

MHAU050000182024 	R.C.S. NO. 02/2024. Hitesh Vasant Jadhav and anr. Vs. Kusumbai Bhaskar Jadhav and ors.
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ORDER BELOW EXH.19.

- 1) This is an application filed by the plaintiff seeking temporary injunction as per Order XXXIX Rule 1 and 2 of the Civil Procedure Code, 1908 (hereinafter referred to as the CPC for brevity).
- 2) Land property admeasuring 75 gunthas in Gat No. 84/1 village Ghaygaon, Tq. Vaijapur (hereinafter referred to as “Suit property ‘A’), land property admeasuring 6H 36 R in Gat No. 84/2 village Ghaygaon, Tq. Vaijapur (hereinafter referred to as “Suit property ‘B’”) and property admeasuring 2400 Sq.ft. city survey No. 179/2/2/1 (hereinafter referred to as “Suit property ‘C’”).
- 3) The plaintiffs have come-up with the case that plaintiffs and defendant Nos. 1 to 14 are members of joint Hindu family and co-sharers of suit properties. These suit properties were originally owned by their common ancestor Vishnu Dashrath Jadhav, who expired on 13.02.1975. The suit properties were acquired by Vishnu as heir of his father Dashrath Jadhav. Vishnu Dashrath Jadhav married Bhimabai and had three sons Bhaskar (grandfather of plaintiffs), Uttam and Sanjay. Defendant Nos. 1 to 14 are all legal

decendants of Bhaskar, Uttam and Sanjay. Bhimabai expired on 29.10.2009 at Ghaygaon. At present, Bhaskar, Uttam and Sanjay have also expired.

4) Up to the death of Vishnu Dashrath Jadhav, suit properties were owned and possessed by him. On his demise, his eldest son Bhaskar became the *karta* of family. Further, for the purpose of family arrangement and management of properties, the names of Uttam and Sanjay were also entered into the revenue record of the suit properties. During the lifetime of Bhimabai and her three sons i.e. Bhaskar, Uttam and Sanjay, no partition of suit properties took place between them either orally or in writing. Only as their names were mutated to revenue record, after their demise, the name of the respective heirs were mutated to revenue record of respective properties.

5) Further, as per plaintiffs, suit property 'B' has been sold by defendant Nos. 1, 4, 6 and her husband, defendant No. 10 to defendant Nos. 20, 22, 15, husband of defendant No. 16 and husband of defendant No. 20 respectively via registered sale deeds. Similarly, suit property 'A' has been sold by Uttam Jadhav and defendant No. 10 to defendant No. 15 and defendant No. 21 respectively via registered sale deeds. As per plaintiffs, the aforesaid transactions were not done for the benefit of joint family. There was no legal necessity for aforesaid transactions and hence, these transactions and respective sale deeds are not binding on plaintiffs.

Thereafter, there were litigation between defendant Nos. 1, 2, 3, 4, 6 & 10 and defendant Nos. 15 to 20 with respect to suit property 'B'. In those litigation, compromise was entered into between the parties and also certain sale transactions took place. However, all the aforesaid transactions were not for the joint family and hence, not binding on plaintiffs. Further, as per plaintiffs, when the compromise in R.C.S. No. 530/2015 was entered, they were minors. Their father expired in 2010. They were residing with their mother defendant No. 2 at their uncle's place at Tadegaon, Tq. Sangamner. Their mother is very innocent and on persuasion of other family members, she put her signature on the documents insisted by those family members. Even though the aforesaid compromise was signed by their mother, no benefit out of the said compromise was given to plaintiffs or their mother. The said compromise is not binding on plaintiffs. On attaining majority, plaintiffs have obtained the information regarding all their joint family properties and transactions with regard to those properties. Accordingly, plaintiffs have filed the present suit for partition and declaration. Plaintiffs have apprehension that further third party interest in the suit properties would be created by defendants. According to them, there is prima facie case in their favour. Hence, through present application, plaintiffs have prayed to restrain defendants from creating third party interest in Suit properties 'A', 'B' & 'C'. Plaintiffs have filed pursis dated 21.02.2025 at Exh.22 that they do not intent to press interim injunction application against defendant Nos. 1 to 11.

6) Suit proceeded without W.S. of defendant Nos. 11 to 14 and defendant Nos. 19 to 22. The W.S. of defendant Nos. 15 to 18 is at Exh.26. Defendant Nos. 15 to 18 in their W.S. admitted that Vishnu Dashrath Jadhav was the common ancestor of plaintiffs and defendant Nos. 1 to 14 and that he expired on 13.02.1975. According to them, plaintiffs and defendant Nos. 1 to 14 never resided in joint Hindu family and therefore, they are not members of joint Hindu family. According to them, suit properties are not the joint Hindu family properties of plaintiffs and defendant Nos. 1 to 14.

