



ORDER BELOW EXH. 5

The present application has been filed by the plaintiff for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 (Hereinafter referred in short 'CPC').

02) In short it is the case of the plaintiff that, the land bearing block No. 65 ad-measuring 1 H 20 R bounded as

Towards East : Land of Sharad Kisan Pawar.

Towards West : Land which on the name of defendant No. 2 in the revenue record and in the possession of the plaintiff.

Towards South : Land of Baburao Rangnath Jadhav.

Towards North : Land of Sharad Kisan Pawar.

is the subject matter of the suit (hereinafter referred as the '**suit property**').

03) The plaintiff submits that the plaintiff and defendants are brothers. The suit property was the ancestral joint family property. In block No. 65 partition had been taken place between them. As such, suit property came to be allotted to the share of defendant No. 1 and in the same block 1.17 R land came in the name of the plaintiff and 1.20 R land in the name of defendant No. 2. The name of the plaintiff and the defendants were recorded in revenue record on 12-12-1998 by way of mutation entry No. 197. In the year of 1999-2000 defendant No. 1 settled at Jalna Dist. Jalna, at that time he sold

the suit property to the plaintiff on the amount of consideration of rupees 40,000/- in presence of panchas by way of written agreement and the plaintiff was put in the possession of the suit property.

04) The plaintiff further submits that the plaintiff had given said written agreement to the concern Talathi for recording his name on the revenue record. However, name of the plaintiff has not recorded in revenue record. The suit property is still in the name of defendant No. 1. Defendant No. 2 also settled at Ramnagar Tq. & Dist. Jalna since last 15 years. He has sold the 1.20 R land to the plaintiff in block No. 65. It's registered sale-deed is still pending. The plaintiff has taken immediately action to execute the sale-deed of the said land.

05) The plaintiff further submits that suit property is still in the name of defendant No.1. The rate of the suit property has increased. Therefore, defendant No.1 has changed his mind. On 18-11-2023 the plaintiff came to know that behind his back, defendant No.1 intend to sale the suit property to the third person. Therefore, he has meet to defendant No.1 and told him that he can not sale the suit property to third person and has showed his willingness to purchase the suit property as per prevailing market valuation.

06) The plaintiff further submits that he has right of preemption to purchase the suit land. Therefore, he is ready to give the consideration of as per prevailing market valuation and ready to purchase the suit property. However, defendant No. 1 has not paid

any heed to him. He further submitted that defendant No. 1 taking undue advantage of his name appearing on the revenue record and is trying to sale the suit property to third person. Therefore, the plaintiff is constrained to file the present suit for right of preemption, declaration of his possession over the suit property and for perpetual injunction to thereby restraining the defendants from obstructing of his possession over the suit property. By way of this application plaintiff has prayed for granting temporary injunction.

07) The defendant No. 1 has marked his presence in the matter on 29-02-2024. However, he has failed to file his written-statement on record. Therefore, on 04-07-2024 my learned predecessor has passed no written-statement order against him. Hence, suit be proceeded without his written-statement.

08) On 17-02-2025 suit summons duly served to defendant No. 2. However, he failed to appear in the suit. Therefore, on 28-02-2025 ex-parte order has been passed against him. Hence, suit be proceeded against him ex-parte.

09) Perused the application supported with affidavit and documents filed on record by the plaintiff. Heard the learned Adv. Shri. R.K. Wayal for the plaintiff. I have no occasion to heard learned advocate for defendant No.1 on repeatedly called out.

10) I have given anxious consideration to the submissions advanced by the learned advocate for the plaintiff. The following points arise for determination. I recorded my findings and reasons

against them as follows :-

<u>Sr .No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiff has made out prima-facie case ?	No.
2)	Whether balance of convenience lies in favour of the plaintiff?	No.
3)	Whether the plaintiff will suffer irreparable loss if the injunction as prayed is not granted ?	No.
4)	What order ?	..Application is rejected.

REASONS

11) The plaintiff in support of the application has relied upon the following documents.

- I) Copy of affidavit of Kashinath Sakharam Kasar.
- II) Copy of affidavit of Baburao Rangnath Jadhav.
- III) Copy of affidavit of Sharad Kisan Pawar.
- IV) Copy of affidavit of Uttam Sakharam Gandhile.
- V) Copy of 7/12 extract of block No. 65.
- VI) Copy of mutation entry No. 197 dated 12-12-1998.
- VII) Copy of objection letter date 21-11-2023 given to Tahsildar, Deulgaon Raja.

