

**:: Order below Exh. 05 ::**  
**( Vaijnath..Vs..Chandar & oths. )**

01. This is an application by the plaintiff under Order-39 Rule-1 of the Code of Civil Procedure for restraining the defendants from alienating suit lands described below or creating third party interest till disposal of the suit.

**:: Suit lands ::**

<b>Sr. No.</b>	<b>Village</b>	<b>Survey No.</b>	<b>Area</b>	<b>Standing in the name.</b>
<b>A</b>	Borol	197/1	0 H. 36 R	Defendant No. 1.
<b>B</b>	Borol	197/1	01 H. 20 R	Defendant No. 2.
<b>C</b>	Borol	197/1	01 H. 20 R	Defendant No. 3.
<b>D</b>	Borol ( Shivaji Nagar Tanda )	4/1	0 H. 68 R	Defendant No. 4.
<b>E</b>	Borol ( Shivaji Nagar Tanda )	4/1	01 H. 00 R	Defendant No. 5.
<b>F</b>	Borol ( Shivaji Nagar Tanda )	4/1	01 H. 00 R	Defendant No. 6.

( Hereinafter, referred as 'suit lands').

02. **Plaintiff's case in short is as under :**

The plaintiff, the defendant No. 1 and 4 are real brothers. The defendant No. 2 and 3 are sons of defendant No. 1. The defendant No.5 and 6 are sons of the defendant No. 4. The suit lands are ancestral joint family properties, which are yet to be partitioned. The plaintiff's uncle namely Bhimrao s/o Dattatraya Koyle was issueless and during his life-time he gifted his land in survey No. 12/A admeasuring

03 Acre, 17 Gunthas to the plaintiff. The mutation of suit lands was recorded in the name of defendant No. 1 and 4 for family arrangement. But it was enjoyed jointly by the plaintiff and defendants. However, the defendant No. 1 and 4 behind back of the plaintiff, made false partition-deed and showed partition between their sons. Accordingly, names of their sons are recorded on 7/12 extract. Therefore, the plaintiff on 20-12-2017 asked partition of suit lands from defendant No. 1 and 4, but defendants flatly refused. Hence, plaintiff constrained to file present suit. During pendency of suit, the defendants may alienate or create third party interest in suit lands, therefore, moved present application.

03. Application is contested by the defendants by filing written statement at Exh. 37. Same is treated as say to the Exh. 05 as per pursis below Exh. 38. As per the defendants, the partition of ancestral properties taken place in the year 1976 and accordingly, mutation entry No. 303 and 304 were recorded. As per said partition, the land in survey No. 12/A, which is stated to be gifted to the plaintiff was actually came to his share by way of partition. The suit lands in present suit came to the share of defendant No. 1 and 4. They made partition in suit lands between their sons. Further, the suit is filed for partition but four sisters of the plaintiff and defendant No. 1 and 4 were not made parties. Hence, plaintiff not came before the Court with clean hands. Hence, prayed to reject the application.

04. From rival pleadings of the parties, following points arise for my determination and I have recorded my findings against them for reasons stated below :

Sr. No.	<b><u>Points for determination</u></b>	<b><u>F i n d i n g s.</u></b>
1}	Whether the plaintiff proves prima-facie case in his favour ?	<b><u>In negative.</u></b>
2}	Whether balance of convenience lies in favour of the plaintiff ?	<b><u>In negative.</u></b>
3}	Whether the plaintiff will suffer irreparable loss, if injunction is not granted as prayed ?	<b><u>In negative.</u></b>
4}	What order ?	<b><u>As per final order.</u></b>

**:: Reasons ::**

**:: As to point No. 1 ::**

05. Heard both sides. Learned advocate for the plaintiff contended that, the suit lands being ancestral properties not disputed by the defendants. But they have claimed that, partition is already taken place in the year 1976. The plaintiff denies said partition. Therefore, till adjudication about said dispute, at this stage, the defendants must be restrained from alienating suit lands which are admittedly ancestral properties. He further contended that, he will add his sisters in the suit. But that would not be a ground to reject the application. Hence, prayed to allow the application.

