

MHKO150002802016



R.C.S.No. 63/2016  
Nirmala V.s. Santosh

**ORDER PASSED BELOW EXH. 35**

This is an application filed by plaintiff under order XXXIX Rule. 1 and 2 of the Code of Civil Procedure Code, 1908.

2. Suit property – Suit property mentioned in paragraph no.1 of present application. (In short "suit property")

3. In short case of the plaintiff is as under-

According to plaintiff, the suit property was originally owned by Santu Desai. Yesubai Desai is wife of Santu Desai. Plaintiff and one Sonabai are the two daughters of the Santu Desai. Sonabai was died. Defendants are the legal heirs of Sonabai.

4. The suit property is joint property of plaintiff and deceased Sonabai. They are jointly owned suit property after demise of Santu and Yesubai. The plaintiffs have requested defendant for partition and separate possession. But defendant has refused request of plaintiff. Therefore, plaintiff filed present suit for partition and separate possession.

5. By way of present application, plaintiff pleaded that, defendant no. 1 illegally tried to made construction over the suit property. There is no specific share was allotted to the defendant no. 1. The undivided share of plaintiff is involved in suit property. The defendant no. 1 wanted to change the nature of suit property by making

construction. The plaintiff requested defendant no. 1 from not making construction. But defendant no. 1 has refused request of plaintiff. Therefore, plaintiff filed present application that is restraining defendant no. 1 from making any construction over the suit property. Plaintiff lastly prayed for allowing application.

6. Defendant no. 1 has filed his say at Exh. 36. He denied all allegation, pleading and prayer of plaintiff. According to defendant no. 1, the suit property and other properties of deceased Santu Desai and Yesubai Desai was partitioned. In that partition, the plaintiff has received 30 tola gold and relinquished her share from suit property and other properties of present suit in favour of his mother namely Sonabai. He is in possession of suit property. The plaintiff is not concern with suit property. He has admitted that, he has try to make construction over the suit property. According to him, he is owner and possessor of suit property. He lastly prayed for rejection of application.

7. Heard learned Advocate Shri. R. I. Palkar for plaintiff and Advocate Shri. A. S. Farakte for defendant.

8. The following points are arises for my determination and I have given my findings thereon are as follows-

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

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

### **REASONS**

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

10. On perusing pleading of plaintiff it appears that, plaintiff pleaded that, the suit property was jointly owned by plaintiff and deceased Sonabai. Both the parties have admitted that suit property and other properties of present suit were owned by Santu Desai and Yesubai Desai. After demise of Santu Desai, the properties came in share of plaintiff, deceased Sonabai and Yesubai. According to defendant, after demise of Santu the plaintiff has received 30 tole gold and relinquished her share in favour of Yesubai and Sonabai. Admittedly, Sonabai is mother of defendant no. 1.

11. The defendants had taken defense that, the plaintiff has relinquished her share by receiving 30 tole gold from Yesubai and Sonabai. Other than their pleading, there is no evidence on record which prima-facie shows that, the plaintiff has received 30 tole gold and relinquished her share in favour of Yesubai and Sonabai.

12. On perusing record of suit property, it appears that, the suit property is in the name of Yesubai who is mother of plaintiff and deceased Sonabai. The Yesubai died on 13.01.2015. Till today the name of Yesubai shown in the record of Grampanchayat. Thus, from the Grampanchayat record, it appears that, the name of Yesubai is shown in the record of suit property.

13. Admittedly, the suit property is comes in the share of plaintiff and the Sonabai from the Santu and Yesubai. The defendants have not produced any evidence other than their oral pleading, which shows that, the plaintiff has relinquished her share from the suit property. Thus, prima-facie it comes on record that, plaintiffs undivided share is involved in suit property. There is no specific share was allotted to the Sonabai or defendant no. 1. Considering these circumstances, I conclude that, prima-facie the plaintiff established her undivided share in suit property.

14. Considering all above discussion, I am coming to conclusion that, the plaintiff has established her undivided share in suit property. The defendants in their say admitted that, they are try to make construction over the suit property. The photographs produced by plaintiff shows that, the defendant no. 1 has try to made construction over the suit property. The prima-facie appears undivided share of plaintiff is involved in suit property. If application allowed then no irreparable loss will be caused to the defendant. The prima-facie case was made out by plaintiff as her undivided share is involved in suit property. The balance of convenience lies in favour of plaintiff. If application rejected then irreparable loss will be caused to the plaintiff. Because she has filed present suit for partition and separate possession.

15. The advocate for defendant submitted that, the injunction can not be granted against co-owner. He has relied on ration of **Hon'ble Bombay High Court decided in AIR 1996 Bombay 36 Prakash vs. Mansurkha Gulbakkha**. On perusing the facts of that case law, it appears that, the suit was filed for injunction and the injunction prayed against co-owners. That is restraining co-owner from interference with his possession and enjoyment. In present case, the plaintiff prayed

injunction against defendant restraining him from making any construction over the suit property. Therefore, the facts of circumstances of that case are different from the case in hand. Hence, the ratio of Hon'ble Bombay High Court is not helpful to the plaintiff.

16. Considering all above discussion, I am coming to conclusion that, the plaintiff has prima-facie made out that her undivided share is involved in suit property. The balance of convenience lies in favour of plaintiff. If application allowed then no irreparable loss will be caused to the defendant no. 1. Hence, I answer point 1 to 3 in affirmative. The application needs to be allowed. In answer to point no. 4. I pass following order,

**Order**

1. The application is allowed.
2. The defendant no. 1 is restrained from making further construction over the suit property till disposal of present suit.
3. Considering peculiar circumstances, there is no order as to cost.

Place - Ajara.  
Date - 14.02.2022.

(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	14-02-2022
Judgment/order typed on	14-02-2022
Judgment/order signed by the P.O. on	14-02-2022
Judgment/order uploaded on	15-02-2022