

**Order below Exh. No.5.**

(Passed on 29-11-2017)

1. This is an application filed by the plaintiff under Order 39 Rule 1 and 2 Code of Civil Procedure for grant of temporary injunction for restraining defendants not to alienate or transfer the suit property mentioned in para no.2 of the plaint, till the final disposal of the suit.

2. The plaintiff and defendant no.1 to 7 are brother and sisters. The defendant no.8 and 9 are nephew of plaintiff. The defendant no. 10 is wife of defendant no.2. The plaintiff and defendants are joint family members and they are having following ancestral and joint family properties.

1. The land block no. 18/3/1 adm. 1 H. 82 R situated at village Dongraj Tq. Chakur
2. The land block no. 102 adm. 1 H. 2 R situated at village Shelgaon Tq. Chakur.
3. The land block no. 72/1 adm. 1 H. 86 R situated at village Hanmantwadi Tq. Chakur,
4. The G.P. house no. 195/1 adm. 30 x 70 situated at village Dongraj Tq. Chakur,

(The above properties hereafter called as 'suit properties', for the sake of brevity.)

3. The suit property of block no. 102 and G.P. house no. 195/1 and land block no.18 adm. 1 H. 82 R situated at village Dongraj

were allotted to the share of father of plaintiff and defendant no.1 to 7 in their family partition of year 1983 and 1999. As per the partition mutation entry no. 301, 591, 377 were sanctioned the name of deceased father of plaintiff. The father of plaintiff and defendants purchased the land block no. 72 adm. 1 H. 86 R under registered sale deed bearing no. 1187/1985 on 15.04.1985 in the name of defendant no.3 out of joint family income and funds.

4. The plaintiff having 1/8th share in the suit properties and defendants are trying to alienate the suit properties, if defendants succeeded in their illegal acts then the legal right of plaintiff will be deprived, therefore defendants are required to be restrained from creating any right, title or interest over the suit properties. Thus, the plaintiff have prima facie case and balance of convenience lies in his favour. Hence, plaintiff prayed to allow the application.

5. Defendant no. 1 to 10 were served with summons vide exh. 12,13,15,16 17 and 23, but they have failed to appear in the suit. Hence, the suit is proceeded ex-parte against them.

6. After considering the contentions of the plaintiff, following points arise for determination along with my findings thereon for the reasons noted below.

<u>Point</u>	<u>Findings.</u>
(1) Whether plaintiff has made out prima -facie case in his favour ?	Yes.
(2) Whether the balance of convenience lies in his favour ?	Yes.

- (3) Whether Plaintiff will suffer irreparable loss if remedy of temporary injunction is not granted? Yes.
- (4) What order ? The application is allowed.

### REASONS.

#### As to Point no. 1 to 3:-

7. Heard learned counsel for plaintiff. In support of the application the plaintiff has relied on the documents filed at exh.4 at sr. no. 1 to 14.

8. I have perused the documents filed on record. The plaintiff has contended that the suit properties is their ancestral and joint family properties and defendants are trying to alienate the said properties. Defendants have not appeared, therefore the contention of the plaintiff is unchallenged. After perusal of 7/12 extract of block no. 18/3/1 the land adm. 1 H. 2 R appears in the name of defendant no.2 and the land adm. 80 R appears to the name of defendant no.10, the land block no. 102/1 adm. 1 H. 2 R appears in the name of defendant no.9, the land block no. 72/1 adm. 96 R appears to the name of defendant no.3 and land adm. 90 R appears in the name defendant no. 8, the house G.P. No. 195/1 appears to be in the name of the father of plaintiff. The mutation entry no. 301 shows that the it was recorded on the basis of partition on 21.06.1983 and it appears that the father of the plaintiff allotted 3 H. 4 R land in sy.no. 102, the corrected mutation entry no.

591 is recorded on 29.09.1992 and mutation entry no. 377 was recorded on the basis of partition on 13.10.1990 and it appears that the father of the plaintiff was allotted 1 H. 82 R land in sy.no. 18 at village Dongraj. The above documents supports to the contention of the plaintiff.

9. The plaintiff has contended that defendants are trying to alienate the suit properties and the plaintiff is having share in the suit properties, the contention of the plaintiff is unchallenged on record. Considering the case of plaintiff and documents filed on record I am with the view that defendants are required to be restrained and if temporary injunction not granted then there would be multiplicity of litigation. Thus, the plaintiff has prima facie established his case, the balance of convenience lies in his favor and if the injunction not granted then he will suffer irreparable loss. Thus the application deserves to be allowed. Accordingly, I answer point no. 1 to 3 in Affirmative and in the result of point no.4 I pass following order.

**ORDER.**

1. Application is allowed.
2. Defendant no.2,3, & 7 to 10, their agents, servants or any other person on behalf of them hereby restrained from alienating, transferring the suit properties mentioned in para no.2 of the plaint till the final disposal of the suit.

Date : 29-11-2017.

**(Gajanan B. Jankar)**  
Joint Civil Judge, J.D. Chakur

