ORDER BELOW EXH. 5 IN R.C.S. NO. 145/2009.

1. The plaintiffs have filed present application in support of affidavit in order to restrain the defendants from creating third party right, title and interest in the suit properties till final conclusion of this suit, in view of rule 1 and 2 of order XXXIX of Code of Civil Procedure, 1908. The defendant no.1 has opposed this application, vide say at Exh. 20. The defendant No. 2 has not filed say this application and therefore, this application proceeded without say of the defendant No. 2.

2. Heard the Ld. Advocate of the plaintiffs but argument of the defendants are not available despite of sufficient opportunity to them. To that effect, orders below Exh. 5 are eloquent.

3. In view of rival submissions before me, following points are arose for my determination and I have recorded my findings thereon for reason stated therein under :

Sr. No.	**POINTS**	**FINDINGS**
1	Whether the plaintiffs have prima facie Case ?	Yes.
2	Whether balance of convenience lies in favour of the plaintiffs ?	Yes.
3	Whether the plaintiffs will be irreparable loss in the event of rejection of this application ?	Yes.
4	What order ?	As per final order.

REASONS

AS TO ALL POINTS:

4. The plaintiffs have contended that, the plaintiff No. 2 and defendant No. 1 are spouse and the plaintiff No. 1 is their sole daughter. The defendant No. 1 adopted the defendant No. 2, without consent of the plaintiff No. 2. Said adoption was taken place without following all requisite of valid adoption and therefore it is void adoption. On that basis, the defendant No. 2 in collusion with Talathi had mutated name of the defendant no.2 into record of rights of the suit properties, illegally. In fact, the suit properties are ancestral joint Hindu family properties of the plaintiffs and defendant No. 1. But, due to mutation entry in the name of the defendants, the defendants tried to dispose off the suit properties and therefore the plaintiff demanded partition of the suit properties to the defendants but same was denied by the defendants and threatened to dispose off entire suit properties. Hence, this suit along with present application came to be filed.

5. The defendant No. 1, vide say at Exh. 20, has stated that, the plaintiff No. 1 is daughter of the plaintiff No. 2 and him. As the plaintiff No. 2 and he did not have a son, they in consent of each other had adopted the defendant No. 2 by following all requisite of valid adoption. To that effect, adoption deed bearing document No. 280/1987 dated 10.02.1987 came to be recorded. On that basis, name of the defendant No. 2 came into record of right of the suit properties by lawful manner and within knowledge the plaintiffs No. 2. But, the plaintiffs never raised objection against said mutation entry in the name of the defendant No.2. The defendant No. 1 gave lamp-sum amount of maintenance to the plaintiff No.2 in the year 1987 and thereafter they executed a divorce deed by way of registered document bearing No.

2854/1987 on 22.12.1987. Since then, their marital relation came to an end. The plaintiff No. 1 was married but not resided at her matrimonial house and she has no issue. Therefore, both plaintiffs are residing together but not resided with the defendant No.1. Therefore, the plaintiffs are not part of joint family of the defendants. Further, stated that, the suit property bearing survey No. 419/A and house Nos. 2/1 and 193 are ancestral properties of the defendant No. 1 but survey No. 422/D is self acquired property of defendant No. 1. The defendant No. 1 gave said ancestral properties up to half extent to the plaintiff No. 1 by way of will. Therefore, the suit properties are not joint family properties of the plaintiffs and defendants. The defendant no.1 has been possessing over the suit properties. The plaintiffs have no concerned with the suit properties. The plaintiffs have not impleaded other ancestral properties and therefore the suit is bad non joinder of necessary parties. Hence, this application may be rejected.

6. Moving to documents on record, it appears that the defendants have not produced any document but the plaintiffs have filed document at Exh. 7 to 11. 7/12 extract at Exh. 7 shows the suit property bearing survey No. 419/A is standing in the name of defendant No. 2 by mutation entry No. 7. 7/12 extract at Exh. 8 shows the suit property bearing survey No. 422/D is standing in the name of defendant No. 1 by mutation entry No. 73. Assessment list at Exh. 9 and 10 shows both house suit properties are standing in the name of defendant No. 1. Mutation entry No. 7 is at Exh. 11 shows the name of the defendant No. 2 in suit property bearing survey No. 419/A and survey No. 422/B on the basis of adoption deed of him. It does not show it was recorded with consent, knowledge or notice to the either of plaintiffs.

