

**ORDER BELOW EXH. 23**

Plaintiff has filed the present application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure against defendants for seeking temporary injunction to restrain them from creating third party interest or alienating suit properties to third party till disposal of the suit.

2) Subject matter of the suit and present application is, suit properties: (i) Gat no. 143 ad-measuring 01 H 15 R out of total 04 H. 60 R land (ii) Gat No. 169 ad-measuring 00 H 02 R out of total 04 H 67 R land (iii) Gat No. 234 ad-measuring 00 H 36 R out of total 02 H 79 R land situated at Bagpimpalgaon, Taluka Georai, District Beed, more specifically described in para no.1 of the plaint and para no. 2 of the present application. (Herein after referred as “suit properties”).

3) It is the case of plaintiff that, she is only daughter of her late father namely Pralhad Manik Chormole and late mother namely Kisanabai Prallhad Chormole. Defendant no. 1 is the son of her uncle (father’s brother) namely Asaram Manik Chormole. After death of her father, the mother of plaintiff took defendant no.1 in adoption vide registered adoption deed bearing No. 4770/2020 dated 22/12/2020 and since then defendant no.1 becomes adopted son of mother of plaintiff.

4) Plaintiff further submits that, the name of her grandfather i.e., Manik Prallhad Chormole was mutated in revenue records of suit properties. After his demise, being legal heirs as the father of plaintiff

was already died, names of plaintiff, her mother Kisnabai and name of her uncle namely Asaram Chormole were mutated in revenue record in respect of suit property Gat No. 143 and 234 in place of her grandfather vide mutation entry bearing no. 515. Plaintiff further submits that, though her name is mutated in other rights column, however being legal heir, she becomes owner and possessor of her share in suit properties.

5) Plaintiff further submits that, name of her father was mutated in revenue record of suit property Gat No. 169. However, after death of her father, despite of that plaintiff is legal heir, defendant no.1 mutated his name and name of late mother of plaintiff in revenue record in place of father of plaintiff vide mutation entry no. 309 dated 13/01/1997. Plaintiff further submits that, on 13/01/1997 mother of plaintiff had not taken to the defendant no.1 in adoption, despite of that, defendant no.1 without authorization in hand in glow with 'Talathi' illegally mutated his name as Laxman Asaram Chormole in revenue record of suit property Gat no. 309 with the name of mother of plaintiff and deprived right of plaintiff in the suit property.

6) Plaintiff further submits that, after death of her father, she and her mother being legal heirs got $\frac{1}{2}$ share each in the property of her father and becomes owner and possessor of their respective shares. Thereafter, the mother of plaintiff took defendant no. 1 in adoption, therefore plaintiff and defendant no.1 both are having $\frac{1}{2}$ share each in the $\frac{1}{2}$ share which was received by the mother of the plaintiff in property of her husband who is father of plaintiff. Despite of that, defendant no.1 in hand in glow with the Talathi illegally without giving

knowledge to the mother of plaintiff mutated only his name vide mutation entry number 534 in revenue record of suit properties which were received by plaintiff and her mother as per mutation entry no. 515.

7) Plaintiff further submits that, thereafter to deprived her right over suit properties, the defendant no.1 in Regular Civil Suit bearing RCS No. 339/2010 entered into compromise and allotted suit property Gat No. 143 to the defendants no. 2 to 4. In view of said compromise decree names of defendants no. 2 to 4 are mutated in revenue record. Plaintiff further submits that, as defendant no.1 is not the owner of suit properties Gat no. 143 and 234, thereby he was not having right to enter into compromise and allot the suit properties in the name of defendants no. 2 to 4. The defendants obtained compromise decree by suppressing true facts from the court. Therefore, the said decree passed in RCS No. 339/2010 is illegal, void and not binding on the share of the plaintiff in the suit properties.

8) Plaintiff further submits that, she is having right in the suit properties. However, in order to deprive her right over suit properties, the defendants by taking disadvantage of the fact that, their names have mutated in revenue record are trying to create third party interest in the suit properties. Therefore, on 15/08/2022, plaintiff demanded her 2/3 share to the defendants. However, defendants denied the same. Hence, plaintiff has filed present suit for partition and separate possession of suit properties and declaration that Decree passed in RCS No. 339/2010 is not binding on the share of plaintiff. Plaintiff apprehended that, if defendants succeeds to create third party interest,

then prejudice will cause to her share in the suit properties. Hence, she filed this application for temporary injunction.

