

MHLA140006612022



**Reg. Civil Suit No. 246/2022
Rekha Vs. Nanasaheb & Ors.**

ORDER PASSED BELOW EXH.5

The present application has been filed by the plaintiff seeking temporary injunction in order to restrain defendants from alienation of the suit property till the disposal of the suit. Perused the application. Heard both.

2. Plaintiff's case is as follows:-

Plaintiff is the daughter of defendant No.1 and 2 and Sister of defendant No. 3, 7 and 8. There is strained relationship between plaintiff and defendants. It is the contention of the plaintiff that suit property is ancestral property of defendant No.1. Plaintiff has her share in the suit property. The defendants are trying to alienate the suit property. The plaintiff requested the defendants to give her share in the suit property. However, defendants denied the same. Therefore, plaintiff has filed present suit for partition and separate possession.

3. Defendant no. 1, 2 and 8 were duly served. However, they failed to appear. Therefore, the suit is proceeded ex-parte against defendant no. 1, 2 and 8. Other defendants are yet to be served. The plaintiff's prayer is only against defendant no. 1. Therefore, the plaintiff has pressed the instant application in this circumstances.

4. Taking into consideration, the case of both parties and arguments advanced by learned advocate for the plaintiff, following points arise for my determination to which I have given reasons and findings thereon:-

<u>POINTS</u>	<u>REASONS</u>
1. Whether the plaintiff prove that prima-facie case is in her favour ?	No.
2. Whether the plaintiff prove that the balance of convenience tilts in her favour?	No.
3. Whether the plaintiff prove that irreparable loss would be caused to her, if application is rejected?	No.
4. What order?	Application is rejected.

REASONS

AS TO POINTS NO. 1 :-

5. As far as the apprehension of obstruction in the suit property is concerned, prima facie there is no reasonable and plausible apprehension of obstruction by defendant is seen. Therefore, there is protection of lis pendens to the suit property under section 52 of Transfer of Property Act, 1882. Therefore, under such circumstances by issuing injunction of not to obstruct the suit property till the disposal of the suit, the property will be locked. Plaintiff and defendants are co-parceners and joint family members. It is undisputed fact that the suit property is ancestral and joint family property of plaintiff and defendants. Hence, injunction can not be granted against co-owner. Therefore, prima-facie it is seen

that the plaintiff failed to prove prima-facie case in her favour. Hence, I answered point no.1 in the negative.

AS TO POINT NO. 2 AND 3 :-

6. Plaintiff failed to show that balance of convenience is in her favour. Further, prima facie it is not seen that no irreparable loss would cause to the plaintiff if the application is rejected. Therefore, as far as the findings given in points no. 1, balance of convenience and irreparable loss does not tilt in favour of plaintiff. Hence, I answer points no.2 and 3 in the negative.

AS TO POINT NO. 4 :-

7. In answer to point No. 4, the following order is passed :-

O R D E R

1. Application is rejected.
2. Cost in main cause.

(Dictated & pronounced in open Court)

Ausa
Date:- 13/09/2022

(P.D.Kolekar)
Jt.Civil Judge J.D.,Ausa.