

**Order below Exh. 5 in R. C. S. No. 63/2013**

1. This is an application by the plaintiffs vide Order 39 rule 1 and 2 of the Code of Civil Procedure (In short C.P.C.) for the temporary injunction.
2. The landed property situated at village Manusmarwadi tq. Renapur dist. Latur bearing gat No.89 area 00 H 84 R is the subject matter of the suit.
3. In short it is the contention of the plaintiffs that they have filed the suit for partition and separate possession of their shares. Plaintiff No. 2 is legally wedded wife of defendant No. 3 and plaintiff No. 1 is their legitimate son. Defendant No. 1 and 2 are the parents of defendant No. 3 and defendant No. 4 and 5 are sons of defendant No.1. They all with the plaintiffs form a Hindu joint family. The suit property is their ancestral and joint family property. Defendant No. 6 and 7 are illegal purchaser of the suit property. The defendants in collusion with each other ill-treated plaintiff No.2 by making illegal demand of money due to which she is constrained to reside at he parent's house along with plaintiff No.1. The defendants are not providing maintenance to the plaintiffs. Defendant No. 1 has sold 30 R land to defendant No. 6 illegally and then defendant No.6 has sold said land to defendant No. 7. Defendant No. 1 to 5 are trying to dispose of remaining land. The plaintiffs have undivided shares in the suit property. On 26.06.2013 plaintiff No. 2 asked her legal share in the suit property but the defendants have denied the same. Hence she has filed present suit. It is her apprehension that since previously defendant No.1 has transferred some of the suit property and he may during the pendency of the suit again alienate the suit property. If the property is transferred it would create multiplicity in the suit and it would cause irreparable loss to the plaintiffs, hence they have filed present application for temporary injunction.
4. Defendant No.1 to 4 have not filed their written statement (In short w. s.) on record hence the suit is proceeded without their w. s. The plaintiffs have not taken steps for service of summons on defendant No. 5 and 6 hence the suit is dismissed

against these defendants vide O IX R 5 of the CPC. As such no question arise to press this application against them.

5. Defendant No. 7 filed pursis at exh.35 and adopted the written statement exh. No. 33 as her say to the present application. The relations between plaintiff and defendants have been disputed by this defendants. She has denied that defendant No.1 to 5 and the plaintiffs form joint family. She has denied that defendant No. 6 and 7 are the illegal purchasers. It her contention that she is bonafide purchaser for value. She has purchased 30 R land from defendant No. 6 by registered sale deed DB No. 392/2013 dated 18/03/2013 and she is in possession of the same. As per this defendant, defendant No. 6 has purchased 84 R land from father of defendant No. 1 by registered sale deeds DB No. 4367/2004 dated 23/06/2004 and DB No. 2106.2005 dated 24/03/2005 for family necessity and parted with the possession. Father of defendant No. 1 has not challenged said transaction therefore the plaintiffs have no locus standee to file such suit. Therefore, the plaintiffs have no prima-facie case in this matter. On these grounds this defendant has prayed to reject the application.

6. The following points arise for my determination and my finding thereon along with its reasoning are as follow-

	<b><u>POINTS</u></b>	<b><u>FINDINGS.</u></b>
01	Whether the plaintiffs have prima-facie case in this matter?	Partly yes.
02	Whether balance of convenience lies in favour of the plaintiffs?	Partly yes.
03	Whether the plaintiffs would have to suffer irreparable loss if the order of temporary injunction is not granted in their favour?	Partly yes.
04	What order?	Application exh.5 is partly allowed.

**REASONS.**

**As to Point No.1.**

7. Since the suit is dismissed against defendant No. 5 and 6 this application would be decided to the extent of defendant No. 1 to 4 and 7 only. Hence I am entertaining the application to the extent of defendant No. 1 to 4 and 7 only.

