

**R.C.S.No. 42/2020**

Asha Patil Vs. Kundalik Patil etc. 4

CNR - MHKO130003212020

ORDER PASSED BELOW EXH.05**(Dt. 07/09/2022)**

1. This application is filed by the plaintiff against defendants to restrain them for alienating the property referred in the application till disposal of suit.
2. Defendant No. 1 to 5 appeared in the matter and filed their reply below Exh. 16, by denying the contents of Exh.5.
3. To avoid repetition of facts, brief pleading of the parties referred in the argument of learned advocates of respective parties.
4. Heard Shri.A.P.Patil learned advocate appearing on behalf of Plaintiff and Shri. O.S.Diwan Learned advocate appearing on behalf of Defendant No. 1 to 5. Form the pleading and arguments of Ld. Advocates of parties with documents on record, following points arise for determination, and this Court, recorded the reasons with finding as stated below : -

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether prima facie case lies in favour of plaintiff ?	:-	Partly Yes.
2.	Whether balance of convenience lies in favour of plaintiff ?	:-	Partly Yes.
3.	Whether plaintiff would suffer irreparable loss if injunction is refused ?	:-	Partly Yes.
4.	What order?	:-	Injunction Partly Allowed.

:- DOCUMENTS :-

5. The plaintiff relied on following documents filed at Exh.3, 20, 23 & 25.

1 - 3.	Certified copy of 7/12 extract of Gat no. 1040, 1149, 1166 at Hasur Khurd, Tal. Kagal.
3(A).	Certified copy of 7/12 extract of Gat no. 1169 at Hasur Khurd, Tal. Kagal.
4 - 7.	Certified copy of 7/12 extract of Gat no. 1162, 320, 899, 403 at Hasur Khurd, Tal. Kagal.
8 - 10.	Certified copy of 8-A extract of Khate no. 495, 444, 38 at Hasur Khurd, Tal. Kagal.
11.	Certified copy of 7/12 extract of Gat no. 784/2 at Khanapur, Tal. Bhudargad.
12.	Certified copy of 8-A extract of Khate no. 47 at Khanapur, Tal. Bhudargad.
13.	Photo copy of assessment extract of property no. 368 at Hasur Khurd, Tal. Kagal.
14.	Photo copy of Judgment of Cri. M.A.No. 44/2012 decided on 15/05/2014 in CJJ & JMFC, Gadhinglaj.
15.	Original copy of notice published in Sakal Newspaper dated 05/05/2016.
16.	Original copy of notice published in Pudhari Newspaper dated 03/12/2021.
17.	Original copy of amended notice published in Pudhari Newspaper dated 04/12/2021.
18.	Certified copy of tax receipt of property no. 1021 at Grampanchayat Khanapur.
19.	Photo copy of order in Cri.M.A.No. 206/2013 decided on 23/02/2019 at Prl. Civil Judge & JMFC, Sankeshwar.
20.	Photo copy of case updates of Cri.M.A.No. 206/2013 at Prl. Civil Judge & JMFC, Sankeshwar.

21.	Certified copy of mutation sheet of Gat no. 899 at Hasur Khurd, Tal. Kagal dated 20/07/2022.
22.	Certified copy of 7/12 extract of Gat no. 899 at Hasur Khurd, Tal. Kagal dated 30/07/2022.
23.	Computerized copy of case updates of Cri.M.A. No.202/2015 at 3 rd Jt. Civil Judge S.D., Kalyan.
24.	Computerized copy of case updates of H.M.P. No.623/2018 at 2 nd Jt. Civil Judge S.D., Kalyan.
25.	Photo copy of petition filed by plaintiff at 2 nd Jt. Civil Judge S.D., Kalyan.
26.	Photo copy of miscellaneous application filed by plaintiff at 2 nd Jt. Civil Judge S.D., Kalyan.

6. The defendants have not filed any documents on record.

Pleading/Argument on behalf of Plaintiff :-

7. It is pleaded and argued that, plaintiff is wife of defendant No. 1. There are several litigation between them at different court in Maharashtra and Karanataka. Other defendants are relative of her husband. According to her defendant no. 1 was previously employed in foreign country and at present he is working at Khopoli. It is pleaded that, there are maintenance due against the defendant no. 1 and he used to avoid the payment of maintenance amount.

8. According to plaintiff, there are following properties of the defendants situated at Hasur Khurd, Tal. Kagal, Dist. Kolhapur.

