

ORDER BELOW EXH.5;

1. The plaintiffs have filed present suit for partition and separate possession of the suit property alongwith present Temporary Injunction application for restraining to defendant No.1 from alienating the suit property till final decision of the suit. According to the plaintiffs, the defendant No.1 being an elder son of their family, his name has been mutated to revenue record and on that basis, he is about to transfer the suit land to third person. Hence, till adjudication of the suit, he may be restrained.

2. To decide this application, it would be just and proper to see few relevant facts of the case.

Land Gat No. 351, admeasuring 3 H. 62 R, situated at village Tigaon Tal. Wadwani is subject matter of the suit. According to the plaintiff, the defendant No.1 and plaintiffs are real brother interse and the suit property is their undivided joint family property and they have been cultivating the suit land jointly. The defendant No.1 Shankar is elder brother of the plaintiffs and defendant No.2 Rangubai is their sister. Gangaram Yoga Dongre was father of parties of the suit. Gangaram purchased the suit property by registered sale deed No. 718/1970 for Rs. 300/- from Kashinath Yonka Hoke. It is contended that the sale deed was registered in the name of defendant No.1 as an elder son of family. At the time of sale deed, defendant No.1 was 20 years old and all plaintiffs were minor. As such, the suit property has

been purchased by their father and due to death of Gangaram, plaintiffs and defendants became owner of the land with extent to 1/5 share each. According to the plaintiffs; they migrated in Mumbai for their livelihood and the defendant No.1 used to help to their father in cultivating the suit property. Moreover, the defendant No.1 is cultivating the suit property on behalf of all. As such, the suit property is their undivided joint family property. But now the defendant No.1 is denying right and interest as well as share of the plaintiffs in respect of suit property. The plaintiffs requested to the defendant No.1 for their share but he refused request of the plaintiffs. Hence, plaintiffs constrained to file present suit. Moreover, he is about to transfer the suit property. Hence, present application is filed for Temporary Injunction. According to the plaintiffs, they have prima-facie case and balance of convenience is also in their favour. In such situation, if plaintiffs succeed to alienate the land, then nothing would be come in hand of the plaintiffs even having decree of partition. Hence, the defendant No.1 be restrained from alienating the suit property.

3. Defendant No.1 strongly opposed the suit and the T.I. application also. His say is at Exh.23. According to him, the suit property is his self acquired property and nobody is concerned with the same. He submitted that being elder member of family, he got married at his age of 18 to 19 years. But due to family dispute, he used to reside separately with his wife. He earns by doing hard labour work. As such, he has been

living separately since 1965 and there is nothing any kind of joint family and joint family property also. He further submitted that the suit land was owned by Kashinath Hoke but it was being cultivated by their father. Therefore, name of their father was mutated to revenue record in column of cultivation. In the year 1970, the defendant No.1 purchased the suit property from Kashinath for consideration of amount of Rs. 300/- and since then, the defendant No.1 has been cultivating the suit property as an absolute owner. As such, the plaintiffs are not concerned with the suit property. It is contended by the defendant that during consolidation period, name of his father was mutated to revenue record as a vendor of the suit property but the said entry came to be corrected by concerned revenue department. He further submitted that after enquiry, his name is recorded to revenue record as an owner and possessor of the suit property. As such, the defendant No.1 purchased the suit property and it is his self acquired property. Therefore, the suit and present application may be rejected.

4. Heard both sides and perused all record of the case. In order to decide this application, following points arise for my determination and I have recorded my findings thereon for the reasons mentioned below;

POINTS;

FINDINGS;

1. Whether there is prima facie case in favour of the plaintiffs? In affirmative.

2. Whether balance of convenience goes in favour of plaintiffs? In affirmative.
3. Whether plaintiffs would suffer irreparable loss if the present application is not allowed? In affirmative.

