

MHAU090005862023

**ORDER BELOW EXH.05**

This is an application filed by plaintiff for grant of temporary injunction restraining defendant No.1 to 7 from alienating the suit property till final decision of this suit.

2. The brief facts of the plaintiffs' case are as under:-

The field Gat No.176 having total area 2 H 53 R, out of it, the area 1 H 27 R which is standing in the name of defendant No.1 situated at Mauje Changatpuri, Tq. Paithan, Dist. Aurangabad, having four boundaries, to the East :- field of Haribhau Manik Bhise, to the West :- Changatpuri - Mahammadpur Shiv (Road), to the South :- field of defendant No.5 to 7 i.e. suit property No.B, and to the North :- field of Shivanath Khade and Dinkar Khade and the field Gat No.176/1 having total area 2 H 53 R, out of it, the area 1 H 26 R standing in the name of defendant No.5 situated at Mauje Changatpuri, Tq. Paithan, Dist. Aurangabad, having four boundaries, to the East :- field of Vishnu Vhorakate, to the West :- Changatpuri - Mahammadpur Shiv (Road), to the South :- field of Vishnu Vhorkate and Jagannath Vhorkate and to the North :- field of defendant No.1 and 2 i.e. suit property mentioned in plaint para No.1-A (Here-in-after referred to as "suit property") is ancestral joint Hindu family properties of plaintiff No.1 to 3 and defendant No.1 and 2, so also, defendant No.5 to 21.

3. The suit properties are originally belongs to one Motilal Saraf. After his death it was jointly in the name of Natwarlal Motilal Saraf. In the year 1976-77 he has transferred it jointly in the name of deceased Saraswatibai Saraf. Till the death of Saraswatibai, Rameshchandra Saraf, being elder son, she is residing with him. By taking disadvantage of it, Rameshchandra as family arrangement has transferred the area 6 acre 10 guntha in the name of his grand-son namely Jagdish and Mahendra. Since then the suit properties were in the name of defendant No.1 Jagdish and deceased Mahendra. Defendant No.1 has transferred 1 H 26 R land without consent of plaintiff and other defendants in the name of defendant No.2. One Mahendra Saraf has also transferred 1 H 26 R land, out of suit properties mentioned in plaint para No.1-B in the name of his wife defendant No.5 by virtue of unregistered partition deed, without consent of plaintiff and other defendants. After death of Rameshchandra, defendant No.1, 2 and 5 to 7 were trying to alienate the suit property and this fact came to the notice of plaintiff. Moreover defendant No.1 and 2 have executed registered agreement to sell in favour of defendant No.3 and 4 to sell suit property mentioned in plaint para No. 1-A. Thus, defendant No.1 to 7 are trying to alienate the suit property in order to deprive the plaintiff and other defendants from getting their share in the suit property. Hence this application.

4. Defendant No.1, 2 and 5 to 7 have filed their Written Statement cum reply of this application at Exh.22. They have denied all adverse allegations levelled against them.

It is their specific contention that the suit property came to the share of Saraswatibai in the year 1975 by way of partition. By virtue of said partition, the name of Saraswatibai entered in the revenue record in the year 1977 itself, being owner of the suit property. Even by way of partition, the properties also come to the share of husband of plaintiff namely Vinodchandra and other brother of the deceased Vinodchandra. During his lifetime deceased Vinodchandra has sold the field, which has come to his share in the partition. Therefore the plaintiff has no any share in the suit property. Thus, defendants have denied that suit properties are joint family properties of plaintiff and themselves. Hence prayed to reject the application.

5. Defendant No.3 and 4 have filed their Written Statement cum reply at Exh.23. It is their contention that they have agreed to purchase suit property from defendant No.1 and 2, being owner of the suit property. Even the defendant No.1 and 2 have executed the registered agreement to sell dated 22-12-2022 in their favour. They have also paid amount of Rs.20,00,000/- to defendant No.1 and 2. On all these grounds, they prayed to reject the application.

6. On rival pleadings of parties, following points arise for determination and findings thereon are recorded for the reasons mentioned thereunder:-

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiff proves that prima-facie case in exists in their favour ?	No

2.	Whether plaintiff proves that balance of convenience lies in their favour ?	No
3.	Who will suffer irreparable loss ?	Defendants
4.	What Order ?	Application is rejected

REASONS

7. Heard learned counsel for both sides. They have reiterated the contentions raised by them in their plaint and Written Statement respectively. Therefore to avoid repetition, I did not mention it here again.

AS TO POINT NO. 1 TO 2 :-

8. It is contention of plaintiffs that the suit property is joint family property, whereas it is contention of defendant No.1, 2, 5 to 7 that there was already partition of the joint family property of plaintiff and defendants. Therefore, it is necessary to scrutinize the documents filed on record. The documents i.e. the partition deed filed by both parties shows that there was partition between husband of plaintiff namely Vinodchandra, his brother Rameshchandra and Pramodchandra. In the said document, it is also mentioned that some of the joint family property was given to the share of Saraswatibai Motilal who is the mother of husband of plaintiff Pramodchandra and Vinodchandra. It is also seen that the husband of plaintiff appears to have sold the property which has come to his share in the said partition to one Jagananth, Bhagwan and Raghunath, as seen from the mutation entry No.1051 to 1053. So also, he has sold his land to one Mohan

Laxman Bargaje, which is seen from mutation entry No.1054. It is not specifically disputed by the plaintiff that there was unregistered partition deed. Even the plaintiff has also filed the copy of said unregistered partition deed. The plaintiff also did not come with a case that the property which was sold by the husband of plaintiff No.1 was his self acquired property. Moreover it is seen that this plaintiffs have filed RCS No.80/2018 against father of defendant No.1 namely Rameshchandra Motilal for declaration that the house property No.4576 was belong to him and he is owner of the said property.

