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MHJN020011672023 	<b>R.C.S No.394 of 2023</b> <b>Rajendra Vs. Laxmibai &amp; ors.</b>
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**ORDER PASSED BELOW EXH. 12**

This is an application under order 39 Rule 1 & 2 of Civil Procedure Code restraining the defendant No.6 from alienating suit house.

**2. Contention of the plaintiff in nutshell are -**

House property bearing No. CTS No. 350/A/20 & CTS No. 350/A/21 , ad-measuring 15.11 sq.mt. and 44.64 sq.mt. respectively, total ad-measuring 59.47 sq.mt. is situated at Gopikisan Nagar, Jalna. The four boundaries are described in the plaint and in present application. (hereinafter the above described property is referred as “suit house” for the sake of brevity).

3. The suit house was purchased by the father of plaintiff in the year 1998 vide registered sale-deed No. 1368/1998 and accordingly name of his father came to be mutated in the city survey record and municipal record. Defendant No. 1 is the mother and defendants No. 2 to 5 are his brother and sisters of the plaintiff. Father of plaintiff expired in the year 2007. The defendant No. 1 being widow and elder person of the family her name came to be mutated in the city survey record and municipal record, though the plaintiff and defendants are co-owner and co-sharer of the suit house. The plaintiff is having 1/6<sup>th</sup> share in the suit house. The plaintiff and defendants No. 1 & 2

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are residing in the suit house. Recently when the plaintiff obtained the copy of PR card, he came to know that defendant No. 1 has sold the suit house with consent of defendants No. 2 to 5 to defendant No. 6 during pendency of the suit vide registered sale-deed No. 999/2024, dt. 29/02/2024 for consideration of Rs.15,00,000/- only to defeat the claim of plaintiff in suit house inspite of paper publication and objections filed in the office of T.I.L.R. Jalna. The subsequent purchaser Rohit i.e. defendant No. 6 threatened the plaintiff to alienate the suit house within short time and therefore he was arraigned as defendant by way of amendment and accordingly the present application has been filed against him. If the property is sold, the plaintiff will be put to loss and will be deprived from his share in the suit house. Hence, this application.

4. The defendant No. 6 appeared and filed his written statement and say to this application vide Exh. 26 and denied the allegation made against him. He admits that Late Pralhadrao was the owner and the plaintiff and defendants are the members of joint family. The house property has been partitioned orally amongst plaintiff and defendants. This plaintiff has already been allotted with share in the joint family property. This plaintiff has suppressed material facts and misled the court. On the other hand during the lifetime of Late Pralhadrao and pursuant to a family arrangement this plaintiff purchased a row house adjacent to the suit house in the year 2005 by registered sale-deed for consideration of Rs.2,51,000/-. It is purchased from the estate of sister property to plaintiff's father property and was acquired from proceeds of the business assets of Late Pralhadrao. This facts shows that the partition has already been effected. After death of Pralhadrao, name of Laxmibai was mutated to which this

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plaintiff has not objected. Thereafter defendants No. 1 to 5 decided to sale suit house to this defendant for which sale-deed has been executed in his favour. Accordingly his name has been mutated in the PR card. This defendant executed paper publication before executing sale-deed to which no objection were received. Thus this defendant being the bonafide purchaser no cause has arosed against him to file the present application. Thus prayed to reject the same.

5. On the rival pleading following points arise for my determination, to which I have recorded my findings with reasons there on as follows-

<b>Sr.No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether plaintiff is having prima facie case?	Yes.
2.	Whether balance of convenience lies in favour of plaintiff ?	Yes.
3.	Whether the injunction is not granted plaintiff will cause irreparable loss ?	Yes.
4.	What order	As per final order

### **REASONS**

6. **Points no.1 to 4:-** All the points are related with each other therefore for convenience they are taken together for discussion.

Heard Ld. Advocate for the plaintiff Shir P.W. Kulkarni and Ld. Advocate Shri Tawarawala for defendant No.6. Gone through the documents filed on record by both sides.

