

MHKO150001722020



**R.C.S.No. 21/2020**  
Vishwas vs. Vasant

**Order passed below Exh. 05**

This is an application filed by plaintiff under order XXXIX rule 1 and 2 of C.P.C.

2. Suit property -

Suit property mentioned in paragraph no. 1 of present application. (In short “suit property”)

3. In short plaintiff's case is as under :

According to plaintiff, defendant no. 1 is his brother, defendant no. 2 is wife of defendant no. 1, defendant no. 3 is son of defendant no. 1 and defendant no. 4 is wife of defendant no. 3. The suit property is ancestral Hindu joint family property of plaintiff and defendant no. 1. The oral partition between plaintiff and defendant no. 1 was completed. The reminder memo was prepared in respect of their partition. As per that partition, plaintiff is exclusive owner and possessor of suit property. The defendants are not concerned with suit property. Therefore, plaintiff requested defendant for not obstructing to his possession. But defendants have refused his request. Therefore, he has filed present suit for perpetual injunction.

4. By way of present application, plaintiff prayed temporary injunction against defendants. That is restraining them from causing obstruction to his peaceful possession over the suit property till disposal of suit. Plaintiff lastly prayed for allowing application.

5. The defendants have appeared and filed their written statement at Exh. 18. They denied all allegation, pleading and prayer of plaintiff. They admitted that, the suit property is Hindu joint family property. But they denied that, the partition was effected between plaintiff and defendant no. 1. There is no partition effected in respect of suit property or other house property or agricultural land. The Pandurang Laxman Kumbhar has filed one suit against plaintiff and defendant no. 1. In that suit, the R.C.A. No. 65/2012 pending before District Judge, Gadhinglaj. For presenting papers in appeal, the plaintiff has requested defendant no. 1 for sign some papers. Because of trust defendant no. 1 has signed document and impressed his thumb. He has not executed any reminder memo in favour of plaintiff. The reminder memo dated 04.11.2019 was false and denied by defendant. Without reading that document, defendant no. 1 has signed his signature. The suit property and other Hindu joint family property was possessed by plaintiff and defendant no. 1 as joint owner. The injunction can not granted against coparcener. They lastly prayed for rejection of application.

6. Heard learned advocate Shri. D. D. Ajagekar for plaintiff and advocate Shri. B. S. Desai for defendant.

7. Following points are arises for my determination to which I have given my findings thereon along with my reasons.

<b>Sr.No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether the plaintiff is prima facie case for grant of temporary injunction as prayed for?	... No
2.	Whether balance of convenience lies in favour of plaintiff ?	.. No
3.	Whether the plaintiff would suffer irreparable loss, if temporary injunction is refused?	... No
3.	What order ?	As per Final order.

## **REASONS**

8. Prima facie case, balance of convenience, and irreparable loss are the three ingredients for temporary injunction.

### **As to point No. 1 to 3 -**

9. The plaintiff pleaded that, he is exclusive owner of suit property as per oral partition. The advocate for plaintiff relied on reminder memo. On perusing reminder memo dated 04.11.2019, it appears that, it was executed between plaintiff and defendant no. 1. In that memo it is mentioned that, the oral partition between plaintiff and defendant no. 1 was effected. As per that partition, the reminder memo was prepared. As per that reminder memo, the suit property was given in the possession of plaintiff and another property was given in the possession of defendant no. 1. The possession and ownership was transferred as per oral partition. The document was signed by plaintiff and defendant no. 1. The document was executed before witnesses. Thus, from the reminder memo dated 04.11.2019, it comes on record that, the oral partition between plaintiff and defendant no. 1 was effected and the suit property was given in the possession of plaintiff.

10. The plaintiff pleaded that, the suit property came in his share as per oral partition. Other than his oral statement, there is no evidence produced by plaintiff which shows that, the actual oral partition effected between plaintiff and defendant. To show the oral partition, it is necessary to plaintiff to show the actual partition in respect of Hindu joint family property was effected. The document dated 04.11.2019 shows that, it was reminder memo. But it is pertinent to note that, the date of oral partition was not mentioned in that document. It was not mentioned that, on which date, day, month and year; the oral partition effected. Further, the plaintiff and defendants have owned other Hindu joint family property and also other Hindu joint family members are present in their family. But other than plaintiff and defendant no. 1, the other property of Hindu joint family

is not mentioned in reminder memo. The other Hindu joint family members are also not party to reminder memo. These all circumstances shows that, the plaintiff and defendant no. 1 are co-parcener of Hindu joint family.

11. The plaintiff has not shown on which day, date, month and year; the oral partition was effected. There is no evidence on record which shows that, the oral partition was effected actually in spot. Further, the Grampanchayat record shows that, the suit property is in the name of defendant. The question arises if the oral partition effected prior to many years, why the suit property was in the name of defendant. These all circumstances shows that, the plaintiff fails to establish that, the actual oral partition was effected. The plaintiff fails to establish that, his exclusive possession over the suit property. Admittedly, plaintiff and defendant no. 1 are the co-parcener and real brothers. Therefore, they are joint owner of suit property. In this circumstances, I conclude that, the injunction can not be granted against co-parcener. The plaintiff fails to establish prima-facie case. The balance of convenience not lies in favour of plaintiff. If application rejected, then no irreparable loss will be caused to the plaintiff. Hence, I answer Points No. 1 to 3 in negative. The application of plaintiff needs to be rejected. Hence, in answer to Point No. 4, I pass the following order,

### **ORDER**

1. The application is rejected.
2. Considering peculiar circumstances, there is no order as to cost.

Date : 18/04/2022.

(S. P. Jadhav)  
Civil Judge J.D., Ajara.

**Certificate**

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

Name of the Stenographer	Mrs. Y.S. Chavan
Name of Court	C.J.J.D. Ajara
Judgment / Order dictated on	18-04-2022
Judgment / Order typed on	18-04-2022
Judgment / Order signed by the P. O. on	18-04-2022
Judgment / Order uploaded on	19-04-2022