8. Defendant No. 7 has disputed the relation of the plaintiffs with defendant No.1 to 5. Admittedly she is not the member of the family of defendant No. 1 to 5. As such she cannot challenge the relationship of the plaintiffs and defendant No. 1 to 4, especially when defendant No. 1 to 4 have not denied the same. Only defendant No. 1 to 4 have locus to deny such relationship. It is fact on record that defendant No. 1 to 4 have not filed the w. s. and disputed the relationship. It is not at all denied by defendant No. 1 to 4 that they along with the plaintiffs form a joint Hindu family. The fact if not specifically denied shall deemed to be admitted. Hence prima-facie it appears that plaintiff No. 2 is legally wedded wife of defendant No.3 and plaintiff No. 1 is their legitimate son and they form a joint family along with defendant No. 1 to 5.

9. It is the contention of the plaintiff that the suit property is joint family property of the plaintiffs and defendant No. 1 to 5. It is not denied by defendant No.7 that the suit property is joint family of defendant No.1. As such prima facie it can be said that the suit property is joint family property of the plaintiffs and the defendant. It is alleged by the plaintiff that defendant No. 1 has illegally sold the suit property to the extent of 30 R area to defendant No.6 and later on defendant No. 6 has sold said portion to defendant No. 7. Though these contentions are raised, details regarding those transactions are not disclosed in the plaint. Necessary details regarding those transactions about dates, extent of properties transferred, the name of the vendor, etc. are missing from the pleadings. On the contrary defendant No. 7 has come with specific case that, defendant No. 6 has purchased 84 R land from father of defendant No. 1 by registered sale deeds DB No. 4367/2004 dated 23/06/2004 and DB No. 2106.2005 dated

24/03/2005 for family necessity.

10. The court has asked the advocate of the plaintiffs to explain about these facts and adduce some documents regarding those transactions. The learned advocate for the plaintiff sought one adjournment but he produced nothing and submitted that said transactions with defendant No. 6 were nominal and for family arrangement. But nothing is adduced on record so as to support these contentions. As such prima facie it has to infer that the father of defendant No.1 has alienated some land to defendant No. 6. The plaintiffs have filed copy of sale deed of defendant No.7. The 7x12 extract in said deed shows that at the relevant time 84 R land was standing in the name of defendant No. 6. That time no land was standing in the name of defendant No. 1. The plaintiffs have filed fresh 7x12 extract of the suit property. It shows that 54 R land is standing in the name of defendant No.1 and no land is standing in the name of defendant No.6. The plaintiff has not given any explanation as to how and when 54 R portion is transferred in the name of defendant No.1.

11. But mere this fact would not affect entire claim of the plaintiffs. No doubt old 7x12 extract shows that 84 land was standing in the name of defendant No. 6, the present 7x12 extract of the suit property on face shows that at present 54 land is standing in the name of defendant No.1. Defendant No. 1 to 4 have not raised any contention regarding self acquisition or holding of separate property. Unless such contentions are raised with the support of some convincing evidence it can be prima facie said that same is the joint family property of the plaintiffs and defendant No. 1 to 5. As such it prima facie seems that being the members of the joint family the plaintiffs have right to claim share in it. Hence the plaintiffs definitely have prima facie case to the extent of the land standing in the name of defendant No.1.

12. So far as the portion standing in the name of defendant No7 is concerned the plaintiffs cannot claim it as joint family property of the plaintiffs and defendant No.

1 to 5. It prima-facie seems that the property was transferred to defendant No. 6 in year 2004 and 2005. The plaintiffs have not adduced any evidence to show prima-facie that at the relevant time joint family of the plaintiffs and defendant No. 1 to 5 was in existence. Admittedly plaintiffs age is not shown in the plaint. It is also not made clear whether he was born prior to said transaction or not. Plaintiff No. 2 is not a coparcener of said family. Plaintiff No. 1 can claim coparcenary right only in those properties which were in existence in the joint family at the time of his birth. He cannot claim any right in the properties already disposed by his ancestors prior to his birth. Hence until it is shown that the plaintiff No. has birth right in the property transferred in the name of defendant No. 6 the plaintiff cannot challenge said transaction. Till that event they have no right to challenge further transaction by defendant No. 6 in favour of defendant No. 7. In the result the plaintiffs have no prima facie case to claim any relief to the extent of the land standing in the name of defendant No. 7. Therefore, I hold that the plaintiffs have prima-facie case in this matter partly to the extent of land standing in the name defendant No. 1 only. To that effect I answer point No.1 accordingly.