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7. It is not disputed that the plaintiff and defendants No. 1 to 5 are relative inter-say. It is also not disputed that Late Pralhadrao was the owner of suit house. It is also necessary to note that the property was not alienated by any means by Late Pralhadrao during his lifetime. Therefore though it was self acquired property and it was not disposed of during his lifetime, the plaintiff and defendants get the right to share in the suit house. It is also necessary to note that name of defendant No.1 i.e. mother of plaintiff Laxmibai was mutated in the year 2007 by mutation entry No. 48683, dt. 06/02/2024. It may be possible that the defendant No. 1 being mother of plaintiff and other defendants have not objected the same being her children. It cannot be gathered from the said fact that it was due to oral partition only. If it was the case, why the consent of defendants No. 2 to 5 is obtained on the disputed sale-deed and not of the plaintiff when oral partition has been taken place. If at all the property was transferred in the name of Laxmibai, what was the need of obtaining consent of defendants No. 2 to 5 on the alleged disputed sale-deed. These defendants are yet to be appear and therefore this fact can only be unfold during the trial.

8. Prima facie it supports the contention of the plaintiff that behind his back, the property has been allotted during pendency of the suit. It is also necessary to state that though the property adjacent to the suit house has been purchased by the plaintiff, the date is material. The alleged sale-deed in the name of plaintiff is of dt.22/03/2003 i.e. much prior to the death of Late Pralhadrao. If at all it was a family arrangement and the sale proceeds have been obtained from the business assets of Pralhadrao, same needs to be proved during the trial only and not at this stage. But at this prima facie stage it is not proved

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that the property of the plaintiff of which sale-deed is produced on record, is purchased out of joint family income. Thus I am not convinced at this stage to rely on the alleged defence of the defendant No.6.

9. Considering the above discussed facts, prima facie the plaintiff has proved that he has the share in the suit house. If the property is again alienated it may cause complication and multiplicity of the litigation. The property is already alienated to defendant No. 6 by the other defendants during pendency of this suit and further alienation cannot be denied. No doubt that this defendant No. 6 issued paper publication before executing the sale-deed, but the copy of same is not filed on record. Only typed copy of proclamation of publication is annexed along with the sale-deed. Also if the description mentioned in the alleged proclamation is seen it does not match with the description of the suit house described in the claim clause of the plaint and in the present application.

10. Moresoever this plaintiff had issued notice to public at large by paper publication about the dispute in respect of suit house on 09/08/2025 and 27/06/2023. It was specifically informed not to enter into contract in respect of the suit house, despite that transaction took place. It proves prima facie the apprehension of this plaintiff of further alienation of the suit house. Hence the plaintiff proved his prima facie case, for which balance of convenience lies in his favour. If the temporary injunction as sought is not granted may cause irreparable loss to him. Per contra, at present ownership of suit house lies with defendant No. 6. His name is on PR Card of suit house. He can enjoy the fruits of the property except its alienation in any

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manner. It is also pertinent to mention that plaintiff except his barewords has not proved his possession and residence over suit house. Also the suit summons report clearly shows that all the defendants No. 1 to 5 do not reside on given address i.e suit house. It prima facie shows possession of this defendant No. 6. Therefore, no prejudice will be caused to him. As such I answer points No. 1 to 3 in the affirmative and pass following order in answer to point No.4.

**ORDER**

1. Application at Exh. 12 is hereby allowed.
2. The defendant No. 6 is hereby restrain temporarily from alienating suit house described in the claim clause and plaint in any manner to anybody ill the decision of the suit
3. Costs in cause.

Jalna.  
Date:- 01.11.2025.

(**Aditi R. Nagori**)  
Jt. Civil Judge, Senior Division,  
Jalna

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : S.S. Khandare  
Court Name : Jt. Civil Judge (S.D.), Jalna.  
Date : 05.11.2025  
Sd/-  
Steno