9) Plaintiff in support of her contentions has filed documents i.e. 7/12 extracts, copies of mutation entries of suit properties, registered adoption deed and copy of decree in RCS No.339/2010 on record.

10) Defendants have resisted the application by filing their say with Written Statements at Exh. 31. Defendants have admitted the relationship stated by the plaintiff. However, defendants have denied the rest of the contents of plaintiff. In respect of suit properties Gat No. 143 and 234, defendants contended that, plaintiff has shown incorrect boundaries. Defendants further contended that, suit property Gat No. 169 is not ancestral property. The said property was jointly purchased by biological father of the defendant no.1 namely Asaram Manik Chormole and father of the plaintiff for construction of house. However, sale Deed of the said suit property registered in the name of father of the plaintiff.

11) Defendants further contended that, as the suit property Gat No. 169 was jointly purchased by father of plaintiff and father of defendant no.1, after demise of father of the plaintiff, out of total 2 R land, mother of the plaintiff mutated her name for 01 R and with her consent name of defendant no. 01 is mutated for 01R vide mutation entry no. 309 in revenue of record of said suit property. It is further contended that, plaintiff knows that, the said entry was taken with consent of her mother, therefore plaintiff has not challenged the said entry. Therefore, said mutation entry is legal. Defendants further contended that, mother of the plaintiff during her life time voluntarily released her right of 01 R

land in favour of the defendant no.1, therefore plaintiff has no concern with the said suit property.

12) Defendants further contended that, Defendant no.1 was owner and possessor of the Suit properties Gat No. 143 and 234, therefore in civil suit bearing RCS no. 339/2010 he entered into compromise and allotted suit property Gat No. 143 in favour of minor defendants. The plaintiff knows the said fact, therefore she has not taken objection till filing suit.

13) Defendants further contended that, one Manik Kolekar was the owner of property S. No. 214 situated at Gulaj Taluka Georai, District Beed. The grandfather and mother of the plaintiff with the consent of plaintiff purchased 40 R land from the said owner for the consideration of Rs. 40,000/- in the name of her husband. At the time of purchase of said property, it was decided that, plaintiff shall not file suit for partition in her father's property and shall not claim her right. Therefore, plaintiff has not taken objection for the mutation entries.

14) Defendants further contended that, in the year 2022 on 5th day after "Gudipadwa" festival, the plaintiff took Rs.50,000/- hand loan from the defendant no.1 for the period of six months. Thereafter, defendant no.1 demanded to return the said hand loan amount to the plaintiff. however, plaintiff refused to repay the said hand loan amount to the defendant no.1. Therefore, with mala fide intention to grab the said amount, the plaintiff has filed the present false suit against defendants.

15) Defendants further contended that, plaintiff has not shown other ancestral properties and house which is in the name of her grandfather. Plaintiff has not made party to the other legal heirs of her grandfather in

the suit. Therefore, the suit is bad for non-joinder of necessary party and the present suit is also not in limitation. Defendants further contended that, being Karta of the joint family the defendants are having right to sale the properties for legal necessity. Defendants further contended that, plaintiff has no concern with the suit properties, therefore she is not entitled to seek partition and with these reasons prayed to reject the application.

16) Perused application, say and documents. Heard learned Advocates for plaintiff and defendants. Both learned advocates have argued in the line of application and say. Learned Advocate for defendants placed his reliance on following judgments of Hon'ble Apex Court and Hon'ble Bombay High Court,

(i) **Narayan Lal Vs. Shridhar Sutar**¹

(ii) **Ramnath Rambahu Gujar Dead through his Legal Heirs and Others Vs. Shamrao Petkar and Others**²

17) The points for determination along-with my findings thereon are as under:

