



CNR No. MHDH040007222022

**Order Below Exh.5 in R.C.S. No.04/2022**

This is an application filed by the plaintiff herein praying for grant of temporary injunction against the defendants.

02. Heard learned advocate Smt. A. A. Dhande for the plaintiff and learned advocate Shri. D. M. Thakur for the defendants. Perused the application and say filed in reply. Perused record of the case.

03. The landed property bearing survey no. 690 admeasuring 05 H - 41 R situated at village Bamhane, Tal. Shindkheda Dist. Dhule (hereinafter referred to as the 'suit land') and a house property bearing house no.721 situated village Boradi Tal. Shirpur, Dist. Dhule (hereinafter referred to as the 'suit house') are together hereinafter referred to as the 'suit properties'.

04. Stated in brief, the case of plaintiff is that the defendants are her real brothers. The father of parties namely Tryambak Sakharam Shimpi had received a property from his issue-less uncle out of natural love and affection for him. The said property was sold and from its proceeds the suit properties were purchased. The suit house initially stood in the name of mother of the parties namely Shakuntala. After her death, the suit house came to be mutated in the name of her husband Tryambak. Thus, the suit

properties are joint family properties of the parties. It is averred by the plaintiff that the suit properties are not yet partitioned amongst the parties by metes and bounds. As a co-sharer, she has an interest in the suit properties at par with the defendants. However, the defendants in collusion with one another, intend to grab the suit properties for themselves and to deprive her from the same. The defendants have provided false information to the village panchayat Boradi about they being the only heirs in respect of the suit house. Also, the defendant no.1 has been receiving monthly rent in the amount of Rs. 3,000/- from the suit house. Similarly, they have left a portion of 1 to 1 ½ acres of barren land in her name and are cultivating rest of the suit land by themselves. When confronted about the same, the defendants abused her in filthy language. They further denied her any share in the suit properties on the count of her getting married to a person of another community and thereby dishonouring their family. It is alleged by the plaintiff that as the defendants intended to deprive her of her lawful share in the suit properties, she issued a notice to them asking for her one-fifth share by way of partition. However, the defendants answered the said notice by a false reply stating that their father had partitioned the suit properties by executing a will. It is averred by the plaintiff that she had cordial relations with her parents. In fact, her father had told her about having secured her share in the suit properties. He had never executed any will as claimed by the defendants bequeathing rights exclusively on them and keeping her out of the same. It is further alleged by the plaintiff that even after issuance of notice the defendants abused her in filthy language and denied her share in the suit property. The defendants intend to grab the suit properties by forging documents. Hence, she was constrained to institute the present suit.

05. It is submitted by the plaintiff that she has a prima facie case

in her favour. The balance of convenience is in her favour. She would suffer an irreparable loss if the relief of temporary injunction, as prayed, is not granted in her favour. Hence, the plaintiff prays that by an order of temporary injunction the defendants may be restrained from creating any third-party interest in the suit properties until they are partitioned. It is also prayed that an order made may be passed directing an equal distribution of the rent received by the defendant no.1 till today from the suit house and to give the plaintiff her share in the same.

06. The defendants have filed their written statement and say to the present application at exhibit no.26. They have admitted the relationship between the parties. However, they have contended the present application with their own version of the case.

07. The case of defendants, in short, is that the suit land was purchased by their father Tryambak. Similarly, the suit house was purchased by Tryambak in the name of his wife and after her death it was mutated in his name. Thus, the suit properties were self-acquired properties of their father Tryambak. On 27/12/2016, Tryambak duly executed a will and bequeathed suit properties on them. He specifically allotted 4 ½ acres of land to the defendant no.1 and 3 ½ acres of land to each of the defendants no.2 to 4. He further bequeathed an equal share upon each of the defendants in the suit house and specifically excluded the his plaintiff from it. Thus, the plaintiff has no right to bring a suit for partition. The instant suit has been instituted to harass them and is liable to be dismissed with compensatory costs.

08. It is contended by the defendants that the plaintiff has no prima facie case. In case temporary injunction is not granted as prayed, she

would suffer no irreparable loss. The balance of convenience is in their favour. Hence, it is prayed that the application may be rejected.

09. The points for determination, along-with my findings thereon and reasons for the same, are as follows :-

Sr.No.	Points	Findings
i)	Whether the plaintiff has a <i>prima facie</i> case in her favour?	Yes.
ii)	Whether the plaintiff would suffer an irreparable injury if the relief of temporary injunction is not granted?	Partly Yes.
iii)	Whether the balance of convenience is in favour of the plaintiff?	Partly Yes.
iv)	What order?	The application is partly allowed.

