

ORDER BELOW EXH.5

The plaintiff has filed this application for temporary injunction restraining defendants from creating third party interest in the following properties situated at village Malkapur, Tq. Udgir, Dist. Latur-

- i) Gat No.2/1, Adm. above 0 H. 25 R.,
- ii) Gat No.2/2, Adm. above 0 H. 25 R.,
- iii) Gat No.2/3, Adm. above 0 H. 23.93 R.,
- iv) Gat No.2/4, Adm. above 0 H. 14 R.,
- v) Gat No.2/5, Adm. above 0 H. 14 R.,
- vi) Gat No.54/1/A, Adm. above 0 H. 68.89 R.,
- vii) Gat No.59, Adm. above 4 H. 46 R.,
- viii) Gat No.61/1/B, Adm. above 0 H. 04.63 R.,
- ix) Gat No.77/2, Adm. above 0 H. 38.52 R.,
- x) Gat No.333/3, Adm. above 0 H. 65.49 R.,
- xi) Gat No.70, Adm. above 0 H. 38.77 R.

(Hereinafter referred as "Suit Properties").

2) It is contended that, plaintiff No.1 and 2 are the children of plaintiff No.3 and deceased Sidheshwar Balwantrao Patil. Deceased Shidehswar Patil who died on 29.03.2009 was the son of defendant No.1 and 2. Defendant No.3 is another son of defendant No.1 and 2 and uncle of plaintiff No.1 and 2.

3) It is contended by the plaintiff that, suit properties mentioned above are ancestral joint family

properties and partition is yet to take place between the parties and plaintiffs are having joint 1/3 share in the suit properties.

4) Plaintiffs contended that, till the year 2019 defendants maintained the plaintiffs well however, since prices of suit properties are increasing they have started ill-treating the plaintiffs and ignored to maintained them. In November 2020, defendants physically assaulted the plaintiff No.3 and threw her out of the house.

5) It is further contended that, defendants are trying to sell out the suit properties without the knowledge and permission of plaintiffs and thereby intend to deprive the rights of plaintiffs in the suit properties. Plaintiffs also contended that, on 10.07.2021 defendants have entered in to agreement to sell in respect suit property bearing No.59 adm. 4 H. 46 R. out which they trying to sell 1 H. 60 R. land which is situated in Malkapur Tq. Udigr Dist. Latur for the consideration of 4,80,00,000/-. As part payment defendants have received Rs.1,20,00,000/- from the purchaser namely Dnyaneshwar Nadarge, Baliram Murke Patil and Bashweshwar Biradar. Plaintiffs submitted that, if the suit properties are sold then they will be deprived of their 1/3 share in the suit properties. Hence, prayed to allow this application by granting temporary injunction against the defendants restraining them to create any third party interest in the suit properties.

6) Defendant Nos.1 to 3 have filed their written statement below **Exh.19** and adopted the same to be their say to this application as per pursis filed below **Exh.21**. Defendants contended that, suit properties mentioned in the application are not ancestral joint family properties of the plaintiff and defendants. However, defendants admitted in their say that, suit properties bearing Survey No.59 and 54/1/A are the only ancestral joint family properties of the parties. Defendants further contended that, on 03.09.2021 defendant No.1 sold 39 R. land out of survey No. 59 to Umakant Walke and another 39 R. land to Prashant Aute through registered sale deed. Defendant No.1 on 05.10.2021 sold 82 R. land out of Survey No. 59 to Shripati Biradar through registered sale deed. Defendant No.1 had to sale these land in order to pay the loan taken from the financial institution being the Karta of the family.

7) Defendants are contending that, suit properties mentioned in the para of the 2 of the plaint are already sold to respective purchasers. Plaintiffs are knowing that, these properties are sold by defendant No.1 being Karta of the family and for the legal necessity of joint family. Defendant No.1 and 3 are having business of selling and purchasing of the properties. They both have purchased properties bearing survey No.2/1 to 2/5 at village Malkapur out of their income received from business. Hence, those can not

be ancestral joint family properties and plaintiffs are not entitled to any share in those suit properties.

8) Defendants further submitted that, plaintiffs have not included property in survey No.89/A as suit property which is situated at village Nideban Tq. Udgir and also house which is situated at village Malkapur being the joint family properties. Plaintiffs have not included necessary parties in the suit therefore, defendants contended that, the suit be dismissed for non-joinder of necessary parties. Defendants denying rest contentions prayed to reject the application.

9) Read the application and say given by defendants, perused the documents and heard both sides. In support of his contention, plaintiff has filed on record documents below list **Exh.4**. Plaintiff has filed on record 7/12 extracts of suit properties which are filed below **Exh.4/1 to 4/12**, copy of agreement to sale dated 10.06.2021 is below list **Exh.4/18**. On the other hand, defendants have not filed anything on record in support of their contentions.

10) After going through the rival pleadings, submissions of learned Advocates for both sides and after perusal of documents, following points arise for my consideration and I have recorded my findings thereon for the reasons given there under.