**AS TO POINT NO. 2 & 3**

13. For the determination of these points some evidence and facts need to be discussed collectively. The repetition of those facts or evidence is possible if these points are determined separately. To avoid such repetition I am determining these points collectively.

14. The plaintiffs have contended that there is apprehension that defendant No.1 to 5 may alienate the suit property. Defendant No. 1 to 4 have not denied these submissions. The plaintiff's story is that they are deserted by the defendants. Said allegations are not denied by the defendants. Admittedly prior to filing the suit, some portion of the suit property has been alienated . It is also a fact on record that the plaintiffs are not residing with defendant No. 1 to 5. Some litigations are pending

between them. As such the possibility cannot be denied that defendant No. 1 to 4 may alienate the suit property along with the share of the plaintiffs. There appears some substance in the contention of the plaintiffs regarding the alienation. The plaintiffs have undivided share in the suit property. Defendant No.1 to 4 have no right to alienate or transfer the suit property in which the plaintiffs have their undivided share. Therefore, the plaintiffs have balance of convenience in their favour to restrain such transactions. If the suit property is alienated or transferred in any other form it would create complications and multiplicity in the proceedings. The plaintiffs are deserted persons. They are not in possession of the suit property. At this stage they are getting no benefit from the suit property. As such if the order of injunction is not granted in favour of the plaintiffs, they would have to face so many hurdles to get actual possession of their share. Timely relief is the need of the plaintiffs. Such transactions would definitely cause delay in the proceedings. In the result the plaintiffs would have to suffer irreparable loss. On the contrary it nowhere seems that defendant No. 1 to 4 have any legal necessity to transfer the property. If they are restrained from alienating the suit property till disposal of the suit they would not have to suffer any loss. The comparative hardship is more to the plaintiff than defendant No.1 to 4.

15. So far as the relief prayed in this application to the extent of the land standing in the name of defendant No. 7 is concerned, the plaintiffs have no prima-facie case. The plaintiffs have failed to establish prima facie, any right in the land standing in the name of defendant No.7. As such no balance of convenience lies in favour of the plaintiffs to claim the relief against said share. In that situation they would not have to suffer any loss if the order of temporary injunction is not granted to the extent of land standing in the name of defendant No.7. In the light of above discussion I answer point No.2 to 3 accordingly.

**As to Point No.4**

16. The plaintiffs have proved that they have prima-facie case in this matter to the extent of relief against the property standing in the name of defendant No.1. The balance of convenience lies in favour of the plaintiffs to that extent only. The plaintiff would have to suffer irreparable loss if the order of temporary injunction to the extent of property standing in the name of defendant No.1 is not granted. In that case the comparative hardship is more to the plaintiffs than defendants No. 1 to 4. To the extent of the land standing in the name of defendant No.1 the plaintiff have proved all the necessary ingredients which are essential to grant the temporary injunction in their favour. So far as their prayer to the extent of the land standing in the name of defendant No. 7 is concerned the plaintiffs have no prima-facie case. No balance of convenience lies in favour of the plaintiffs to claim any relief against said share. They would have not to suffer any loss if the order of temporary injunction is not granted. In the result, application exh.5 is liable to be allowed partly. To that effect I pass the following order.

**ORDER.**

1. Application exh.5 is partly allowed.
2. Defendant No.1 to 4 are or anybody claiming through them is hereby restrained from alienating or transferring the property standing in the name of defendant No.1 in Gat No. 89 of village Manusmarwadi Tal. Renapur, in any form till the disposal of the suit.
3. The application is rejected to the extent of plaintiff's prayer against defendant No. 5 to 7
4. Cost will be in cause.

Date: 10.09.2014.  
Renapur

(A. A. Yadav)  
Civil Judge, Jr. Division, Renapur.