

MHAU070014232022



ORDER BELOW EXH.5.

This is an application filed by plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (in short 'CPC') for temporary injunction restraining the defendant No.7 from alienating, transferring, mortgaging, or creating any third-party interest in the suit property (suit property as specifically defined in the para No.1 of the plaint) till final disposal of the suit.

The plaintiff's case in nut shell as under :

02. The plaintiff and defendant Nos.1 to 5 are members of a Hindu Joint Family and the suit property, being agricultural land bearing Gat No. 23, total admeasuring 02 H 80 R, out of it 0 H 70 R situated at village Limbejalgaon, Taluka Gangapur, is alleged to be ancestral Joint Family property. According to the plaintiff, no partition has taken place amongst the coparceners. It is the specific contention of the plaintiff that defendant No.1, acting as Karta of the family, had borrowed an amount of Rs.50,000/- from defendant No.6 for family necessity and, as security for the said loan, caused execution of a nominal sale deed dated 10/04/2006 (Sale Deed No. 1583/2006) in respect of 70 Are land in favour of defendant No.6 through defendant No.3.

03. It is further the case of the plaintiff that subsequently, in the year 2007, defendant No.1 borrowed Rs.1,00,000/- from defendant No.7, repaid the earlier loan to defendant No.6, and again, as security for the new loan, got

executed another nominal sale deed dated 27/04/2007 (Sale Deed No. 2113/2007) in favour of defendant No.7, with an understanding that upon repayment, the property would be reconveyed.

04. According to the plaintiff, both the aforesaid transactions were without legal necessity, without consent of coparceners, and were merely nominal transactions executed as security for loans. It is further alleged that in April 2022, the plaintiff along with defendant No.1 repaid the loan amount to defendant No.7 and demanded reconveyance, which was refused. Thereafter, legal notice was issued, but defendant No.7 failed to comply.

05. On these pleadings, the plaintiff has filed the present suit for partition and separate possession and for cancellation of the aforesaid sale deeds, along with the present application seeking temporary injunction.

06. Suit summons duly served to defendant Nos. 1 to 7. Defendant Nos.1, 2, 4, 5, 6 and 7 in consequence of suit summons appeared, but only defendant Nos.1, 2, 4, 5 and 6 filed their Written Statement cum Say at Exh.24 and 28 respectively. Defendant No.7 has not filed his written statement therefore, suit proceeded without written statement against defendant No.7. Defendant No.3 neither appeared nor filed written statement therefore, suit / application proceeded ex-parte against defendant No.3. Defendant Nos.1, 2, 4, 5 and 6 in their written statement / say, have substantially admitted the case of the plaintiff, including the nature of the property as Joint Family Property and the alleged nominal nature of the transactions. Further they submitted to allow the application and pass appropriate order in their favour.

07. Perused the record. Heard Ld. Advocates plaintiff. Repeatedly called learned Advocate for defendant Nos.1, 2 and 4 to 7 but absent therefore, proceeded without argument on their behalf. Also perused the written argument filed on behalf of plaintiff.

08. Considered pleadings of both the parties of which the points arise for my determination along with findings and reasons are as follows;

Sr. No.	<u>Points</u>	<u>Findings.</u>
1	Whether the plaintiff has made out a prima facie case in his favour ?	In the negative.
2	Whether balance of convenience tilts in favour of the plaintiff ?	In the negative.
3	Who will suffered irreparable loss if temporary injunction is not granted?	In the negative.
4	What order ?	As per final order.

REASONS

09. To support the contentions of the plaintiff he has relied upon copy of 7/12 extract of land gut No.23, mutation entry No.988, xerox copy of sale-deed No.1583/2016, copy of mutation entry No.481, xerox copy of sale-deed No.2113/2007, copy of mutation entry No.485, notice and its reply. Whereas, defendants relied upon only their say.

AS TO THE POINT NOS.1 To 4:-

10. As all the points are interconnected with each other therefore, taken together for reasoning;

(i) Prima Facie Case

11. At the outset, it is necessary to observe that even though defendant No.7 has not filed any reply, the burden lies upon the plaintiff to independently establish the existence of a prima facie case. Grant of injunction is a discretionary relief and cannot be granted merely on account of absence of opposition.

12. Upon careful consideration of the pleadings and documents, it emerges that the plaintiff is seeking to challenge registered sale deeds executed in the years 2006 and 2007. The record prima facie indicates that the suit property stands in the name of defendant No.7 by virtue of a registered sale deed executed on 27/04/2007. A registered sale deed carries with it a presumption of legality and valid transfer of title. The plaintiff has attempted to rebut this by contending that the transactions were nominal and executed merely as security for loans. However, such a plea is in the nature of an exception to the apparent tenor of a registered document and requires strong and cogent evidence.

13. At this interlocutory stage, the plaintiff has not produced any documentary material such as agreement for reconveyance, receipt of repayment acknowledged by defendant No.7, or any contemporaneous record to indicate that the transaction was in fact a loan transaction disguised as sale. The entire case of the plaintiff on this aspect rests on oral assertions and admissions of defendant Nos.1, 2, 4 and 5, who are admittedly interested parties being family members. Such admissions, by themselves, cannot prima facie displace the legal effect of a registered conveyance standing in favour of defendant No.7.

14. Further, the plaintiff has approached the Court after a long lapse of time, i.e., nearly 15 years from the date of execution of the sale deed in favour of Defendant No.7. This delay also weakens the prima facie case. Thus, upon overall consideration, this Court is of the opinion that the plaintiff has failed to establish a strong and convincing prima facie case warranting grant of temporary injunction.

Balance of Convenience

15. In the present case, the suit property is standing in the name of defendant No.7 on the basis of a registered sale deed since the year 2007. Prima facie, she is the recorded holder of the property. Granting an injunction would effectively restrain defendant No.7 from exercising her rights as a recorded owner, despite the plaintiff not establishing a strong prima facie case.

16. On the other hand, refusal of injunction does not render the suit infructuous. In the event the plaintiff ultimately succeeds, the law adequately protects his rights. Any transfer made during pendency of the suit would be governed by the doctrine of lis pendens and would not prejudice the rights of the plaintiff. Therefore, the comparative inconvenience that may be caused to defendant No.7 by granting injunction is greater than that which may be caused to the plaintiff by refusing it. Hence, the balance of convenience does not lie in favour of the plaintiff.

Irreparable Loss

17. The plaintiff has contended that if injunction is not granted, defendant No.7 may alienate the property and thereby defeat his rights. However, such apprehension, by itself, is not sufficient. The plaintiff must

show that the injury likely to be caused is irreparable in nature. In the present case, even if the property is transferred, the plaintiff, if he succeeds in the suit, can seek appropriate relief against the transferee. The doctrine of lis pendens ensures that any transfer during pendency of litigation does not defeat the rights of the parties. Thus, the injury, if any, is not irreparable and is capable of being adequately addressed in law.

18. In view of the above discussion, this Court arrives at the following conclusions:

- i. The plaintiff has failed to establish a strong prima facie case;
- ii. The balance of convenience is not in favour of the plaintiff;
- iii. No irreparable loss is demonstrated;

19. Mere non-filing of reply by defendant No.7 does not entitle the plaintiff to injunction. Therefore, I answered point Nos.1 to 3 in the negative and in answer to point No.4, I pass the following order;

ORDER

- 1** The application Exh.5 is rejected.
- 2** Cost will abide the main cause.
- 3** Pronounced in open Court.

Date: 17.04.2026

(Sushama S. Agrawal)
Jt. Civil Judge, Jr. Dn., Gangapur
Tq. Gangapur, Dist.Aurangabad.