Sr. No.	Points for Determination	Findings
1.	Whether prima facie case is made out in favour of plaintiff ?	Yes
2.	Whether balance of convenience lies in favour of the plaintiff ?	Yes
3.	Whether plaintiff will suffer from irreparable loss, if application is rejected ?	Yes
4.	What Order	Application is allowed

¹ 1996 DGLS (Soft) 211

² 2010 (3) Mah L R 797

REASONS

Point No. 1:

17) On-going through the pleadings of parties it appears that, plaintiff has come with the case that, suit properties Gat No. 143 and 234 were belonged to the grandfather of the plaintiff and Suit property Gat No. 169 was belonged to the father of plaintiff. Defendant no.1 is adopted son of mother of plaintiff. After demise of grandfather, being legal heir names of plaintiff along with her mother and uncle i.e. biological father of the defendant no.1 were mutated in revenue record of suit properties Gat no. 143 and 234 vide mutation entry bearing no. 515. On perusal of say of defendants, prima facie it appears that, these contentions have not specifically denied by the defendants.

18) On perusal of extract of mutation entries bearing no. 308 and 309 prima facie it appears that, both these entries have taken on the same day i.e. on 13/01/1997. It appears from the entry no. 308 that, father of the plaintiff namely Prallhad Manik Chormole had purchased suit property Gat no. 169 from Laxman Kisan and Vishnu kisan Lad for consideration of Rs.6,000/-. On mutation entry no. 309 prima facie it appears that, after death of Prallhad Chormole, though plaintiff is the daughter, her name is suppressed and only names of mother of plaintiff and defendant no.1 are mutated in respect to Gat no. 169 as legal heirs of the father of plaintiff.

19) On perusal of copy of adoption deed prima facie it appears that, in the said deed it is mentioned that, on the occasion of 'Gudi Padwa'

1997 the defendant no.1 taken in adoption by the mother of the plaintiff. The said contents of adoption deed prima facie shows that, at the time of making mutation entries bearing no. 308 and 309 dated 13/01/1997, the defendant no.1 was not adopted son of mother of plaintiff and despite of that, his name is mutated as heir of deceased father of plaintiff in respect to the suit property Gat no. 169.

20) In respect to mutation entry bearing no. 309, the defendants have contended that, father of plaintiff namely Prallhad and father of defendant no.1 namely Asaram Chormole were brothers of each other. Suit property Gat no. 169 was jointly purchased by them for construction of house. Therefore, after demise of father of plaintiff, out of total 02 R land 01 R land given to the mother of plaintiff being legal heir and 01 R land given to the defendant no.1 being legal heir of his late father. However, the defendants have not filed document to substantiate these contentions and the said contentions have also not supported with mutation entry no. 309. Therefore, though the said contentions of defendants are part of merits of the case, but at this juncture prima facie it appears that, plaintiff is having right and share in the suit property Gat no. 169 of her father and despite of that, her name was suppressed while mutating names of her mother and defendant no.1 in mutation entry no. 309.

21) On perusal of copy of Decree passed in R.C.S. No. 339/2010 filed by plaintiff on record, prima facie it appears that, defendants nos. 2 to 4 had filed suit for partition in respect of suit property Gat no. 143 and 234. In the said suit plaintiffs i.e. present defendants no. 2 to 4 admitted that, these suit properties are ancestral properties. The said

contentions are supported with the contentions of plaintiff in the present suit. On perusal of say of defendants prima facie it appears that, defendants have not specifically denied that, suit properties Gat no. 143 and 234 are ancestral properties. Defendants have also not denied that, suit property Gat no. 169 was in the name of father of the plaintiff.

22) On the other hand, the defendants have come with case that, Manik Waman Chormole and mother of the plaintiff had purchased property S. No. 214 situated at Gulaj, Taluka Georai in the name of husband of plaintiff with her consent and at the time of said transaction, it was decided that, the plaintiff has relinquished her right of partition in view of purchase of land in the name of her husband. Therefore, now plaintiff is not entitled to seek partition of suit properties

23) It is pertinent to note that, contentions raised by defendants regarding to that, plaintiff has relinquished her right to seek partition, plaintiff has taken hand loan of Rs. 50,000/- from the defendant no.1, the suit is not in limitation and bad for non-joinder of necessary parties, these are parts of merits of the case and will be taken into consideration after evidence adduced by both parties. At this juncture prima facie there is no material available on record to substantiate the contents of defendants and to disbelieve the contents of plaintiff. Therefore, in view of this and considering the admitted fact that, suit properties Gat no. 143 and 234 are ancestral properties and Gat No. 169 was in the name of father of plaintiff, prima facie it appears that being daughter and legal heir her right is involved in the suit properties. Therefore, prima facie case is made out in favour of the plaintiff. Hence, I answer point no.1 in the affirmative.

