

**:: ORDER BELOW EXH. 5 ::**

Perused the application, say (Exh.33) filed by the defendant no.6 and documents placed on record. Heard both sides. Perused the written notes of argument filed by both sides. Through this application, the plaintiff is seeking temporary injunction restraining defendant no.6 from creating third party interest in the land Gat No.152, admeasuring 9 H. 33.8 R. situated at Mouje Patgaon, Tal.Bhudargad, Dist.Kolhapur. (Hereinafter referred as "the suit property"). The plaintiff also requested for granting temporary injunction restraining the defendant no.6 from disturbing his possession over the suit property.

2) Points for determination and findings thereon alongwith reasons stated thereto are as under :

<b><u>Points</u></b>	<b><u>Findings</u></b>
1] Whether the plaintiff has made out prima-facie case ?	: In the Affirmative
2] Whether there is balance of convenience in favour of the plaintiff ?	: In the Affirmative to the extent of alienation of the suit property.
3] Whether irreparable loss will be caused to the plaintiff, if the application is not allowed ?	: In the Affirmative to the extent of alienation of the suit property.
4] What order ?	: As per final order

**REASONS****As to point no. 1 :**

3) In order to get discretionary relief of temporary injunction it is for the plaintiff to show the existence of prima facie case in his favor. In order to ascertain whether the plaintiff has made out the prima-facie case or not ?, I have perused the pleadings and documents placed on record. Herein, it is the case of the plaintiff that one Shankar Bala Sheti, Narayan Bala Sheti and Laxman Bala Sheti were the brothers interse. The suit property is the self-acquired property of Shankar Bala Sheti. Narayan & Laxman died before him. Shankar Bala Sheti was unmarried and died in the year 1988. Plaintiff, deceased Vitthal, defendant no.2, deceased Ramchandra, defendant no.4 and defendant no.5 are the legal heirs of deceased Narayan. Defendant nos.1(A) to 1(E) are the legal heirs of deceased Vitthal. Defendant nos.3(A) & 3(B) are the legal heirs of deceased Ramchandra. Defendant no.6 is the daughter of Laxman Bala Sheti. Deceased Jaywanti was the wife of Laxman Bala Sheti. According to the plaintiff, Shankar Bala Sheti was unmarried, therefore, as per section 8, schedule 4(1) of the Hindu Succession Act, he himself and defendant no.1 to 5 are entitled to succeed the interest in the property of Shankar Bala Sheti. Deceased Jaywanti is the wife of brother hence she cannot be said to be a entitled to the property of the Shankar Bala Sheti. Defendant no.6 is claiming through deceased Jaywanti, therefore, she is also not entitled for the property of Shankar Bala Sheti. In spite of that, during her lifetime Jaywanti managed to record her name in the revenue record of the suit property. Thereafter the name of defendant no.6 is came to be recorded to the revenue record of the

suit property. On the strength of revenue record, defendant no.6 is trying to disturb his possession over the suit property and also trying to create third party interest in it.

4) On the other hand, it is the contentions of the defendant no.6 that the pedigree of the Sheti family given in the plaint is wrong. The suit property is not the self-acquired property of Shankar Bala Sheti. All the joint family members are not included in the suit property. Therefore, the suit is not maintainable. During the lifetime of Shankar Bala Sheti, the name of Jaywanti Laxman Sheti was recorded to the revenue record of the suit property vide mutation entry no.934. The plaintiff challenged the said revenue entry. However, he could not get success in it. Due to that, he annoyed and filed present false suit. According to defendant no.6, her mother Jaywanti Laxman Sheti was having 1/2 share in the suit property. Thus, she is enjoying her 1/2 share in the suit property.

5) On perusal of the aforementioned contentions it appears that the plaintiff is contending that the suit property is the self acquired property of the Shankar Bala Sheti. On the other hand defendant no.6 is contending that the suit property is the ancestral property. In such circumstances the question for adjudication whether the suit property is the ancestral property or it is the self acquired property of Shankar Bala Sheti. Herein defendant no.1 to 5 placed on record a registered Will deed dated 18/02/1987 executed by Shankar Bala Sheti. The recitals of the will shows that Shankar Bala Sheti described the suit property as his self acquired property and bequeathed it in favor of the legal heirs of Narayan. Thus at this stage it appears that

the suit property is the self acquired property of the Shankar Bala Sheti.

6) On perusal of village extract no.12 of the year 1950-51, The 7/12 extract of the year 1959-60 to 1984-85, it appears that the name of Shankar Bala Sheti was recorded in the revenue record as owner and possessor of the suit property till the year 1985. This fact also supports the contentions of the plaintiff that the suit property is the self acquired property of Shankar Bala Sheti.

