

ORDER PASSED BELOW EXHIBIT NO.05
IN R.C.S. NO. 55/2016

CNR No. MHK015-000231-2016

01. By this application plaintiffs have filed under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, plaintiffs have prayed for grant of temporary injunction, restraining defendants for not to oust them from suit properties as well as not to alienate, create any interest in or charge over the suit property.

02. Plaintiffs have contended that suit instituted for partition, separate possession and perpetual injunction in respect of properties described in plaint schedule A, B and C. The genealogy of plaintiffs and defendants described and explained at schedule D. Plaintiffs have further contended that properties in schedule A are ancestral and joint family property of themselves and defendant no.1 to 18. Property at Sr.no. 6 purchased in the name of defendant no.23 at the expenses of joint family funds. The certificate under section 32 M of Tenancy Act is also issued to defendant no.23 in respect of suit property at Sr.no. 6 in schedule A. Suit properties at schedule A Sr.no. 7 and 8 were purchased by depositing the amount to Government from the joint family property fund of plaintiffs and defendants.

03. Suit property schedule at B is also purchased by sale deed dated 22-3-1961 from Babu Desai and Krishna Desai

out of joint family property funds of plaintiffs and defendants. Suit properties at schedule C is used for residence of plaintiffs and defendants which is also part of joint family property. Under such circumstances plaintiffs have asked to the defendants for partition, separate possession on the same defendants no.1 to 22 obstructed their joint possession then suit as well as application for temporary injunction relief is asked. Plaintiffs prayed to allow the application.

04. Defendant nos.1 to 18 filed their written statement and say at Exh.44. Defendant no.2, 4 to 16 and 18 admitted the written statement by filing pursis at Exh.51. The defendant no.1 to 18 strongly objected the instant suit on the ground that the properties already partitioned before several years. The ancestor of plaintiff and defendant no.19 to 23 instituted suit R.C.S.No.50/1987 the said suit was unconditionally withdrawn by the parties then suit is hit by principle led down in O.2 R.2 of Code of Civil Procedure. The contention made by the plaintiffs are false and frivolous. Hence, suit is not tenable in present form liable to be dismissed.

05. Defendant no.23 filed his written statement at Exh.46 and admitted the claim of plaintiffs.

06. I have heard learned advocates for respective parties at considerable length.

07. Considering the application and submissions of the parties, following points arise for my determination and I have recorded my findings thereon with reasons stated below.

SR.NO.	POINTS	FINDINGS
1	Whether the plaintiffs have made out <i>prima-facie</i> case ?	No.
2	Whether the balance of convenience lie in favour of the plaintiffs ?	No.
3	Whether irreparable loss would be caused to the plaintiffs, if the injunction as prayed is not granted. ?	No.
4	What order ?	As per final order.

-: **REASONS** :-

08. In order to support their respective claim and defence, both the parties have placed reliance on various documentary evidence. The reference of the said documents will be made in my discussion at the relevant place.

AS TO POINT NO. 1 :-

09. Undisputed and uncontroverted facts, as seen from the pleadings of both the sides are that relations of plaintiffs and defendants were admitted. Only issue of present temporary injunction application is whether plaintiffs have *prima-facie* case against defendants or not.

10. The learned advocate for plaintiffs submitted that the properties are ancestral and joint family properties of

plaintiffs and defendants. Under such circumstances defendants no.1 to 22 have no concern to obstruct the joint possession of plaintiffs in suit properties.

11. Plaintiffs relied on **Mandlik Ranganna and others Etc. vs. T. Ramchandra** decided on 30th April, 2008. In this case Hon'ble Justice of Apex Court held that injunction can be granted against co-owner if co-owner defendants raising any construction of building in suit properties. Further he relied on **Ganpatrao Shankarrao Kadam vs Kacchi Properties**. In this case Hon'ble Justice of Bombay High Court held that if any dispute in respect of partnership firm the plaintiff is successful in convincing their exist sufficient grounds for allowing him to institute fresh suit that there is no bar in O.2 R.2 of the Code of Civil Procedure. Ratio of these case will be taken into consideration at relevant time.

12. The learned advocate for defendant nos.1 to 18 submitted that plaintiffs have no prima-facie case in their favour because partition was held between predecessor of themselves and predecessor of plaintiffs before several years. Their predecessor also instituted suit bearing R.C.S.No.50/1987 in which suit properties Gat no.697, 661 and 668 were included for the relief of partition and separate possession. The suit R.C.S.No.50/1987 was unconditionally withdrawn on 2-5-1987 by predecessor of plaintiffs.

