

**Reg. Civil Suit No.20/2022**

Omkar Sarjerao Narke and ors.

Versus

Sarjerao Ganpati Narke and others.

Order below Exhibit 5.

The present application is filed by the plaintiffs for grant of temporary injunction under provisions of Order 39 Rule 1 & 2 and section 151 of Code of Civil Procedure (Herein after referred as CPC).

02. Plaintiffs filed this suit for partition. Plaintiff No.1 is son and plaintiff No.2 is wife of defendant No.1. Defendants No.2 & 3 are daughters of defendant No.1 and plaintiff No. 2. Other defendants are siblings and their children; of the defendant No.1. It is the case of the plaintiff that the land properties situated at village Kekhale Tal. Panhala Dist. Kolhapur specifically described in para 1 of the plaint are ancestral properties of plaintiffs and defendants. Which is herein after referred as suit properties. That the suit properties are originally belongs to late grand father of plaintiff No.1. The plaintiffs and defendants are co-parceners in the suit property. The suit properties are yet not partitioned by metes and bounds. Defendant no. 1 being father of plaintiff No.1 not taking care nor maintaining the plaintiffs since long time. Now defendant No.1 trying to alienate the suit property to avoid the share of plaintiffs. Therefore plaintiffs filed this suit for partition and injunction. Plaintiffs under apprehension that the defendants will alienate the suit properties pending the suit which will cause grate hardship to them thus plaintiffs payed for interim injunction.

03. Defendant Nos. 2 & 3 filed their written statement at Exhibit 25 and admitted the claim of plaintiffs. Defendants No. 1 & 4 to

6 filed their written statement at Exhibit 20 and strongly resisted the application. At the outset, defendant denied all the submissions of plaintiffs and prayed for rejection of application. It is submitted by the defendants that plaintiff have not properly described the suit property. The suit is bad for non-joinder of necessary parties, suit is also barred by law. That the plaintiff No.1 voluntarily deserted the defendant No.1. Therefore defendant No.1 performed second marriage with Rajshree and have two children namely Shital and Vijay. Plaintiffs not made Rajshree, Shital and Vijay as party to the suit. Plaintiffs have not included house constructed by defendant No.1 as suit property. Wife can not open the partition in the lifetime of husband. Therefore suit is not maintainable. Therefore prayed to reject the application.

04. Perused the application, say of the defendants and the documents filed on record by the parties. Considering rival contentions of parties following points arise for determination to which findings are recorded against each of it with reasons thereto as under :-

No.	Points	Findings.
1.	Whether the plaintiffs made out a <i>prima facie</i> case in their favour ?	Yes.
2.	Whether the balance of convenience tilts in favour of plaintiffs ?	Yes.
3.	Whether the plaintiffs prove that they will suffer an irreparable loss, if injunction is not granted?	Yes.

REASONS

As to points No.1 :

05. To substantiate claim plaintiffs and defendants have relied upon bulk of documents therefore describing each document is not

possible. Plaintiffs and defendants mainly relied on revenue documents and the affidavits.

06. Heard advocates for both parties at length. Advocate for both the parties argued vehemently and thoroughly. Advocate for plaintiffs argued that the suit properties are ancestral properties and yet not partitioned. If defendants alienated the suit properties it will cause hardship to the plaintiffs. Advocate for plaintiff relied on judgment of Hon'ble High Court of **Madya Pradesh (Gwalior Bench)** in case **Kanchan Singh V/s. Daulat Singh**, reported in **2014,CJ (MP)1811**, wherein it is held by Hon'ble Madya Pradesh High Court that, temporary injunction to restrain co-parceners from alienating joint family property can be granted. Defendants advocate argued that the wife can not open the partition. The suit is barred for want of necessary parties.

07. It is not disputed that the suit properties are ancestral properties of plaintiff and defendants. The relation between the parties are not disputed. It is not the case of defendants that the suit properties are previously partitioned. It is true that the plaintiffs have not made the second wife of defendant No. 1 and children from his second marriage as party to suit but whether they are essential parties is a vital issue of suit which is required to be tried on merits. Further it is true that wife can not claim share in the ancestral property of husband in the life time of husband but share of wife can be derived if partition is opened by other coparcener such as son. Therefore at this primary stage it can not be said that suit is barred by law and for want of necessary parties. As the suit properties are ancestral and yet not partitioned the plaintiffs being co-parceners can file suit for partition.

Therefore in light of above said facts and circumstances, plaintiff has prima facie case. Hence, point No.1 is answered in the affirmative.

As to points No.2 & 3 :

08. The plaintiff proves prima facie that the suit property is undivided joint family property they have joint ownership and possession over the suit property. Therefore, if the defendants are not restrained from creating third party interest then they will transfer the suit property pending suit which would cause great hardship to the plaintiffs and it also leads to multiplicity of proceedings. As it is prima facie held that the suit property is ancestral property of plaintiffs and defendants; the grant of temporary injunction in favour of plaintiff will not prejudice to defendants. Considering these facts and as the suit property is jointly owned and possessed open agricultural land, the balance of convenience is also lies in favour of plaintiffs. Hence, points No.2 and 3 answered in affirmative. In result, the following order is passed:

ORDER

- a) Application for temporary injunction is allowed.
- b) The defendants are temporarily restrained from alienating and/or creating third party interest in the suit property specifically mentioned in paragraph No. 1 of the plaint till final disposal of this suit.
- c) Costs in cause.

(Dictated and pronounced in open Court).

Sd/-

Place :- Panhala.
Date :- 13.02.2024

Atul Ashok Kore
Jt. Civil Judge Jr. Dn., Panhala.