Sr. No.	Gat No.	Area H. R.	Rupaiye Paise	Out of area H. R.
1.	1040	0 H. 21 R.	1-31	5 Aane 4 Pai
2.	1149	0 H. 13.3 R.	1-27	5 Aane 4 Pai

3.	1166	0 H. 14 R.	0-25	5 Aane 4 Pai
4.	1169	0 H. 07 R.	0-12	5 Aane 4 Pai
5.	1162	1 H. 03 R.	0-69	1 Aane 9 Pai
6.	320	2 H. 81 R.	4-44	1 Aane 4 Pai
7.	899	0 H. 26 R.	1-47	8 Aane
8.	403	0 H. 83 R.	0-58	5 Aane 4 Pai

and out the income of above property, they have purchased the properties at various place. Further, the defendant no.1 also married illegally to another woman. Now, the defendant no. 1 is trying to avoid the maintenance amount and the plaintiff cannot attach the salary of the defendant No.1. It is further pleaded that, without any need the defendants are trying to alienate the property to deprive the rights of the plaintiff and if the defendants succeeded in the suit property, she may suffer irreparable loss. Moreover, the plaintiff has apprehension that, the defendants may sold the entire properties and she may suffer hard ship in getting maintenance, if the injunction is not passed in her favour, accordingly, prayed to allow the application.

9. Learned advocate of the plaintiff argued that, earlier one property is also sold by the defendant no. 2. Thus, in like manner if the remaining properties are sold by the defendants then the plaintiff would deprived her right in the property. It is argued that, in the year-2016 due to such apprehension, the plaintiff has made publication in news paper to object the sale of above properties. Moreover, this suit will take its own time to dispose on merit, hence prayed to allowed the application as prima facie case balance of convenience lies in favour of applicant/plaintiff. Hence, prayed to allow the application.

Reply/Argument on behalf of Defendants' No. 1 to 5 :-

10. Contrary learned advocate of the defendants vehemently opposed the application stating that, the properties referred in the application are not subject matter of suit property. It is argued that, no relief is claimed in respect to properties in the main suit. Moreover, all the properties are belonging to defendant no. 2. Thus, the plaintiff has no share in the said properties. It is argued that, the suit is not filed for partition. Moreover, even suit for partition at this stage is not maintainable. According to defendants, the plaintiff is also not entitled for share in the suit property of her father in law, thus, grant of injunction would amount to blanket injunction. It is argued that, this court has no jurisdiction to try the suit. Further, the divorce has been granted by the decree of Court. Hence, relation between parties are came to an end, in such circumstances without ascertaining the final rights of the plaintiff she cannot seek injunction.

11. As per the learned advocate of defendants, application as to jurisdiction is pending in this matter. Apart from that, there is not proof with the plaintiff to suggest the nature of the above referred properties that those are ancestral one. It is argued that, due to dissolution of marriage, the plaintiff is not entitled for any relief in respect to property referred in the application. It is argued that, the injunction is granted, the defendants may suffer inconvenience, accordingly, urged to reject the application.

:- REASONS :-**As to Points No. 1 to 3 :-**

12. Perused the record. Heard the learned advocate of the both the parties. Points no. 1 to 3 are interrelated with each other, thus, to avoid repetition they are discussed together.

13. The relation and pending litigation at various court is admitted to the parties. So far as the case of divorce is concern the plaintiff has preferred the appeal against the Judgment passed in divorce case. Be it so, as the relation is admitted the plaintiff is entitled for her proposed share in the suit property from the share of her husband at appropriate stage. Thus, if entire properties are sold by the defendant no. 2, the plaintiff may suffer irreparable loss. Though the properties are not referred as the suit property or though at present the plaintiff is not entitled for share from such properties, refusal of injunction would frustrate the very purpose of the suit and application, if the defendant no. 2 sold the properties.

14. Prima facie case means of injury. Admittedly, the plaintiff is also entitled for creating charge of her maintenance upon above referred properties. Thus, using discretion upon settled principle and considering relation between parties it would be just and proper to grant injunction against the defendant no. 2 to restrain him from alienating the share of defendant no.1 from above referred properties. Moreover, if the injunction is granted in entirety other defendants may suffer inconvenience. Thus, considering the above admitted position and circumstances the plaintiff has prima facie case and balance of convenience in partial manner. Accordingly, it would be just and proper to grant the injunction partly. Thus, point no. 1 to 3 are answered partly in the affirmative and for point no. 4 following order is passed.

ORDER

1. The application (Exh.5) is partly allowed.
2. Defendant no. 2 is temporarily restrained from alienating the share of defendant no. 1 in any manner from the properties referred in the application, till the disposal of

suit.

3. No order as to costs.

Kagal.

Date:- 07/09/2022.

(B. D. Gore)

Civil Judge Junior Division,
Kagal.