss if injunction is not granted. Hence, the plaintiff or any person through him be restrained from committing encroachment in the suit property and restrain the plaintiff from causing obstruction to the peaceful possession of the defendant No.1 and 2 over the suit property.

3] 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.** reported in 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.

4] *Per contra*, the learned counsel of the plaintiff submitted that the defendant has filed false application. He admitted that partition of the suit property took place between Hari and his children. Thereafter, the defendant No.2 has purchased the suit property 1B 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 suit property are the ancestral and joint family properties of the plaintiff and the defendant. The plaintiff has share in the suit property. The defendant have given one room to him in suit property No.1B 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 1/5<sup>th</sup> share in the suit property, however, they refused to partition the suit property. He denied that the suit property is the self acquired property of the defendant No.1 and 2. He specifically averred that the defendant No.1 and 2 have not mentioned any cause of action arose to file the present application for injunction. The defendant No.1 and 2 have filed the present application only to prolong the matter. They do not have prima-facie case in their favour. Hence, the said application rejected.

5] 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.

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 :

| <b>Sr. No.</b> | <b><u>POINTS</u></b>  | <b><u>FINDINGS</u></b>          |
|----------------|---|---------------------------------|
| 1              | Whether the defendant Nos. 1 and 2 have prima-facie case for grant of temporary injunction in his favour ?                  | .... No.                        |
| 2              | Whether balance of convenience lies in favour of defendant Nos. 1 and 2 ?   | .... No.                        |
| 3              | Whether the defendant Nos. 1 and 2 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 defendant Nos. 1 and 2 have to show that they have 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. Thus, it is clear that the

defendant No. 1 is in prima facie possession of the suit property.

8] Now, it is to be seen whether injunction can be granted against the plaintiff restraining him from committing encroachment in the suit property and from restraining the plaintiff from causing obstruction to the peaceful possession the defendant No.1 and 2 over the suit property restraining pending the decision of the suit. It is well settled principle of law that possession of one co sharer is possession of all. Admittedly, the defendant Nos.1 and 2 have filed the present counterclaim suit for declaration and perpetual injunction. The partition of the suit property has not been effected between the the plaintiff and defendant Nos. 1 and 2. Admittedly, the plaintiff is the son of defendant Nos. 1 and 2. The plaintiff is Class-I heir of the defendant Nos. 1 and 2. Any property which is not part of joint family property is self acquired property. The partition has taken place between defendant No. 1 and his brothers. Hence, the suit property is separate property of defendant No. 1 in relation to his brothers and not amongst his children. The property is acquired by the defendant No. 1 from his father, hence the plaintiff is co sharer in the suit property.

9] Thus, the defendant Nos. 1 and 2 not entitled for the relief of injunction against the plaintiff. Thus, the case law relied upon by the defendant counsel in **Sachin (supra)** is not applicable to the present facts as no evidence is led at this stage to decide to suit property is self acquired property of defendant Nos. 1 and 2. Further, the case law relied upon by the defendant counsel in **Dada Tangaji Wani (supra)** is not applicable to the present facts as the defendant Nos. 1 and 2 have not come with a case of oral partition. Further, the case law relied upon by the defendant

counsel in **Beereddy Dasaratharami Reddy (supra)** is also not applicable at this stage while deciding the present application of temporary injunction as Karta of joint Hindu family is not selling the suit property. Further, the case law relied upon by the plaintiff counsel in **Ramdas (supra)** wherein it has been held that undivided share of a co-sharer can be a subject matter of sale is not applicable to the present facts of the case at this stage. Hence, on this background, it is clear that defendant Nos. 1 and 2 does not have a prima-facie case in their favour. Thus, balance of convenience also does not lie in the favour of the defendant Nos. 1 and 2. Accordingly, no irreparable loss will be caused to the defendant Nos. 1 and 2. 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.