

MHAU050000182024



ORDER BELOW EXH.21 IN R.C.S. NO. 02/2024.

1. Present application is made by plaintiffs for prohibiting defendant Nos. 15 to 18 by way of temporary injunction for carrying construction in the suit property survey No. 179/2/2/1 situated at Vaijapur (hereinafter referred to as “Disputed property”).
2. The original suit is filed by the plaintiffs seeking the relief of partition. Partition is sought by plaintiffs in respect of various properties, of which one of property is the disputed property. As per plaintiffs, they and defendant Nos. 1 to 14 are members of joint Hindu family. Rest defendant Nos. 15 to 22 are third party purchasers. Defendant Nos. 15 to 18 specifically are purchasers of disputed property.
3. Perused the application and say. Heard the Advocate for plaintiffs and Advocate for defendant Nos. 15 to 18.
4. According to plaintiffs, the disputed property is their ancestral and joint Hindu family property. Defendant Nos. 15 to 18 have started construction on the disputed property.
5. When the interim injunction application was moved by plaintiffs at Exh.19, plaintiffs were not aware about the construction by defendant Nos. 15 to 18 on disputed property. Hence, prayer to

that effect is not included in interim injunction application. As per plaintiffs, if defendant Nos. 15 to 18 are not restrained from undertaking construction, then the nature of the disputed property would change. According to plaintiffs, there is prima facie case in their favour. Hence, through present application, plaintiffs have prayed to restrain defendant Nos. 15 to 18 from carrying the construction over disputed property till disposal of present suit.

6. Defendant Nos. 15 to 18 submitted that the said disputed property was purchased by Vishnu Jadhav (great grandfather of plaintiffs). The said disputed property is not the ancestral property of Vishnu Jadhav. After demise of Vishnu Jadhav, his eldest son Bhaskar (grand father of plaintiff) became the *karta* of family. In the year 1981-1982, Bhaskar effected the partition of all the joint Hindu property between himself, his brothers Uttam and Sanjay. After said partition, the said status of joint Hindu family came to an end. Each brother was the owner and possessor of the properties which came to their shares. Some of the properties were sold by them. Thereafter, even they partitioned the properties amongst their legal heirs. The disputed property was already sold by Bhaskar (grand father of plaintiffs) to defendant No. 15 prior to the births of plaintiffs via registered sale deed on 09.12.1977. Hence, according to defendant Nos. 15 to 18, the disputed property is not the ancestral joint Hindu family property of plaintiffs. Defendant Nos. 15 to 18 are the owners and possessors of disputed property. According to them, there is no prima facie case in favour of plaintiffs. They prayed for rejection of present application.

7. As per Section 6 (1) (a) of Hindu Succession Act, a Hindu coparcener gets right in the coparcenary property by birth. Further, as per Section 20 of the Hindu Succession Act,

“Right of child in womb - A child who was in the womb at the time of the death of an intestate and who is subsequently born live shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.”

Therefore, what follows from above is that a coparcener gets right in the coparcenary property either by birth or when the child was in womb at the time of death of instate. The learned Advocate for defendant Nos. 15 to 18 rightly pointed out the age of both the plaintiffs. The age of plaintiff No. 1 is 23 and plaintiff No. 2 is 20 years. Admittedly, Vishnu Dashrath Jadhav (Great grandfather of plaintiffs) expired on 13.02.1975 i.e. much prior to the birth of both the plaintiffs. In the year 1975, neither the plaintiffs were born and considering their age could not have been conceived in womb. Therefore, they cannot be said the coparcener to the disputed property.

8. On perusal of sale deed dated 09.12.1977 of disputed property, it appears that the same has been sold by Bhaskar Vishnu Jadhav (grandfather of plaintiffs) to defendant No. 15. It has been specifically mentioned in the sale deed that he is the *karta* of family.

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For household and agricultural need he is selling the property owned by him i.e. disputed property to defendant No. 15. Hence, when the disputed property was sold to defendant No. 15 by Bhaskar Jadhav and he being the *karta* of the family, joint Hindu family status of the property prima facie appears to have come to an end. Even at the time of sale of disputed property, plaintiffs were not born or conceived in womb. Hence, for above reasons, there appears no prima facie case in favour of plaintiffs. In result, I proceed to pass following order:-

ORDER

Present application is hereby rejected.

Vaijapur.

(Smt. S. K. Khan)

Date: 15.04.2025.

Jt. Civil Judge Junior Division, Vaijapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	: Shubham B. Jadhav, Stenographer Grade-III,
Court	: Smt. S. K. Khan, Jt. Civil Judge J.D., Vaijapur, Dist. Aurangabad.
Order delivered on	: 15.04.2025
Order signed by the presiding officer on	: 15.04.2025
order uploaded on	: 17.04.2025