7) Plaintiffs admitted that Vishnu Jadhav had three sons Bhaskar, Uttam and Sanjay, Bhaskar was *karta* of their family. After the demise of Vishnu Jadhav, in the year 1981-1982 Bhaskar Jadhav being *karta* had divided the joint family properties between himself and his brothers. According to them, joint Hindu family status of defendant Nos. 1 to 14 came to an end. All the three brothers were enjoying the property, which came to their share. Some of the properties were even sold by them. Further these properties are also divided amongst their respective children. The deceased father of plaintiff was Vasant Bhaskar Jadhav and he got 25R land in suit property 'A' and 65R land in suit property 'B'. In total he got 89R land in partition, which at present stands against the name of plaintiffs. Suit property 'C' was already sold by Bhaskar (grandfather of plaintiffs) prior to the birth of plaintiffs to defendant No. 15 on 09.12.1977.

8) Defendant Nos. 15 to 18 admitted that there were previous litigation between defendant Nos. 1 to 14 and defendant No. 15 with respect to suit properties 'A' and 'B'. They denied that in the compromise, defendant No. 15 and her son admitted that suit properties 'A' and 'B' are joint Hindu properties of defendant Nos. 1 to 14. Defendants further submitted that in R.C.S. No. 530/2015 the mother of plaintiffs was defendant No. 7. In that suit the mother of plaintiffs has put her signature on the compromise pursis, as the ownership of defendant No. 15 to the suit properties was admitted to her. According to defendant Nos. 15 to 18, no cause of action to file the present suit arose to the plaintiffs. There is no prima facie case in favour of plaintiffs. They prayed for rejection of present application.

9) After going through the application and documents filed along with it, following points arose for consideration and I have given findings thereon for reasons stated thereunder-

Sr. No.	Points	Findings
1	Whether plaintiffs have established prima-facie case ?	Negative
2	Whether the balance of convenience lies in favour of plaintiffs ?	Negative
3	Whether plaintiffs will be put to irreparable loss, if injunction is not granted ?	Negative
4	What order ?	As per final order.

REASONS**AS TO POINT NOS. 1 TO 3 :-**

10) It is settled position of the law that, any party claiming injunction against the other must prove firstly that, he has prima-facie case in his favor. Secondly that, balance of convenience lies in his favor, and lastly that, if injunction is refused, he will be put to irreparable loss. It is also settled law that, mere institution of suit does not entitle the plaintiff to relief. He must satisfy the Court that there is a fair and substantial question to be tried. No injunction would be issued if the final relief cannot be granted. To make out a prima-facie case for a temporary injunction, it is not required that, the plaintiff should establish his title, but it is enough if he can show that he has a fair question to raise as to the existence of the right alleged and the property in the meantime should be preserved as it is till the final order.

11) Perused the application, documents filed on record and considered the argument of the plaintiff and defendants. Through the present interim application plaintiffs are praying before this Court to restrain defendant Nos. 12 to 22 from creating third-party interest in the suit property till the final disposal of the present suit.

12) Plaintiffs are claiming that even at present suit properties are ancestral and joint Hindu family property of plaintiff and defendant Nos. 1 to 14 and therefore, they have brought the suit for partition. According to defendant Nos. 15 to 18, suit properties are

already partitioned amongst the grandfather of plaintiffs i.e. Bhaskar Jadhav and his brothers in 1981-1982. Further as per defendants, suit property 'C' was sold by Bhaskar Jadhav being *karta* of family on 09.12.1977 to defendant No. 15.

13) Alongwith the plaint various documents with respect to suit properties including 7/12 extracts, mutation entries and sale deeds are filed by the plaintiffs. Of all the mutation entries, Mutation Entry No. 836 dated 12.03.1975 is the most important. The said mutation entry is in respect of suit properties 'A' and 'B'. As per the said mutation entry, partition of suit properties 'A' and 'B' is already done after demise of Vishnu Jadhav amongst his three sons and wife. Therefore, considering the aforesaid Mutation Entry No. 836, it *prima facie* appears that partition of suit properties 'A' and 'B' was already effected in the year 1975.

14) 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.

15) 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 they could not have been ever conceived in womb. Therefore, they cannot be said to be coparcener of disputed properties.

16) On perusal of sale deed dated 09.12.1977 of suit property 'C', 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. For household and agricultural need he is selling the property owned by him i.e. suit property 'C' to defendant No. 15. Hence, when the suit property 'C' 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. Also, when the said sale transaction of suit property 'C' was effected on 09.12.1977, both the plaintiffs were neither born nor conceived in womb.

17) Therefore, from the aforesaid documents and discussion, it prima facie appears that prior to the birth of plaintiffs, suit properties were already partitioned and sold by the ancestors of plaintiffs. There appears no prima facie case in favour of plaintiffs. If present application is allowed, irreparable loss would be caused to defendants then to plaintiff in reverse situation. The balance of convenience is not favour of plaintiff. I answer point Nos. 1 to 3, in the Negative.

AS TO POINT NO.4 :-

18) In view of my findings to point Nos. 1 to 3, it is clear that plaintiffs have failed to establish prima-facie case in their favour. Thus, in answer to point No.4, I proceed to pass following order:-

ORDER

Present Application is hereby rejected.

Vaijapur.

Date- 15.04.2025

(Smt. S. K. Khan)

Jt. Civil Judge J. D., Vaijapur.

CERTIFICATE

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

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