06. Per contra, learned advocate for the defendants submitted that, as per mutation entry No. 303, the plaintiff

was allotted land in survey No. 12/A, which is admeasuring 03 Acre, 17 Gunthas along with other uncle namely Kashiram. As per mutation entry No. 304, suit lands which were earlier known as survey No. 234/A and 267/A were allotted to the share of defendant No. 1 and 4. Mutation entry No. 303 is recorded on application of the plaintiff himself and mutation entry No. 304 was recorded on application of the defendant No. 1. Both mutations were recorded on 10-04-1976. Therefore, the partition is already taken place and same is acted upon which is supported by mutation entries. The plaintiff by suppressing material facts has claimed partition only in respect of lands allotted to the defendants and intentionally omitted to add land in survey No. 12/A by claiming it was gifted to him. But as per mutation entry No. 303 same was came to his share as heir of deceased Bhimrao. Further, sisters of plaintiff and defendants were not added. Hence, the plaintiff is not entitled for injunction as claimed. Therefore, prayed to reject the application.

07. It is not in dispute that, suit lands are ancestral properties. The defendants are claiming that, partition is already taken place in the year 1976. In support of their contentions, they have filed copies of mutation entry No. 303 and 304 below Exh. 42. As per mutation entry No. 303, the plaintiff moved an application and stated that, Bhimrao, who is brother of plaintiff's father was died and he being his

nephew and real brother of deceased Kashiram are only heirs to the deceased and therefore, they both succeeded to that property in equal share. Further, as per mutation entry No. 304 survey No. 234/A and 267/A (which are now survey No. 197/1 and 4/1 ) are partitioned between defendant No. 1 and defendant No. 4.

08. As per the written statement, the father of the plaintiff and defendants namely Babarao was having 02 brothers namely Bhimrao and Kashiram. As per plaintiff and defendants, said Bhimrao died issueless. As per the plaintiff, the lands standing in his name in survey No. 12/A was gifted to the plaintiff during his life-time and as per claim of the defendants, it was allotted to the plaintiff during partition in the year 1976. The plaintiff had not filed any document to show that, it was gifted to him. However, the defendants by filing mutation entry No. 303 showed that, it was recorded in the plaintiff's name as heir of deceased Bhimrao along with Kashiram, who is real brother of deceased Bhimrao. On same day, the mutation entry No. 304 was recorded on application of the defendant No. 1 and the suit lands were partitioned amongst the defendant No. 1 and 4. From mutation entry No. 303 and 304 it is clear that, there was partition effected in respect of ancestral properties between plaintiff and defendants. The plaintiff is not alone nephew of deceased Bhimrao. The defendant No. 1 and 4 are also his nephews,

but their names were not recorded as heirs. The application for mutation entry No. 303 is moved by the plaintiff himself. Therefore, it is clear that, the plaintiff was aware about partition taken place and said land was allotted to him as heir of deceased Bhimrao by excluding defendant No. 1 and 4. Therefore, at this stage, prima-facie the contention of the defendants appears more probable and believable. Whereas, the contention of the plaintiff is not believable and further his conduct is very mischievous as he intentionally omitted to add his sisters in suit for partition. Further, he made false claim about land in survey No. 12/A was gifted to him by deceased Bhimrao during his life-time. Therefore, the plaintiff failed to make out prima-facie case in his favour. Hence, point No. 1 is answered in negative.

**:: As to point No. 2 & 3 ::**

09. From the findings of point No. 1, the plaintiff has no prima-facie case and he will not suffer irreparable loss and balance of convenience not lies in his favour. If, the plaintiff succeeded to show that, the suit properties are not yet partitioned and suit properties are meanwhile alienated by the defendants to third parties, still plaintiff's rights are protected under section 52 of the Transfer of Property Act. The alienation of suit properties during pendency of present suit would be subject to decision of present suit. Therefore, the plaintiff's rights are already protected. Hence, point No. 2 and 3 are answered in negative.

**:: As to point No. 4 ::**

10. From the findings of point No. 1 to 3, application deserves to be rejected. Hence, following order.:

**:: Order ::**

- 1) Application is rejected.

Date : 15-11-2019.

Sd/-  
{U.B. Kalapagar }  
Civil Judge Junior Division,  
**Deoni.**

**:: Certificate ::**

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	M.Y. Wadiwale.
Name of the Court	Shri.U.B.Kalapagar, Civil Judge Jr. Division, Deoni.
Date of Dictation	15/11/2019
Order signed by the P.O. on	15/11/2019
Order uploaded on	15/11/2019