R E A S O N S

5. Heard arguments of both sides at length and I have given anxious consideration to the submission of both sides. In order to show prima-facie case in favour of the plaintiffs, they relied on 7/12 extract of the suit property of the year 1950 to 1983 Exh.10. Khasara Patrak Exh.35, 7/12 extract of suit property Exh.41.

On the other hand, the defendant No.1 relied on the 7/12 extract of the suit property as well as the copy of mutation entry Exh.9. Moreover, he relied on certified copy of sale deed.

6. To decide this application, it is to be seen that whether there is some element to show prima-facie that the suit property is joint family property of the plaintiffs and defendants. It is not disputed that the sale deed of the year 1970 in respect of the suit property is in name of defendant No.1. Moreover, it is also not in dispute that the defendant No.1 personally cultivates the suit property. Therefore, if present factual situation as well as present revenue record of the suit property is taken into consideration, then it can be said that the defendant No.1 is absolute owner of

the suit land. But it is to be noted that prior to come at such conclusion, original source of the suit property should be noted.

7. According to the plaintiffs, their father namely Gangaram Yoga Dongre had purchased the suit property. But it is registered in the name of the defendant No.1 as he was elder as well as major son of family. Moreover, at the time of sale deed, defendant No.1 had nothing any kind of source of income.

8. In this context, Ld. advocate for the plaintiffs attracted my attention towards Khasara Pahani Patrak Exh.35 and 7/12 extract of the suit property of the year 1958 and upward Exh.10.

9. I have perused the above said documents Exh.10 and Exh.35. So far as Khasara Pahani Patrak Exh.35 is concerned, it is of the year 1958-59. In that document, name of father of plaintiffs and defendants is mentioned in column No. 11 and it is specially mentioned in column No.12 as Kashinath sold the property by way of oral sale. Moreover, the 7/12 extract at Exh.10 of the year 1958-59 shows that original owner Kashinath sold his land to Gangaram Yoga by oral sale deed. As such, name of father of the plaintiffs and defendants is seen to the 7/12 extract of the suit property since 1958.

10. Moreover, it is to be noted that the revenue record shows that father of plaintiff and defendants had been cultivating the suit property since 1958 and he

himself purchased the land from Kashinath.

11. Ld. advocate of the defendants attracted attention of Court at mutation entry No.30 Exh.9 and submitted that the name of Gangaram Yoga was mutated at the time of implementation of Consolidation Scheme and the said mistake is rectified by Revenue Department by allowing mutation of the defendant No.1. Hence, the application may be rejected.

12. Heard argument of the defendants and perused all record. In fact, I do not find any substance in submission of the defendants. Because Scheme of Consolidation had come at about 1975-76. But Khasara Pahani Patrak Exh.35 as well as 7/12 extract Exh.10 show name of father of plaintiff as a purchaser as well as cultivator of the suit property since 1958-59. Therefore, the said documents show that the plaintiffs have prima-facie case as pleaded by them. Hence, on the basis of Khasara Pahani Patrak and 7/12 extract of the suit property, I have come at opinion that the plaintiffs have prima-facie case. Hence, I answer on point No.1 in affirmative.

13. So far as balance of convenience is concerned, it is also in favour of the plaintiffs. Moreover, the plaintiffs want to restrain the defendants from alienating the suit property. However, they are not seeking any relief in respect of possession. In such situation, if defendant No.1 restrained from alienating the suit property till final decision of the suit,

nothing any kind of irreparable loss would be caused to defendants. But in case of rejection of this application, there are chances of irreparable loss to the plaintiffs because purpose of the suit would be frustrated. Hence, I have no any hesitation to answer on point No.2 and 3 in favour of the plaintiffs. Consequently, I pass following order;

O R D E R

The defendant No.1 is hereby temporarily restrained from alienating the suit property till final decision of the suit.

sd

Wadwani.
Dt:12.01.2015.

[Ishwar K. Suryawanshi]
Civil Judge, J.D. Wadwani.