

MHKO090001252021



ORDER BELOW EXH. 5 IN SPL. CIVIL SUIT NO. 11/2021

1. The present application is filed for seeking temporary injunction, under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, praying that till disposal of the suit, the defendants shall not oust her from the suit property. Say to this application is filed below Exh. 31.

Admitted facts in the application are as follows -

2. The relationship between the parties is an admitted fact in the suit. The plaintiff is widow of Harry. Defendant No. 1 is their son, while defendant No. 2 is the wife of defendant No. 1. Defendant No. 3 is the daughter of Harry and the plaintiff.

In short, case of the plaintiff is as follows -

3. The plaintiff submits that the suit property was owned and possessed by Harry and She jointly. Some time in the year 1997, they constructed one house in it. For that purpose, they obtained loan from Sane Guruji Housing Society Gadhinglaj. The said house was subsequently entered in the Grampanchayat record as Grampanchayat House No. 1412/1 and 1412/2. Thus, it is case of the plaintiff that the suit property is jointly owned and possessed by Harry and she.

4. Later in the year 2019, Harry died due to cardiac arrest. As such, she alone was living in the suit property. In the year 2020, defendant Nos. 1 and 2 started living with her due to Covid 2019 pandemic and lockdown. As per the plaintiff, initially for some days, there was no trouble as such from defendant Nos. 1 and 2, but thereafter the dispute started and they were trying to oust her from the suit property. Hence, the plaintiff has prayed aforesaid relief in Exh. 5.
5. Defendant Nos. 1 and 2 have contested the application by saying that the suit property is not jointly owned and possessed by Harry and the plaintiff. They categorically deny that they tried to oust the plaintiff from the suit property or caused disturbance to her, in enjoyment of the said house. Hence, they submit that the application Exh. 5 is liable to be rejected.
6. Following points arise for my determination and my finding there on with reasons, are as under -

Sr. No.	Points	Findings
1	Does the plaintiff prove that he has prima facie case in her favour ?	.. Yes
2	Does the plaintiff prove that he has balance of convenience in her favour ?	.. Yes
3	Whether irreparable loss would cause to the plaintiff, if injunction is refused ?	.. Yes
4	What order ?	.. As per final order

REASONS**As to point No. 1 -**

7. To show that the suit property was jointly owned by Harry and plaintiff, various documents are placed on record. In my humble view, whether the property was jointly purchased by both of them or by Harry alone, is not a material issue in the suit. It is only to be seen, whether after death of Harry, is plaintiff having any vested right in the said property and if yes, can defendant Nos. 1 and 2 cause disturbance to that right ?
8. Nobody disputes that the property was originally purchased by Harry. The suit property was originally belonged to Ganpati Gondhali. On 18.07.1991, Harry purchased the property from him by way of registered sale deed. Photo copy of the registered sale deed is placed on record. Therefore, there cannot be any dispute that Harry was owner of the suit property. There is also no dispute and even it is evident from the record that Harry constructed a house in the said property. The plaintiff has duly placed on grampanchayat record of this house. It is also not in dispute that Harry died in the year 2019. Even if it is presumed that property was exclusively owned by Harry, now, it has devolved upon his heirs by way of succession.
9. As per the Indian Succession Act, the plaintiff, defendant No. 1 and 3 have undivided share in the suit property. Therefore, by way of rule of succession, they have become

co-owners in the suit property. Therefore, in such circumstance, the defendants cannot disturb joint possession of the plaintiff.

10. In my humble opinion, the plaintiff has duly proved her prima facie case. It is duly proved by her that she has undivided share in the suit property, as legal heir of Harry. Hence, Hence, I answer point No. 1 in the affirmative.

As to point No. 2 and 3 -

11. As already discussed, the plaintiff is a co-owner in the suit property, therefore, balance of convenience lies in her favour. She has every right to enjoy the suit property. Her joint possession cannot be disturbed. Defendant Nos. 1 and 2 forcefully submit that they are not disturbing her possession nor they are making any attempt to oust her. Such defence cannot be believed. I do not find any reason, why the version of plaintiff should be disbelieved. Without any reason, she would not file a suit in the court, when defendant Nos. 1 and 2 are her son and daughter-in-law. In my opinion, her statement on oath shall not be disbelieved. Hence, I find that the balance of convenience is in her favour. Similarly, it is the plaintiff, who will suffer irreparable loss, if application Exh. 5 is rejected.
12. There is even possibility that the plaintiff may even loose her joint possession and will have to stay elsewhere. It is submitted by Ld. Adv. for the plaintiff Shri. Todkar that the plaintiff is having no other residential home in

Gadhinglaj. Therefore, there is possibility that the plaintiff may have to stay somewhere else, in case of rejection of this application. I find this submission reliable. Hence, I hold that the plaintiff will suffer irreparable loss. Accordingly, I answer point Nos. 2 and 3 in the affirmative.

As to point No. 4 -

13. The discussion made hereinabove shows that the application is liable to be allowed. Hence, I pass the following order in answer to point No. 4 -

ORDER

The application Exh. 5 is allowed as follows -

1. Defendant Nos. 1 and 2 shall not disturb joint possession of the plaintiff, over the suit property or they shall not oust her from it, otherwise than due process of law, till disposal of the suit.
2. Cost of the application will be costs in cause.

Date – 04.04.2022

(G. V. Deshpande)
Civil Judge Senior Division,
Gadhinglaj