

MHBU130002312025



R.C.S. No.12/2025
Vijay Kisan Mahale
Vs.
Smt. Radhabai Utttam Mahale

Order below Exh. No. 5

Heard Ld. Advocate Shri P.D.Kavimandan for the plaintiffs.
Read the plaint, application for temporary injunction and affidavit in support. Perused the documents.

02. Ld. Advocate for the plaintiffs has argued that the defendant nos 1 to 5 are legal heirs of Uttam Amarsing Mahale. The suit property i.e. Grampanchyat property no.136 is in the name of Namdeo Balaji Mahale, Kisan Ekoba Mahale and Uttam Amarsing Mahale and others. The plaintiffs and defendant nos. 1 to 5 are the owners and in possession of the same. The parties have filed R.C.S. No.43/2004. On 31.08.2009 the suit was decreed. In the said judgment it was specifically held that the plaintiffs, defendants and legal heirs of Uttam Amarsing Mahale are directed accordingly and the suit property was held to be Hindu joint family property. The partition has not taken place as per judgment in R.C.S. No.43/2004. The plaintiffs are in possession of the suit property. On 10.12.2001 the defendants tried to sell the valuable soil of fortress. The defendants no.5 and 6 were implead as party to R.C.S. No. 43/2004. The defendant no.1 executed sale deeds of part suit property in favour of defendants no. 6 and 7. The sale deeds are declared to be null and void. Therefore, the defendants no. 6 and 7 have not right in the suit property. The defendant no. 8 and 9 have failed to take action against defendant no.6 and 7. Therefore plaintiffs have filed present suit for partition and separate possession. Learned advocate for plaintiffs have argued that ex-parte injunction be issued against the defendants

restraining them from entering on the suit property, failing the soil from fortress, depositing the property and defendant nos. 6 to 9 be restrained from taking any action in respect of suit property without the order of the Court.

03. It is notable that the present suit for partition separate possession, perpetual injunction. The plaintiffs and defendant no.1 are claimed to be legal heirs of Namdeo Balaji, Kisan Ekoba. It is notable that apparently it is seen that by way of judgment and decree in R.C.S. No.43/2004 passed by 3rd jt. Civil Judge, Jr.Dn.Khamgaon, the suit property is ordered to be partitioned. The plaintiffs have again claim partition. It is also significant to note that at this juncture, the plaintiffs have not placed cogent material on record to show that defendants no. 6 and 7 are trying to remove the sand to affect the rights of the plaintiffs. Further, the defendant no.9 is B.D.O, Panchayat Samit Chikhli, a government servant. In such circumstances, of the case it would be just and appropriate to hear the defendants. No exceptional cause for grant of ex-parte injunction is shown by the plaintiffs. The plaintiffs have also failed to show that the purpose of granting injunction would be defeated by delay. Thus in view of above discussion following order is passed.

ORDER

- 1) Issue notice to defendants to show cause as to why injunction as prayed should not be granted against them.
- 2) P.B. and E.P. is allowed as per choice of plaintiffs.

sd/-

Place: Chikhli
Date:01.02.2025

(P.R. Kulkarni)
Jt. Civil Judge Jr. Dn.
Chikhli