7) As per the section 8 & 9 of the Hindu Succession Act, property of Hindu dying intestate is devolved in accordance with the schedule and in accordance with the rule under section 9. As above stated, Shankar Sheti is not having any Class-I legal heir. As per section 9, the property of deceased devolves in the first on the Class-I heir. Class-I heir take it simultaneously. In the absence of Class-I heir, it devolves on the Class-II heirs. Class-II heirs in the first entry will have to be preferred then the second entry in the schedule. Herein, plaintiff and defendant nos.1 to 4 are the legal heirs of Shankar Sheti. They are the Class-II heirs. In the Class-II heir, they are in the second entry while defendant no.6 is in the fourth entry. Therefore, plaintiff and defendant nos.1 to 5 got preference over the defendant no.6. On this count also, it appears that plaintiff and defendant nos.1 to 5 are having prima-facie case.

8) At the same time, on perusal of mutation entry no.904 of village Patgaon, it appears that the name of Jaywanti Laxman Sheti is recorded in the revenue record of the suit

property. Thereafter, as per mutation entry no.1037, the name of defendant no.6 is recorded in the place of Jaywanti to the extent of 1/3<sup>rd</sup> share in the suit property. At present also, the name of defendant no.6 is standing to the revenue record of land Gat No.152/B and the name of plaintiff and defendant nos.1 to 5 are recorded to the land Gat No.152-A, which are the two separate properties formed by the revenue authorities out of the land Gat No.152.

9) In all these circumstances, it appears that plaintiff has made out the prima-facie case and he is having chances of success in it. At the same time, on the strength of revenue record, it appears that defendant no.6 is in the possession of land Gat No.152/B. In all these circumstances, I answer point no.1 in the affirmative.

**As to point nos.2 & 3 :**

10) In view of affirmative finding to the point no.1, it is clear that the plaintiff has made out the prima-facie case. According to the plaintiff, defendant no.6 by taking undue advantage of her name in the revenue record of the suit property will create third party interest in it. Plaintiff also contends that defendant no.6 is trying to oust him from the possession of the suit property. It will cause hardship and irreparable loss to him.

11) Herein, the plaintiff has described the suit property as land Gat No.152 and also shown it's area as 9 H. 33.8 R. However, on perusal of the revenue record, it appears that the said land is divided into 2 different blocks i.e. land Gat No.152-A,

which is of admeasuring 6 H. 22 R. and land Gat No.152-B, which is admeasuring 3 H. 11 R. As above discussed, there is a prima-facie case in favour of the plaintiff. Land Gat No.152/B is recorded in the name of defendant no.6. In such circumstances, if defendant no.6 creates third party interest in it, then there will be multiplicity of the proceeding and it will cause hardship and irreparable loss to him.

12) As above discussed, defendant no.6 is in the possession of land Gat No.152/B. In such circumstances, if temporary injunction restraining defendant no.6 from disturbing the possession of the plaintiff over land Gat No.152/B is granted, then comparatively more hardship and irreparable loss will be caused to the defendant no.6. The plaintiff will have to obtained possession of the said land by following due process of law and after the success in the present suit.

13) In all these circumstances, in my view, so far as the question of alienation of the suit property the plaintiff is having balance of convenience in his favour and if the relief of temporary injunction restraining defendant no.6 from alienating the suit property is not granted, then he will suffer irreparable loss. Therefore, I answer point nos.2 & 3 in the affirmative to that extent only.

**As to point no.4 :**

14) In view of affirmative finding to the point no.1, it is clear that the plaintiff has made out the prima-facie case. In view of affirmative findings to the point nos.2 & 3 to the extent of

question of alienation of the suit property is concerned, the plaintiff is entitled for the relief of temporary injunction restraining defendant no.6 from creating third party interest in the suit property. As above stated, the plaintiff is also not entitled for the relief of temporary injunction restraining defendant from disturbing his possession over the suit property. Hence, I answer point no.4 accordingly and pass the following order.

**:: ORDER ::**

- 1] The application is partly allowed.
- 2] Defendant no.6 is restrained from creating third party interest in the suit property till the conclusion of the suit.

**Sd/-**

Gargoti  
Date : 08/07/2016

( S. S. Parave )  
Civil Judge Junior Division,  
Gargoti

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

Name of the Stenographer	:	Mr. S. D. Sarang
Name of Court	:	Court of Civil Judge Junior Division, Gargoti, Tah. - Bhudargad, District - Kolhapur
Date of Dictation	:	08/07/2016
Order signed by the P.O. on	:	08/07/2016
Order uploaded on	:	08/07/2016