Points No. 2 and 3:

24) In view of affirmative finding of point no.1, as plaintiff succeeds to establish prima facie case in her favour balance of convenience also lies in her favour. On perusal of 7/12 extracts and extracts of mutation entries of suit properties filed on record, it appears that, in view of compromise decree passed in RCS No. 339/2010 names of defendants no. 2 to 4 have mutated on 7/12 extract and revenue record of suit properties Gat no. 143 and 234 and name of defendant no.1 is mutated on 7/12 extract of Gat no. 169.

25) Defendants in their say specifically contended that, defendants are having right to sale suit properties for the legal necessity and no prejudice will cause to the plaintiff if defendants sold suit properties to third party. In support of this contentions defendants have placed their reliance of judgements of Hon'ble Apex Court and Hon'ble Bombay High Court in **Narayan Lal Vs. Shridhar Sutar (supra) and Ramnath Rambahu Gujar Dead through his Legal Heirs and Others Vs. Shamrao Petkar and Others³ (supra)** in both these cases, Hon'ble Apex Court and Hon'ble Bombay High Court observed that, "*In Joint Hindu family karta and other adult members of family in competent to dispose of undivided and unidentified share of the minors even without permission of Court.*" However, on perusal of facts of both these cases and present case in hand it appears that, nature of the suit, relief claimed and facts of the present case is different, therefore with due respect the said observations of Hon'ble Apex Court and Hon'ble High Court are not helpful to the defendants in the present case.

³ 2010 (3) Mah L R 797

26) It is significant to note that, in view of discussion of point no.1 plaintiff has succeeded to establish her prima facie right over suit properties. The plaintiff has also challenged the compromise decree of court passed in RCS 339/2010 with specific prayer made prayer in the suit for declaring the said decree is not binding on her share. In view of discussion of point no.1 as plaintiff has made out prima facie case in her favour and in the light of contentions of defendants, prima facie of it appears that, possibility that defendants may create third party interest in the suit properties on the basis of their name mutated on revenue record. Therefore, if the defendants succeeded in creating third party interest, then irreparable loss will cause to the plaintiff and this would lead multiplicity of litigation with complications in the suit.

27) considering the above facts and circumstances of the present case, in order to avoid multiplicity of litigation and complication in the suit, it would be necessary to restrain defendants from alienating suit properties and create third party interest till disposal of the suit. No prejudice will cause to the defendants if the application is allowed as the suit will decide on its own merits. Hence, I answer points No. 02 and 03 in the affirmative.

Point No. 4:

28) In view of affirmative findings of points no. 1 to 3, plaintiff is entitled for temporary injunction against Defendants in respect of suit properties. Hence, following order,

ORDER

1. Application is allowed.

2. Defendants, their agents, servants or any person acted on behalf of them are hereby restrained from creating third third party interest in the suit properties (i) Gat no. 143 ad-measuring 01 H 15 R out of total 04 H. 60 R land (ii) Gat No. 169 ad-measuring 00 H 02 R out of total 04 H 67 R land (iii) Gat No. 234 ad-measuring 00 H 36 R out of total 02 H 79 R land situated at Bagpimpalgaon, Taluka Georai, District Beed, more specifically described in para no. 2 of the present application by way of mortgage, sale, gift, security or alienate these suit properties in any manner to anybody till disposal of the suit.
3. Parties to bear their own cost.

Date : 17.04.2023

A. D. Kulkarni
4th Jt. Civil Judge Junior Division,
Georai

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original order.

sd./-

Date: 17/04/2023

(P.J.Kulkarni)

Junior Clerk, Georai.