


MHJN040001842023 	R.C.S. No.36 of 2023 Anita & Ors. Vs Haridas & Ors.
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**ORDER BELOW EXH. 5 IN R.C.S. NO. 36 of 2023**

(Passed on 19<sup>th</sup> September 2024)

1. Plaintiffs have preferred this application under Order XXXIX Rule 1 & 2 for grant of temporary injunction to restrain the defendants from disposing/alienating or creating third party interest, etc. in the suit property as well as to restrain the defendants from causing obstruction to the possession of plaintiffs.
2. The suit is filed for partition and possession in respect of four properties more particularly described in claim clause/prayer clause of the plaint.
3. Plaintiff No.1 is daughter-in-law of defendant No.1 & 2. Plaintiff Nos.2 to 5 are grand-daughters of defendant No.1 & 2. Defendant No.1 & 2 were having three sons out of which Radhakisan died in the year 2020. According to plaintiff, suit properties are joint Hindu Family properties which are not partitioned yet. However, originally it was owned by Gangaram Abaji Korde who was father of defendant No.1. Gangaram Korde had distributed his property situated at Kordewadi, District Beed being Survey No. 249/1-A, admeasuring 8 H. 31 R, amongst the heirs and 2 H. 31 R land was given to the defendant No.1 and remaining 6 Hectare land was registered in the name of minor grand-sons namely Radhakisan (Plaintiff's husband), defendant No.3 & 4 respectively. Similarly, Survey No.237/1 was also

registered in the name of Gangaram Korde. However, her family was in search of better property and therefore, defendant No.1 sold whole land admeasuring 8 H. 31 R in Survey No.249/1-A for Rs.1,00,000/- in the year 1991. Thereafter, out of that consideration amount, property being Gat No.228 admeasuring 2 H. situated at Lakhmapuri was purchased in the year 2002 in the name of defendant No.2 and out of the earning from Gat No.228 at Lakhmapuri, property being Gat No.181 situated at Dadegaon, Ambad was purchased. Therefore, plaintiff claims that she also has share in the ancestral properties being widow of the deceased Radhakisan (Son of defendant No.1 & 2).

4. After demise of Radhakisan, the defendants have thrown the plaintiff out of their house and restrained her from cultivating the land. She prayed for partition of her share. However, the defendants refused her request. The plaintiff is apprehending every possibility that the defendants will dispose off or may create third party interest in the ancestral properties and may cause obstruction to her possession in the suit properties. Hence, present application.

5. The defendants filed say and strongly objected the application. They have refuted the allegations made by the plaintiffs. It is specifically stated that suit properties at Kordewadi, District Beed are no more in the possession of any of them as it has been sold. Similarly, the defendants have denied the plaintiffs' status as co-parcener or legally wedded wife of deceased Radhakisan. They also claimed the plaintiff No.2 to 5 as illegitimate children of Radhakisan. It is stated that defendant No.2 has purchased Gat No.228 and Gat No. 181 by way of registered sale deed. Therefore, said properties can not be considered as ancestral properties. In such circumstances, the plaintiff can not claim any right in the suit property.

6. Perused application and documents. Heard Both sides. Following points arose for determination and I have recorded findings alongwith the reasons for them as under: -

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiffs have prima facie case?	Partly Affirmative
2.	Whether balance of convenience lies in favour of the plaintiff ?	Partly Affirmative
3.	Whether the plaintiff will suffer irreparable loss, if temporary injunction is not granted in his favour?	Partly Affirmative
4.	What order?	Application is partly allowed.

### REASONS

#### AS TO POINT NO. 1 TO 4

7. Heard both sides. The plaintiff has relied upon old mutation entries and 7/12 extract of properties at Kordewadi wherein name of Gangaram Korde is seen. Similarly, mutation entries shows that Survey No.249/1-A was partitioned in the name of defendant No.1 and his minor sons.

8. So far as objection as to legal status of the plaintiff No.1 is concerned, it is a matter of trial. However, plaintiff No.2 to 5 are, admittedly, daughters of deceased Radhakisan. Therefore, right of plaintiff No.2 to 5 exists in the ancestral property, if any.

9. Since it is a suit for partition, entitlement of the plaintiffs will be decided only after trial. However, in view of Judgment of Hon'ble Supreme Court *in Saketa Waksana LLP Vs Kaukutla Sarla (Civil Appeal No.9483/2019- Supreme Court-Reportable)*, and Judgment of Hon'ble

Bombay High Court *in Prakash Ahuja Vs Ganesh Dhonde & Ors. (2016) 6 Bom- CR. 262*, and in view of guidelines thereof, if properties are disposed off or third party rights are created, the suit will become complicated. Hence, it will be proper to restrain the defendants from further alienation or creation of third party interest.

10. Learned Advocate for defendant relied upon Judgment of Hon'ble Bombay High Court *in Kachhi properties VS Ganpatrao Kadam & Ors. (2010(5) AIR BomR 353)*. Perused Judgment. Said judgment is in respect of scope of Doctrine of lis-pendence and situations where protection provided under Section 52 of Transfer of Property, is inadequate. However, it is pertinent to note that Judgment of Hon'ble Bombay High Court was discussed in Judgment of Hon'ble Supreme Court *in Saketa Vaksana (Supra)*. Therefore, judgment of Hon'ble Apex Court will prevail.

11. The plaintiffs are claiming that the defendants are disturbing her peaceful possession over the suit properties. However, there is nothing on record except N.C. reports that the defendants are insulting and threatening her. From N.C. report, it is nowhere seen that the plaintiff is in possession of the suit properties. Therefore, temporary injunction in respect of obstruction by defendants can not be considered.

12. Since, prima-facie case is made out only in respect of right in the suit properties, application is partly allowed to the extent of restraining the defendants from creating third party interest as balance of convenience lies in favour of plaintiffs and if properties are alienated, irreparable loss would be caused to the plaintiffs. Accordingly, point No.1 o 3 are answered in the affirmative to the extent of alienation and creating third party interest. Hence, to answer point No.4, following order is passed.

**-ORDER-**

- i) Application is partly allowed.
- ii) Defendants, their agents or any person claiming on their behalf are restrained from disposing, alienating or creating third party interest in the suit properties till the final decision of the suit.
- iii) Parties to bear their own cost.

Date: 19.09.2024

Jt. Civil Judge Jr. Division,  
Ambad.

**CERTIFICATE**

I affirm that the contents of this PDF file are word to word as per original order.

**Name of Steno** : - S. M. Sapkal

**Name of Court** :- Jt.Civil Judge Junior Division,  
Ambad.

Sd/-  
**Steno**