

ORDER BELOW EXH.5 IN R.C.S. NO.688/2022

This is an application filed by the plaintiff seeking relief of temporary injunction against the defendant under provisions of order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908.

Narration of facts of Plaintiff's case in nutshell is as follows:-

2. Suit property bearing Block No.815 adm. 1 H. 76 R and 2 H. 0 R. situated at village Lohara is subject matter of the suit. The four boundaries of suit property – A i.e. Block No.815 1 H. 76 R. is as follows – on or towards East – Property of Anant Bhanudas Mogle, on or towards West – Property of Padminbai and Bhanudas, on or towards South – Property of Bhagwat Mogle, on or towards North – Bhakaskheda road. The four boundaries of suit property – B i.e. Block No.815 1 H. 76 R. is as follows – on or towards East – Property of Maroti Mogle, on or towards West – Property of Bhagwat Mogle, on or towards South – Bhakaskheda road, on or towards North – Property of Dnyanoba Biradar and Shankar Biradar. Hereinafter referred as “Suit Property”.

3. Suit property – A was allotted to share of the plaintiff, property – B was allotted to the share of son of the plaintiff i.e. Dayanand Bhanudas Mogle. However,

Dayanand Bhanudas Mogle is residing in abroad hence, property of his share is being possessed by the plaintiff. In the year of 2004 dispute arose in respect of ancestral properties between plaintiff and his two sons namely Dayanand Bhanudas Mogle, Anant Bhanudas Mogle and their mother Padminbai Bhanudas Mogle. On 27.02.2004 registered partition deed was executed accordingly mutation entry No.1269 is certified. The son of the plaintiff i.e. Anant Mogle is residing separately from the plaintiff and is in possession of property allotted to his share. The defendant was residing separately since 2001 from his mother Rohini Mogle and his father Anant Mogle due to their family dispute. The mother of the defendant has also filed proceeding for maintenance and proceeding under Section 498-A of the I.P.C. against his father. In Criminal M.A. No.26/2006 compromise took place between mother of the defendant and his father and they decided to get separated since then defendant is residing separately at Nagtirthwadi.

4. The defendant and his father has partitioned the property allotted to share of the father of defendant. The defendant is not having any concerned with the suit property. However, on 07.07.2022 defendant threatened and demanded the share in the suit property despite of being partitioned between plaintiff and his sons. At that time, defendant broke the

door lock of the house of the defendant and carried away along with him Soyabean wrapped in Gunny bags. On 08.07.2022 plaintiff also lodged the police complaint with the Udgir Rural Police Station against the defendant. On 08.08.2022 in the afternoon plaintiff was cultivating his land of Soyabean at that time defendant came thereat and threatened to dispossess the plaintiff from the suit property. Several criminal cases have been filed against the defendant bearing RCC No.36/2018, RCC No.316/2012, RCC No.57/2012 and RCC No.21/2013. The plaintiff by way of partition is in possession of his share of the suit property. However, defendant is obstructing his possession over the suit property. The police did not pay any heed. Hence, plaintiff is constrained to file present suit.

5. Defendant appeared in the matter and filed his say at Exh.39 and strongly opposed the application on a ground that, present suit filed by the plaintiff is false and misleading. The plaintiff and his two sons Anant and Dayanand are residing in a joint family. There is no partition by meets and bounds between plaintiff and his sons. The so called partition deed executed is false and bogus. The property of degraded quality was given to the share of father of the defendant. The said partitioned has been effected without consent of mother of the defendant. The plaintiff and his son Anant Mogle thrown away defendant and his mother out of the

house. Thenafter, the mother of the defendant had filed criminal proceeding for maintenance and proceeding under Section 498-A of the I.P.C. against the defendant. In Criminal M.A. No.26/2006 compromise was effected an amount of Rs.3,00,000/- was given to the mother of the defendant till defendant attains the majority. After attaining the majority defendant demanded his separate share. However, plaintiff and his son refused to do so. The partition deed executed in 2004 is not binding upon defendant as it was executed in collusion with Anant Mogle and Dayanand by the plaintiff. There was no consent to the said partition deed of the defendant. Spl.C.S.No.107/2022 has been filed against the defendant. Hence, defendants prayed to reject the application.

6. Heard the learned advocate Shri. R.M.Patil for the plaintiff. Heard learned advocate for the defendant Shri.G.G.Gundre.

7. From consideration of facts and pleadings of the parties the following points arises for my determination to which I have record my findings for reasons stated below.

Sr. No	Points for determination	Findings
1.	Whether plaintiff has made out prima facie case in his favour ?	No
2.	Whether balance of convenience	No

	lies in favour of the plaintiff ?	
3.	Whether irreparable injury is likely to cause to the plaintiff if application is rejected ?	No
4.	What order ?	Application is rejected

8. Plaintiff in support of his contentions has produced on record following documents at Exh.4:-

- i) Certified copy of 7/12 extract of Block No.815 of village Lohara.
- ii) Xerox copy of partition deed dated 27.02.2004.
- iii) Application dated 08.07.2022 written by the plaintiff to the Udgir Rural Police Station.
- iv) N.C.R. dated 11.07.2022 bearing No.570/2022, N.C.R. bearing No.590/2023 dated 26.06.2023.