	POINTS		FINDINGS
1)	Whether plaintiff has made out <i>prima-facie</i> case ?	..	Yes.
2)	Whether balance of convenience lies in favour of the plaintiff ?	..	Yes.
3)	Whether plaintiff is likely to suffer the irreparable loss if temporary injunction is refused?	..	Yes.
4)	Whether plaintiff is entitled for relief of temporary injunction as prayed?	..	Yes.

REASONS

As to point nos.1 to 4 together :-

11) Since all these points are inter connected they are answered together to avoid repetition of discussion. Plaintiff has specifically filed this application below Exh.5 against the defendants restraining them from creating any third party interest in the suit properties. I have gone through and perused documents filed by the plaintiff regarding suit properties. After perusal it is seen that, suit properties are in the names of defendant No.1 Balwantrao Yeshwantrao Patil except the suit properties in survey No.61/1/B, 77/2, 333/3, 70 are in the name of Sunil Balwantrao Patil i.e. defendant No.3.

12) Plaintiffs are apprehended that, these suit properties if transferred or alienated in favour of any third party then they will be deprived of their share in the suit

properties. Also, it will create multiplicity of proceedings if more rights and interests are created in the suit properties.

13) Provision of temporary injunction are governed under **Section 37** of Specific Relief Act and also under **Order XXXIX Rule 1 and 2** of Code of Civil Procedure. Temporary Injunctions are such as are to continue until specified time or until the further of the Court and they may be granted at any stage of the suit. **Order XXXIX Rule 1** of C.P.C. provides that, when any property in dispute in a suit is in danger or being wasted, damaged **or alienated** by any party to the suit or wrongfully, sold in execution of decree or when defendant threatens or intends to, to remove or dispose of his property with a view to defraud his creditors and also when defendant threatens to dispossess the plaintiff or causing injury to plaintiff in relation to property in dispute in the suit.

14) Also, it must be seen that, before granting temporary injunction, whether plaintiff proves that, protection granted under **section 52** of Transfer Property Act is inadequate. In the present case plaintiff is claiming 1/3 share in the suit properties. Present suit is filed for Partition and Separate Possession. It is also necessary to see that, whether plaintiffs are likely to suffer irreparable loss if the temporary injunction is not granted. **Section 52** of Transfer of Property Act says, *“When any right to immovable property is directly and specifically in question, the property*

can not be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any party thereto under any decree or order which may be made therein.”

15) Applying the protection given under section 52 of T.P.Act transactions pending the suit will always remain binding between the transferor and purchaser. However, temporary injunction can avoid multiplicity and complications by deterring the party at the threshold its self from entering into transactions. This effect can not be given by section 52 of T. P. Act.

16) In the present case, plaintiffs have brought on record copy of agreement to sale below Exh.4/18 in respect of suit property bearing survey No.59 to show the apprehension that, defendants might create third party interest in the suit properties. On the contrary, defendants in their written statement have only alleged that, they have sold part of suit properties to various purchasers but did not produce any material document to show that, there has been registered sale deeds in respect of the same. In absence of such contentions of defendants are less to believe than the contentions of the plaintiffs.

17) It is worth to mention here that, parties have admitted their relation which other and also the fact that, there has been no partition till date between them in

respect of suit properties mentioned in this suit. Prima facie it appears that, the suit properties are in the name of defendant No.1 and 3 who are the family members of plaintiffs. As per the contentions of the defendants some portion of suit properties are already sold to different purchaser but nothing in respect of that showing any mutation entries are brought on record by the defendants. Therefore, I am of the view that, at the present stage interest of the plaintiffs in respect of suit properties needs to be protected to avoid further complications in the suit.

18) By filing this application, plaintiffs are only seeking that, defendants should not alienate and create any third party interest in the suit properties. Question regarding the suit properties and share of the plaintiffs will be decided on merits after the full trial of the suit. Considering the facts and circumstances of the case and documents filed on record, plaintiff in the present case has made out prima facie case for granting temporary injunction. Prima facie appears that, partition has not taken place in respect of suit properties. This suit is filed for partition and separate possession. As the parties have admitted their relations with each other it prima facie appears that, they have undivided share in the suit properties.

19) Considering the prayer mentioned in this application, if temporary injunction is not granted then

plaintiffs will face greater hardship than the defendants. If any third party interest is created in the suit properties, then it will create multiplicity of the proceedings and plaintiff will have to suffer irreparable loss since they have got undivided share in the suit properties. Therefore, I hold that, plaintiff has made out prima facie case in his favour and also balance of convenience lies in his favour. Considering the facts in hand, it is necessary to protect the interest of the plaintiffs over the suit properties.

20) Hence, as per reasons given above, I answer the point Nos.1 to 4 in the affirmative and record my findings accordingly. Both parties are contesting the case on merits, therefore it would be just and proper that, each party to bear their own costs of this application and in the interest, I pass the following order-

ORDER

1. Application Exh.5 is allowed.
2. Defendants are restrained from alienating and creating any third party interest in the suit properties till final decision of the suit.
3. Parties to bear their own costs.

(Dictated and pronounced in open court.)

Sd/-

(N. J. Chavan)

Date : 27/09/2022

3rd Jt.Civil Judge (J.D.), Udgir.