AS TO POINT NOS. 1 to 4 :-

- 12) Relief of injunction is discretionary and equitable relief.

As per the provisions of Order 39 Rule 1 and 2 of the Code of Civil Procedure for granting interim relief of injunction, there must be existence of a prima-facie case as pleaded, necessitating protection of the plaintiff right by issue of a temporary injunction. When the need of protection of the plaintiff rights is compare with or weighed against the need for protection of the defendant's right, the balance of convenience tilting in favour of the plaintiff and there must be clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. It is also pertinent to note that in addition to the above requirements the discretion for granting equitable relief of injunction requires to be exercised only when the plaintiff's conduct is free from blame and he approached the Court with clean hands.

13) Learned advocate Shri. R.K. Wayal submitted that, the suit property was allotted to the share of defendant No.1 in the partition. The plaintiff had purchased the suit property from defendant No.1 prior to 24 years on the consideration amount of rupees 40,000/- in the presence of panchas. Since, he is in possession of the suit property. He further submitted that the plaintiff being brother of defendant No.1 has pre-emptive right to purchase the suit land and he is ready to give the consideration at the prevailing market valuation to defendant No.1. In support of his submission he invited my attention toward the affidavits of adjoining land owners to support his case. He further submitted that the documents filed on record are supporting the case of the plaintiff. Adjacent land owners specifically mentioned in their affidavits that the suit property was purchased by the plaintiff from defendant No.1 for consideration

amount of rupees 40,000/- in presence of panchas and since then he is in the possession of the suit property.

14) Admittedly, the suit property was the joint family property. The partition had taken place between the plaintiff and defendants. The suit property was allotted to the share of defendant No.1. In the present case the plaintiff has claimed that he has purchased the suit property from defendant No.1 and he is continuous and physical possession over the suit property since 24 years. However, no any written document has filed on record by the plaintiff to substantiate his case that the plaintiff has purchased the suit property from defendant No.1. Moreover, 7/12 extract filed on record by the plaintiff prima-facie shows the name of defendant No.1 owner and possessor of the suit land. The revenue documents has presumptive value unless contrary proved. Therefore, the 7/12 extract of the suit property prima-facie shows possession of defendant No. 1 over the suit property. Revenue record does not show the possession of the plaintiff over the property at any point of time.

15) The affidavit of adjacent land owners stated on oath that the plaintiff is in the possession of the suit property. It is necessary to mention here that possession can not merely be established only by the affidavits of adjoining land owners. It should be supported by the concerned revenue record. In the present case, there is no revenue record supporting the case of the plaintiff. Therefore, In this circumstances it can not be said that prima-facie the plaintiff is in possession of the suit property.

16) The plaintiff has claimed the temporary injunction to restrain defendant No.1 for transferring or creating third party interest in the suit property to third person on the ground that he has right of preemption to purchased the suit property as per the provisions of Hindu Succession Act. The learned advocate for the plaintiff submitted that the plaintiff is the real brother of defendant No.1 and he had already purchased the suit property from defendant No.1. However, sale-deed was not executed. Now, the plaintiff is ready to purchase the suit property as per prevailing market valuation.

17) So far as, right of preemption is concerned. It is a very weak right. Section 22 of the Hindu Succession Act provides the right of preemption. Such right can not be claimed where property has already been partitioned.

18) In present case it is contention of the plaintiff that suit property already partition and defendant No.1 has allotted the share of the suit property in the partition. The right of preemption being an exceedingly feeble right. Therefore, there is no force in the submission advanced by the learned advocate for the plaintiff regarding right of preemption of the plaintiff to purchased the suit property from defendant No.1.

19) In this circumstances I am of the considered view that if temporary injunction is granted it would cause great hardship to the right of the defendants. The plaintiff has failed to made out prima-

facie case. Balance of convenience has not lies in his favour. If the temporary injunction is refused the plaintiff will not suffer any loss. Having considered the facts and circumstance of the case and the materials on record. The plaintiff is not entitled for temporary injunction as sought. Therefore, I answered points No. 1 to 3 in the negative and answer to point No. 4 accordingly I pass the following order.

ORDER

- 1) The application (Exh.5) is rejected.
- 2) Costs in main cause.

Place :- Deulgaon Raja.

Date :- 10/03/2025.

Sd/-
(Hasim M. Baig)
Joint Civil Judge, (J.D.),
Deulgaon Raja.