

MHKO050029642019



ORDER BELOW EXH.150 IN
SPECIAL CIVIL SUIT NO.54/2019
(Passed on 02. 11. 2022)

This is an application for grant of temporary injunction restraining the defendant Nos.14 and 15 from disturbing the possession of plaintiff over the suit property bearing Gat No.121 ad-measuring area 0.89 HR situated at Mouje Halondi, Tal. Hatkanangale, Dist. Kolhapur (for the sake of brevity here-in-after referred to as “suit property”) and for restraining the defendant nos.14 and 15 from alienating or creating third party interest in the suit property and raising construction in the said suit property till final disposal of the present suit.

02. **Brief facts of the application are as under:**

Suit property is the ancestral property of the plaintiff and defendant Nos.1 to 7. Moreover, suit property was in joint possession of plaintiff and defendant Nos.1 to 7. However, defendant No.1 illegally executed gift deed dt.15.05.2006 in favour of defendant No.2 in respect of his undivided interest in the suit property. Therefore, plaintiff has filed the present suit for declaration regarding illegality of the said gift deed, partition and separate possession of his share in the suit property. Thereafter, defendant No.2 sold the suit property to the defendant No.13 and defendant No.13 again sold the suit property to defendant Nos.14 and 15 despite of having due knowledge about the pendency of

the present suit. It is apprehended that defendant Nos.14 and 15 will again sell out the suit property to some other person to create the multiplicity of the proceeding and to frustrate the present suit. Hence, this application.

03. Defendant Nos.14 and 15 have failed to file their reply to the present application despite of grant of ample opportunity to that effect. Hence, application is proceeded further without the reply of defendant Nos.14 and 15.

04. Heard learned counsel for the plaintiff, defendants and their learned counsel, all are absent, though matter is repeatedly called out. Hence, nothing was argued on behalf of all the defendants.

05. Following points arise for my determination, to which I record my finding for the reasons stated there under:

<u>Sr. No.</u>	<u>POINTS</u>		<u>FINDINGS</u>
1)	Whether plaintiff has made out the <i>prima facie</i> case ?	...	<u>In The Affirmative</u>
2)	Does plaintiff prove that the balance of convenience lies in his favour ?	...	<u>In The Affirmative</u>
3)	Does plaintiff prove that he would sustain irreparable loss, if the temporary injunction is refused ?	...	<u>In The Affirmative</u>
4)	What order ?	...	<u>Application Is Partly Allowed</u>

REASONS**AS TO POINT NO.1 :-**

06. At this juncture, I would like to note the meaning attributed to the word '*prima facie case*'. *Prima facie case* means there must be a bonafide substantial question to be tried at the hearing and there is probability that plaintiff will be entitled to the relief sought by him. Thus, it is clear that *prima facie case* does not mean that it must be shown in all probability plaintiff would succeed the suit. But it must be shown by the plaintiff that he has a bonafide question to raise as to the existence of the right of his claim and that it is necessary in the interest of justice to preserve the said right till the disposal of the suit.

07. It is significant to note that both the parties have disputed the manner of acquisition of the suit property by the deceased defendant No.1. It is the contention of the plaintiff that deceased defendant No.1 inherited the suit property from his father namely Bhau Babasaheb Khochge whereas defendants have claimed that suit property is the self acquired property of the deceased defendant No.1. It is significant to note that defendants have not specified the source of income of the defendant No.1 from which he acquired the suit property. At this juncture, it is necessary to refer mutation entry No.1920 which shows that father of deceased defendant No.1 Ramu, Bhau Babaji Khochge was having agricultural land. After the death of Bhau Babaji Khochage it was inherited by defendant No.1 Ramu and his brothers and

sister. As the pleadings of defendants are silent regarding source of income from which defendant No.1 Ramu and his brothers acquired the suit property, nexus between the income of ancestral agricultural land and acquisition of suit property by the defendant No.1 and his brothers can be said to be *prima facie* proved. In these circumstances, it can be held that plaintiff has *prima facie* proved that suit property is his ancestral property and he is having undivided interest in the same. Therefore, I hold that plaintiff has raised a bonafide substantial question regarding his right and interest over the suit property which can be tried at the hearing.

08. In view of above-said facts and circumstances of the case, I hold that plaintiff has made out the *prima facie* case. Hence, I record my finding to point no.1 'in the affirmative'.

AS TO POINT NOS.2 AND 3 :-

09. I have already held that plaintiff has made out the *prima facie* case. Consequently, I hold that plaintiff has proved that balance of convenience lies in his favour and he would suffer irreparable loss, if the injunction restraining the alienation of the suit property and construction over the suit property is refused. Hence, I record my finding to the point nos.2 & 3 'in the affirmative'.

10. On applying all the principles required for granting the temporary injunction, I hold that plaintiff is entitled to the relief of the temporary injunction restraining the alienation of the suit

property and construction over the suit property till the final disposal of the suit. It is pertinent to note that evidence of plaintiff at Exhibit No.41 shows that he is residing separately from the defendant Nos.1 to 7 since the year 2000. Moreover, there is nothing on record to show that plaintiff is in actual physical possession of the suit property. Therefore, plaintiff is not entitled to the temporary injunction restraining the defendant Nos.14 and 15 from disturbing the possession of the plaintiff over the suit property as claimed. Hence, I pass following order:

ORDER

- 1) Application at Exhibit No.150 is partly allowed.
- 2) Defendant nos.14 and 15 are hereby restrained from alienating the suit property or creating third party interest in the suit property bearing Gat No.121 ad-measuring area 0.89 HR situated at Mouje Halondi, Tal. Hatkanangale, Dist. Kolhapur till final disposal of the present suit.
- 3) Defendant nos.14 and 15 are hereby restrained from raising construction over the suit property bearing Gat No.121 ad-measuring area 0.89 HR situated at Mouje Halondi, Tal. Hatkanangale, Dist. Kolhapur till final disposal of the present suit.
- 4) Cost in cause.

Ichalkaranji.
Date : 02. 11. 2022.

(H. A. Wani)
Civil Judge (Sr.Dn.), Ichalkaranji.
Dist. Kolhapur