

MHLA160010322023



R.C.S.No.361/2023
Vedant +2 Vs. Datta.

ORDER BELOW EXH.5.

This is an application for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure (Shortly called as CPC).

2. The plaintiff's case is as under,

The plaintiff Nos. 1 to 3 are son, daughter and wife of the defendant. They have joint family and right and interest in the suit property i.e. ancestral land Block No.109/1 area 00H 80R and Block No.89 area 01H 68R. It is not partitioned. It was granted to the defendant in partition, as per mutation No. 1072. The suit property is sole income source for their family. The defendant is trying to alienate the suit property to others for bad habits and without legal necessity. He uttering in that regard on 15/10/2023. Third persons have also visited the suit property for that purpose. The defendant has refused partition and the plaintiffs' share. The plaintiffs filed the suit for partition and separate possession. The prima facie case, balance of convenience and irreparable loss are established in their favour. They prayed temporary injunction to restrain defendant from alienating the suit property and relied on Village Form No.8A, village Form

No.7/12 and Mutation No.1072.

3. The defendant failed to file say. This application is proceeded further without say, vide order dated 18/06/2025.

4. I have carefully gone through the record and arguments. The following points are arising for my determination and I recorded my findings and reasons therein as under.

No.	Points	Findings.
1.	Is prima-facie case made out in favour of the plaintiffs?	Yes.
2.	Is balance of convenience lies in favour of the plaintiffs?	Yes.
3.	Will cause irreparable loss to the plaintiffs if refused temporary injunction?	Yes.
4.	What order ?	As per final order.

REASONS

POINT NOS.1 TO 3 -

5. Aforesaid points are interlinked; therefore, they are taken up for discussion together.

6. Learned advocate Shri. S.P. Kamble for the plaintiffs vehemently argued on the pleadings. According to him, no counter pleadings in-spite sufficient chance. All components of injunction are made out in the plaintiffs'

favour.

7. Whereas, learned advocate for defendant failed to argue inspite sufficient opportunity.

8. I have carefully gone through the record and argument. In order to decide this application, the plaintiffs' right or interest in the suit property are most important. The defendant has not denied or objected the plaintiffs' pleadings or right or interest. Under such circumstance, his indirectly admitted the same. Both parties are Hindu. As the suit property is ancestral, the plaintiff Nos.1 and 2 got right and interest in the suit property by birth. Hence, the prima facie case is made out in the plaintiffs' favour.

9. The comparative hardship or mischief are base of balance of convenience. The defendant trying to alienate the suit property inspite the request and demand of partition. He has not shown legal necessity to alienate the suit property. Thus, his bad habits and cause of alienating the suit property are cause more hardship to the plaintiff and mischief with the suit property. Hence, the balance of convenience is also lies in the plaintiffs' favour.

10. Irreparable loss is also most important component. The plaintiff Nos.1 and 2 have right and interest in the suit property. If the defendant succeeded to alienate the same, they will face irreparable loss and may arise situation of

multiplication of litigation.

11. Hence, I concluded that, the prima facie case, balance of convenience and irreparable loss are lies in the plaintiffs' favour. The plaintiffs will face irreparable loss if injunction is refused. The plaintiffs succeeded to established all components of injunction. Hence, I answered point Nos.1 to 3 in affirmative.

AS TO POINT NO.4 :-

12. As above discussed, and findings of the point Nos.1 to 3, all components of injunction are established in the plaintiffs' favour. The defendant has not sufficiently established cause of alienating the suit property or legal necessity. No reasons to make the plaintiffs dis-entitled him from the relief. The defendant is committing breach of legal obligation. If the suit property alienated, the multiplication of litigation will arise and caused delay in the trial of this suit. This is fit case to grant temporary injunction as prayed. In that event the defendant will not face any loss. The plaintiffs are entitled to discretionary and equitable relief of temporary injunction. This application is deserved to be allowed. Hence, in answer of point No.4, I passed the following order.

ORDER

1. The application is allowed in the interest of justice and thereby the defendant is temporary restrained from

alienating the suit property by any means till decision of the suit, vide Order 39 Rule 1 of the Code of Civil Procedure.

2. Both parties shall make endeavor to dispose the suit as early as possible.

3. Order dictated on computer and pronounced in open court.

Date- 11/09/2025
Deoni.

(S.A. Surjuse)
Civil Judge (Jr.Dn.,) Deoni.