7. The Ld. Advocate of plaintiff has argued that, the plaintiffs have filed documents at Exh. 7 to 11 which go to show the suit properties are ancestral joint family properties of the plaintiffs and defendant No. 1. Even, say filed by the defendant No. 1 at Exh. 20 is also supporting said submission of the plaintiffs. Record shows conduct of the defendant No. 2 is of not proceeding with suit but remaining absent deliberately, despite of knowledge of this suit and application. The defendant no.2 is in haste to dispose of the suit properties entirely to avoid lawful interest of the plaintiffs therein, by taking undue advantage of his name into record of right of the suit properties. Therefore, interim relief as prayed may be granted in favour of the plaintiffs as matter of urgency and in view of existence of equitable principle in favour of the plaintiffs.

8. Considering available contentions, documents, submissions and argument before me, it appears that the plaintiff No. 2 and the defendant No. 1 are husband and wife and they are blessed with a daughter i.e. the plaintiff No.1. Because, though the defendant No. 1 has stated a divorce between the plaintiff No. 1 and him but there is nothing valid on record to show their divorce was taken place lawfully. Further, it appears all suit properties except survey No. 422/D are ancestral joint family properties of the defendant No.1 and the plaintiff no.1. Though the suit property bearing No. 419/A is standing in the name of defendant No. 2 but his name is appeared to be recorded on the basis of adoption deed executed by the defendant No. 1. But, said adoption deed is not on record. Therefore, there is nothing on record to show that said adoption was completed by following all requisites of valid adoption and same needs to be proved during course of trial. More so, there is nothing

on record to show that, the defendant no.1 adopted the defendant no.2 with consent of the plaintiff no.2. Even, there is nothing on record to show how the name of the defendant no.2 came into record of rights of survey no. 419/A on the basis of adoption deed. Moreover, it is apparent that when said survey no.419/A was ancestral property of the defendant no.1 then he had no right to dispose of the same on sole count. Hence, this question is also needed to be proved during course of trial. Therefore, I am of the view that, though the defendant No. 2 is appearing into 7/12 extract of survey No. 419/A but he is not having lawful right, title and interest therein. Rather, the plaintiffs are having lawful right, title and interest in survey no.419/A.

9. As regards to house suit properties and landed suit property bearing number survey No. 422/D, it appears that those are standing in the name of the defendant No.1. Admittedly, said house suit properties are ancestral properties of the defendant No. 1 and the plaintiff no.1. Therefore, it is clear that the plaintiff No. 1 has ancestral undivided right, title and interest in the same. The defendant No. 1 has stated that survey No. 422/D is his self acquired property and to that effect 7/12 extract of survey No. 422/D is enough to accept this submission. The plaintiffs have not shown that survey No. 422/D is ancestral property of her. However, it appears that, the defendant No. 1 and the plaintiff No. 2 are reported to be dead during pendency of this suit. It also appears that, the plaintiff no.1 is their legal heir and if the adoption deed is proved then the defendant no.2 is also their legal heir with the plaintiff no.2. Therefore, in view of section 8 of Hindu Succession Act 1956, the plaintiff no.1 has sole or undivided right, title and interest in survey No. 422/D also. Though, the defendant No. 1

stated allotment of some suit properties in favour of the plaintiff No. 1 by will. But, said will is not on record. More so, defendant No. 1 had no right to execute will of said suit properties, beyond his undivided share therein, as same are ancestral properties of the plaintiff no.1 also. Therefore, said submission of defendant No. 1 is not acceptable. So, I am of the view that, the plaintiff No. 1 has prima facie case.

10. Under these circumstances, if third party interest is created by the defendant No. 2 in the suit properties then the plaintiff No. 1 will be any irreparable loss which cannot be compensated in terms of money. Therefore, principle of balance of convenience and irreparable loss also tilt in favour of the plaintiff No.1. Hence, I answer all the points in the affirmative in favour of plaintiff No.1 and pass further order.

ORDER

1. Application is allowed as follows:
   The defendant No. 2 either by himself or anybody else on his behalf, is temporarily restrained from creating any right, title and interest in the suit properties without consent of the plaintiff No.1, in any manner, till final conclusion of this case.
2. Cost in cause.
3. Order is dictated and pronounced in open court.

Sd/- 20.07.2016.
(M.S. Jadhav)
IInd Jt. Civil Judge, J.D. Georai.

Georai,
Dt. 20.07.2016.