9. On perusing the said plaint, it is mentioned by this plaintiff that there was partition of ancestral property of the husband of plaintiff namely Vinodchandra and his brother Rameshchandra and they are in possession of it. Thus, contentions in RCS No.80/2018 itself goes to show that there was partition of the joint family property of husband of plaintiff and his brothers. Had there been no partition of the suit property, the plaintiff could have mentioned this property in the said suit itself, however they did not do so. Moreover, plaintiff have suppressed this fact in this suit. Therefore from pleadings of plaintiff in RCS No.80/2018 itself, it is clear that there was partition of the joint family property of plaintiff and defendants. Moreover on perusing the partition deed, it is seen that the suit property has come to the share of Sarashwatibai during her life time itself. Therefore the suit property is the self acquired property of Saraswatibai, after the partition of ancestral properties and she has every right to dispose off it.

10. The partition deed executed by Saraswatibai in favour of Jagdishchandra and Mehendra shows that she has given the property i.e. Gat No.176 having area 12 acre 20 guntha to Jagdish Rameshchandra and Mahendra, which come to her share, when the partition took place between her, husband of plaintiff No.1 and father of defendant No.1 namely Rameshchandra and his brother. Therefore the initial partition deed between Rameshchandra, Vinodchandra, Pramodchandra and Saraswatiabi goes to shows that there was partition of joint family ancestral property of husband of plaintiff No.1. Moreover another partition deed executed by Saraswatibai in favour of Jagdishchandra and Mahendra dated 24/12/1985 also shows that she has given her share to the defendant No.1 and one Mahendra Rameshchandra i.e. her grand-son. Therefore it cannot be said that suit property is joint family property and there was no partition of it. Moreover perusal of the plaint in RCS No.80/2018 also supports contention made in above documents that there was partition of the ancestral property of husband of plaintiff, one Vinodchandra and, father of defendant No.1 Rameshchandra. Therefore it appears that plaintiff have suppressed material facts from the Court and did not come before Court with clean hands.

11. The learned counsel for defendant No.1, 2 and 5 to 7 has also argued that the plaintiff did not come before Court with clean hands and they are not entitled for the relief of injunction. He has placed his reliance on the Judgment of Hon'ble Supreme Court in case of **S.P.Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. AIR 1994**

Supreme Court 853.

12. I have gone through it and considered the ratio laid down therein while deciding present application. Thus, in view of above discussion, I hold that there is already partition of the joint family property of husband of plaintiff and father of plaintiff No.2 and 3 and in between brother of husband of plaintiff namely Rameshchandra, Pramodchandra and Saraswatibai. Therefore, it cannot be said that the suit property is joint family property of plaintiffs and there was no partition of it. I therefore hold that plaintiffs have failed to prove prima facie case and balance of convenience lies in their favour. I have, therefore, recorded Negative findings of Issue No.1 and 2.

AS TO POINT NO.3:

13. As regards irreparable loss is concerned, plaintiffs have suppressed the material fact of the partition in between the joint family property of husband of plaintiff namely Vinodchandra, his brother Rameshchandra, Pramodchandra and their mother Saraswatiabi. Moreover, plaintiffs themselves have admitted that there was partition of ancestral property, husband of plaintiff No.1 and father of plaintiff No.2 and 3, in RCS No.80/2018. Therefore, it appears that they did not come before Court with clean hands and suppressed the material facts. Moreover after partition Saraswatibai become the sole owner of the property, which she has received in partition along with husband of plaintiff No.1 Vinodchandra and, thereafter, said property became her self acquired property

and she has every right to dispose off, according to her will. Therefore she has disposed off it and given it to her grand-son as per her wish. Even it appears that the grand-son of Saraswatibai agreed to sell suit property to defendant No. 3 and 4 and have also received the amount of Rs. 20,00,000/- and it was agreed to execute on 15/03/2023. However as the ex-parte injunction is granted the said sale-deed cannot be executed. Moreover it is also seen that husband of plaintiff has sold the property which has come to his share in the partition of their ancestral joint family property. Plaintiff failed to disclose as to which are those properties, which were sold by the husband of plaintiff No. 1 and father of plaintiff No. 2 and 3. Moreover it also appears that the plaintiff have suppressed the material facts from the court and did not come before the court with clean hands. Therefore if the injunction is granted to not to alienate the suit property against defendants, the defendants would suffer irreparable loss than the plaintiff, because from the contention of plaintiffs themselves in RCS No. 80/2018 it is clear that there was partition of ancestral property of husband of plaintiff. Therefore I hold that plaintiff will not suffer irreparable loss and defendants would suffer irreparable loss. I have therefore answered Point No.3 accordingly.

AS TO POINT NO.4:-

14. All the observations made above are prima facie in nature and they did not affect the merits of the case.

15. In view of findings of Issue Nos. 1 to 3, the

application is liable to be rejected. Hence I proceed to pass following order :-

ORDER

1. Application (Exh.05) is rejected.
2. Costs in main cause.

Date : 10/02/2026

(G. V. Gandhe)
Civil Judge, Junior Division,
Paithan