### REASONS

#### As to the point no.(i) :-

10. The plaintiff claims the suit properties to be joint family properties. She further claims herself to be a co-sharer in the suit properties at par with the defendants. The defendants, on the other hand, claim that the father of parties Tryambak executed a will on 27.12.2016 and bequeathed the suit properties on them to the exclusion of plaintiff. A perusal of M.E.

no.6231 extract (Exh.3/4) would reveal that after the death of Tryambak the names of parties to the present suit are mutated in the record of rights as his heirs in respect of the suit land. Also, a perusal of V.F. no.7/12 extract (Exh.3/1) would reveal that vide M.E. no.6231 the names of parties to the suit are mutated in record of rights and that the suit land is held by them jointly as occupants of class-I. Further, on perusal of assessment list extract in form no. 8 (Exh.3/26) it could be seen that initially the name of Shakuntala and thereafter the name of Tryambak has been entered therein as the owners and occupants of the suit house. Similarly, perusal of assessment list extract in form-8 (Exh.3/27) for the years 2020-2021 to 2023-2024 would show the name of Tryambak has been entered therein as owner and occupant. The aforesaid material on record supports the claim of plaintiff. The defendants have claimed that Tryambak executed a will on 27.12.2016 and by virtue of it he bequeathed the suit properties on them to the exclusion of plaintiff. A perusal of replies to notices (Exh.3/18, 3/19 and 3/20) would show that the defendants have adopted such a stance. However, it is pertinent to note that the defendants have not produced on record the will dated 27.12.2016 allegedly executed by Tryambak in their favour to support their claim. Under such circumstances, it appears from the aforesaid material that the suit properties are joint family properties of the plaintiff and the defendants. It therefore, appears that the plaintiff has some undivided interest in the suit properties along with the defendants.

11. The plaintiff has alleged that the defendants have denied her share in the suit properties on the count of her getting married to a person of another community and for the reason that Tryambak bequeathed the suit properties on them to her exclusion. It is already observed above that the defendants appear to have adopted such a stance. Further, a perusal of application (Exh.3/9) made by the defendant no.1 to the village panchayat,

Boradi would show that he had prayed for causing his name to be entered in respect of the suit house after the death of his father. It could also be seen that in the inquiry report issued by Talathi, village Bamhne, Tal. Shindkheda, accompanying the aforesaid application, the name of plaintiff was mentioned to be one of the heirs to Tryambak Sakharam Shimpi. However, in the affidavit accompanying the aforesaid application the defendants could be seen to have deposed about they being the only heirs to deceased Traymbak in respect of the suit house. Thereafter, The defendants no.2 and 4 seem to have made application to the village panchayat, Boradi (Exh.3/11) stating that the defendant no.1 had earlier obtained their signature by deceiving them for the purpose of mutating his name in respect of the suit house and to sell the same. Therefore, in this backdrop, the apprehension of plaintiff regarding the defendants appropriating the suit properties for themselves to her exclusion and thereby depriving her of said properties appears to be reasonable. The possibility of defendants alienating the suit properties and creating third party interest in them can not be ruled out.

12. It is already observed above that the plaintiff has some undivided interest in the suit properties. The shares of the parties to suit in the suit properties are yet to be finally ascertained. In case, during the pendency of this suit, the defendants alienate the suit properties and create third party interest in them it might be violative of the rights of plaintiff. Therefore, I find that the plaintiff has a *prima facie* case to go for trial. Hence, the point no. (i) is answered in affirmative.

**As to the points no. (ii) and (iii) :-**

13. In the present case, the plaintiff prays in first instance that by

an order of temporary injunction the defendants may be restrained from creating any third-party interest in the suit properties until they are partitioned. If, during the pendency of this suit, the defendants alienate the suit properties and create third party interest in them, the loss suffered by plaintiff due to her being deprived of the user of the suit properties would not be obviously ascertainable in monetary terms. Therefore, she might suffer an irreparable loss. On the other hand, the defendants do not seem to suffer any such loss if they are restrained from alienating and creating third party interest in the suit properties during the pendency of this suit. Thus, the balance of convenience is in favour of the plaintiff. Importantly, alienation and creation of third party interest in the suit property during the pendency of this suit might also lead to multiplicity of proceedings and create further complications. Under such circumstances, it would be appropriate to restrain the defendants from creating any third party interest in the suit properties in any manner, at least during the pendency of this suit.

14. The plaintiff in second place has prayed that an order made may be passed directing an equal distribution of the rent received by the defendant no.1 till today from the suit house and to give the plaintiff her share in the same. Exactly, same prayer has been made by the plaintiff in the suit. Granting such a relief at this juncture would amount to virtually decreeing the final relief at the interim stage itself. Considering the nature of such relief it would be appropriate to grant or otherwise deal with it only upon a trial of the suit on its merit. The plaintiff does not seem to suffer any irreparable loss as such if this particular relief is not granted at the interim stage of suit. The balance of convenience with regard to this particular prayer could not be held to be in favour of the plaintiff. Therefore, at this stage of proceedings it would not be appropriate to grant

the aforesaid relief as prayed and the same deserves to be rejected.

15. Thus, in view of aforesaid discussion the points no. (ii) and (iii) are answered partly in affirmative.

**As to the point no. (iv) :-**

16. The points no. (i) is answered in the affirmative. The points no. (ii) and (iii) are answered partly in affirmative. Therefore, consequently, in answer to point no. (iv), the following order is passed :-

**:- ORDER :-**

1. The application is partly allowed.
2. The defendants are hereby restrained from alienating the suit properties in any other manner or from creating any third party interest in them, until the final decision of this suit or until any other further appropriate order is passed in future.

Place : Dondaicha  
Date : 08/04/2024

(Aditya G. Naik)  
Civil Judge Junior Division,  
Dondaicha

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