. Plaintiff has produced along with Exh.28 following documents.

- i) N.C.R. bearing No.894/2023 dated 21.09.2023.
- ii) N.C.R. bearing No.859/2023 dated 08.09.2023.
- iii) F.I.R. dated 29.08.2017 bearing No.160.
- iv) N.C.R. bearing No.894/2023 dated 21.09.2023.

. Plaintiff has produced along with Exh.32 photographs.

. Defendant has produced on record along with Exh.38 following documents.

- i) xerox copy of Spl.C.S.No.107/2022
- ii) xerox copy of compromise in Cri.M.A.No.26/2006
- iii) xerox copy of 7/12 extract of Block No.278

REASONS**AS TO POINT NOS.1 TO 4:-**

9. In order to succeed and while determining the temporary injunction application the plaintiff has to prove three essential ingredients i.e. prima facie case in his favour, balance of convenience lies in his favour and irreparable injury is likely to cause to him if injunction is not granted in his favour.

10. Now, at this stage recourse to documentary evidence produced by the plaintiff is necessary. Plaintiff has produced on record certified copy of 7/12 extract of Block No.815 village Lohara. Plaintiff has produced on record xerox copy of partition deed dated 27.02.2004. On the perusal of said partition deed it transpires that, partition has been effected in respect of Block No.815 between Bhanudas Mogle, Anant Mogle, Dayanand Mogle and Padminbai Mogle. In the said partition Anant Mogle has been given 1 H. 10 R. land out of Block No.815 and 87 R. land out of Block No.765. Now, it is the contention of the plaintiff that, Suit property - A was allotted to share of the plaintiff, property - B was allotted to the share of son of the plaintiff i.e. Dayanand

Bhanudas Mogle. However, Dayanand Bhanudas Mogle is residing in abroad hence, property of his share is being possessed by the plaintiff. In the year of 2004 dispute arose in respect of ancestral properties between plaintiff and his two sons namely Dayanand Bhanudas Mogle, Anant Bhanudas Mogle and their mother Padminbai Bhanudas Mogle. On 27.02.2004 registered partition deed was executed accordingly mutation entry No.1269 is certified. The son of the plaintiff i.e. Anant Mogle is residing separately from the plaintiff and is in possession of property allotted to his share.

11. The defendant has produced on record xerox copy of Spl.C.S.No.107/2022 instituted by Shreya Anant Mogle, Trisha Anant Mogle through their guardian mother Aasha Anant Mogle against Anant Mogle, Krushna Anant Mogle, Rohini Anant Mogle and Bhanudas Anant Mogle in respect of Block No.815, 765 and Gram Panchayat Property No.402. The defendant has also produced on record xerox copy of compromise in Criminal M.A.No.26/2006. In the said compromise in para no.5 it has been agreed that, present defendant i.e. Krushna Anant Mogle shall have right over the immovable property. On perusal of xerox copy of Block No.278/1 it transpires that, it is standing in the name of Bhanudas Mogle. It is relevant to note that, in the partition deed dated 27.02.2004 the said property i.e. Block No.278/1 was not subject matter of the partition.

It is settled principle of law that, for the purpose of partition all the properties of the joint family must be included in common hotch potch.

12. In the present suit the plaintiff has suppressed the material fact about institution of Special Civil Suit No.107/2022. The said suit i.e. Spl.C.S. No.107/2022 and the present suit is instituted by the same Advocate. The said suit has been instituted prior to institution of the suit. The plaintiff ought to have disclose the material fact about the said suit in the present suit. The plaintiff has not come with the clean hands.

. At this stage it is relevant to note case law Hon'ble Bombay High Court Bench at Aurangabad in case of **Umaji Satwaji Shep through L.Rs. Vs. Gulam Mohmood Gulam Dastgir through L.Rs. : 2022 Livelaw (Bom.) 431** it is held that,

“Temporary injunction can be granted only if the applicant approaches the court without any suppression of material facts and reiterated that such an injunction can be granted only if a prima facie case, balance of convenience, and irreparable loss to the person seeking the injunction is established.”

. At this stage it is relevant to note case law Hon'ble Bombay High Court in case of **Shri Vasudev Nene and Ors. Vs. Dattatraya Raghunath Jog : 2000 (3) ALLMR 193** has held that,

In a matter where a party seeks an equitable relief, the party has to approach the court with clean hands and should not suppress any material fact or document, otherwise he or she cannot seek indulgence of the court for any equitable relief.

13. Prima facie case is not in favour of the plaintiff. Balance of convenience does not lie in favour of plaintiff because no mischief is likely to be caused to the plaintiff, if injunction is not granted. No irreparable injury is likely to be caused to the plaintiff if temporary injunction is not granted. In the light of conspectus of above discussion I, answer point no.1 to 3 in negative. In answer to point no.4 I, proceed to pass the following order:-

ORDER

1. Application is Exh.5 is rejected
2. Costs shall follow the event.

Udgir
Date: 30/11/2023

(K. A. Powar)
2nd Civil Judge, Jr. Dn. Udgir