13. The dispute regarding entries on 7x12 extract and mutation extract was also decided by revenue authorities in

plaintiffs and defendants at appellate stage. The learned advocate for defendant no.1 to 18 is relied on **Raman Pillai Krishna Pillai and others vs. Kumaran Parameswaran and others (AIR 2002 Kerala 133)**. In this case Hon'ble Justice of Kerala High Court held that as per section 58 of Indian Evidence Act facts admitted need not be proved. If any admissions appear in written statement it will go in evidence of suit instituted by the parties. Further he relied on **Digambar Adhar Patil vs. Devram Girdhar Patil (AIR 1995 SC 1728)**. In this case Hon'ble Justice of Apex Court held that the fact of partition between parties taken into consideration as per section 35 of Indian Evidence Act entries in record of rights is relevant piece of evidence in suit for partition and separate possession. Further he relied on **Shrikant R. Sankanwar and other vs. Krishna Balu Naukudkar (2003(2) Mh.L.J. 276)**. In this case Hon'ble Justice of Bombay High Court held that entries in revenue records basically used for the purpose of collection of revenue. These entries does not constitute title upon the same. Further he relied on **Balakrishna Menon and another vs. Padmavathy Amma and another (AIR 1993 Kerala 218)**. In this case Hon'ble Justice of Kerala High court held that if any report filed by the commissioner then parties not to be permitted to take inconsistent plea at successive stage. Further he relied on **Parasram and others vs. Smt.Naraini Devi and others (AIR 1972 Allahabad 357) and R.S.Maddanappa vs. Chandramma and another (AIR 1965 SC 1812)**. In these

cases Hon'ble Justice of Allahabad High Court and Hon'ble Justice of Apex Court held that principle laid down u.s.115 of Indian Evidence Act is useful to the parties. The object of estoppel is to prevent fraud and secure justice between the parties. The ratio of these case will be taken into consideration at relevant time.

14. Plaintiff relied on documents at Exh.3. On perusal of document at Exh.57 to 65 it appears that these are the 7x12 extracts of suit properties for various years. The document at Exh.66 to 79 are the Grampanchayat property extract of suit property. The plaintiffs have not produced on record any mutation entry to show the suit properties were joint family property and ancestral property of plaintiffs and themselves.

15. Defendant no.1 to 18 relied on documents at Exh.55. Document at Sr. no.1, list Exh.56 appear to be certified copy of R.C.S.No.50/1987. Defendants no.1 to 18 relied on mutation entry at Exh.80 and 81. Further he relied on section 257 of Maharashtra Land Revenue Code, 1966 Order at Exh.82. On perusal of Sr. no.1 Exh.56 suit in respect of Gat no.697, 661 and 668 as well as schedule B suit property instituted by the predecessor of plaintiffs. Under such circumstances principle of ancestral and joint family property required to be proved by independent evidence at the time of hearing of main suit. Prima facie revenue records not shown the plaintiffs have prima-facie case in their favour.

16. Citation submitted by plaintiff **Mandlik Ranganna and others Etc. vs. T. Ramchandra and Ganpatrao Shankarrao Kadam vs Kacchi Properties**, not applicable to the present case because fact of construction not at all disputed in present suit. The fact of partnership firm also not disputed or in issue in present suit.

17. Citation submitted by defendant no.1 to 18 **Parasram and others vs. Smt.Naraini Devi and others (AIR 1972 Allahabad 357) and R.S.Maddanappa vs. Chandramma and another (AIR 1965 SC 1812)** not applicable to the present case because principle of estoppel section 115 of Evidence Act will be taken into consideration and hearing of main suit. **Digambar Adhar Patil vs. Devram Girdhar Patil (AIR 1995 SC 1728)** fact of partnership as per section 35 is different from the case in hands. Citation **Shrikant R. Sankanwar and other vs. Krishna Balu Naukudkar (2003(2) Mh.L.J. 276)**, entries in dispute decided by revenue authorities at this stage this citation is not applicable to the present case. **Balakrishna Menon and another vs. Padmavathy Amma and another (AIR 1993 Kerala 218)**, not applicable here because there is report in case in hand.

18. On perusal of entire evidence on record plaintiffs have not made out prima-facie case in their favour. Hence, I answer to point no.1 in the negative.

AS TO POINT NO.2 :-

19. The plaintiffs have failed to establish *prima facie* case in their favour. Therefore, I do not find that the balance of convenience lies in their favour. Hence, I answer point No.2 in the negative.

AS TO POINT NO.3 :-

20. In view of my above findings, the plaintiffs have failed to establish *prima facie* case and balance of convenience in their favour. In such circumstances, I am of the considered view that no such irreparable loss would be suffered by the plaintiffs. Hence, I answer point No.3 in the negative.

AS TO POINT NO.4 :-

21. Thus, in view of my findings to the aforesaid points, the instant application is liable to be rejected. Hence, in answer point No.4, I proceed to pass the following order.

ORDER

- 1) Application Exhibit 5 is rejected.
- 2) Cost of this application shall be cost in cause.

Dt. 18.06.2018.

(K.K.Khomane)
Civil Judge, Junior Division,
Ajara, Kolhapur.

I affirm that the contents of this PDF file Judgment are same,word to word, as per the original Judgment.

Name of the Stenographer	:R.N.Kulkarni
Court	:Civil Court Jr.Dn.Ajara
Date	:18.06.2018
Judgment signed by the Presiding Officer on	:18.08.2018
Judgment uploaded on	:20.06.2018