

MHND140008702023



**ORDER BELOW EXH. 06**  
**(passed on 30<sup>th</sup> April 2025)**

01] The plaintiffs have filed application for grant of temporary injunction for obstructing defendants from creating any third party interest in the property in Gat No.73, 170, 28, 185, 80, 23 admeasuring 2H 2R, 3H 64R, 1H 21R, 0H 40R, 0H 20R, 3H 23R and 10H 70R respectively situated within the limits of village Kavalgadda, Tq.Degloor, Dist. Nanded, specifically described in claim clause of the plaint. (Hereinafter referred as **suit properties.**)

02] **Case of the plaintiffs:**

Plaintiff no.1 and 2 are sisters inter vivous and plaintiff no.3 and defendant no.1 are their parents. Defendant no.2 second wife of defendant no.1 and defendant no.3 to 6 are step sibling of plaintiff no.1 and 2. Defendant no.7 to 10 are maternal aunts of plaintiff no.1 and 2. Defendant no.8 and 9 are legal heirs of deceased maternal aunt Shobha bai. Defendant no.11 is the uncle of plaintiff no.1 and 2 and real brother of defendant no.1. The grand father of plaintiff no.1 and 2 the father of defendant no.1 to 11 namely Khushalrao Venkatrao Jadhav was the owner of suit properties. Plaintiff and defendants are legal heirs of late Khushalrao Jadhav. The suit properties are yet to be partitioned and plaintiffs and defendants have their respective share. However, defendants are under

preparation to alienate the suit properties to third persons. Hence this application.

**03] Case of the defendants:**

The defendants filed their say and admitted the relationship with plaintiffs. However, they denied other claim of plaintiffs flatly. The defendants submitted that the oral partition was effected between late Khushalrao and his brother in the year 1986 and mutation entry no.537 was recorded accordingly on 15/11/1987. Moreover, said Khushalrao has also effected oral partition of suit properties in his life time between plaintiffs and defendants vide mutation entry no.543. The plaintiff no.3 is second wife of defendant no.1 and plaintiff no.1 and 2 are children's of that second wife. Therefore, they have no right in the suit properties. Hence, they prayed to reject the application.

**04]** Perused the application and say. Heard both sides. following points arise for my determination, to which I have recorded my findings and reasons as under:

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether plaintiffs have made out a prima facie case in his favour?	<b>NO.</b>
2	Whether balance of convenience rests in favour of plaintiffs for grant of temporary injunction?	<b>NO.</b>
3	Whether plaintiffs will suffer irreparable loss if order of temporary injunction is not passed?	<b>NO.</b>
4	What order?	<b>Application is rejected</b>

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

05] The sum and substance of the plaintiffs claim is that suit properties are ancestral properties of plaintiffs and defendants and defendants are under preparation to alienate the suit properties behind the back of plaintiffs. Therefore, by way of this application they sought to obstruct the defendants from the alienating the suit properties.

06] In support of his claim plaintiffs have adduced photo copy of 7/12 extract of Gat No.73, 170, 28, 185, 80 and 23, photo copy of mutation entry no.1584, 1571, 1463, 542. Whereas, defendants have not adduced any document in their favour.

07] Perused the application and say. Heard both sides. Perused the documents on record. The claim of plaintiff is that suit property is ancestral of plaintiffs and defendants and partition is not yet affected. The defendants are trying to alienate the suit properties. Therefore, plaintiff wants to restrain them by temporary injunction. Considering the facts and circumstance of the case in hand, I referred an authority of Hon'ble Supreme Court. In **Sunil Kumar and Ors Vs. Ramprakash and Ors(1988, 2 SSC 77)** the Hon'ble Apex Court held that *"an injunction can not be granted against Karta of the family unless the alienation in fact is completed there would be no cause of action for in coparcener to maintain the suit because the right is only to challenge the alienation may and there is no right recognized in law the maintain the suit to prevent the proposed sale. The principal*

*that the injunction can be granted for preventing wast by a manager or Karta obviously would not be applicable to such a suit because the proposed alienation for an alleged need or the benefit of estate can not be said to the an act of wast by any stretch any reasoning. We are therefore, of the considered view that the coparcener has no right to maintain the suit for permanent injunction to restraining the manager or Karta from alienating the coparcener the property and his right is only to challenge the same to recover the property after it has come into being"*

**08]** Considering the ratio laid down by Hon'ble Apex Court in the Sunil Kumar's judgment as discussed supra, the same principle is also applicable to the case in hand. Defendant no.1 is Karta of the family and other defendants are coparcener. Therefore, I am of the considered view that temporary injunction can not be granted against defendants for restraining them from alienating the suit properties. Therefore, I conclude that plaintiffs have **prima-facie** failed to establish their case. Hence, in the light of above discussion, I answer point No. 1 in Negative.

**As to Point No. 2 , 3 and 4 :**

**09.** For grant of temporary injunction, the plaintiffs also have to make out that the balance of convenience lies in his favour. As plaintiffs have failed to prove prima-facie case, balance of convenience does not rest in their favour. Thus, the question of irreparable loss would not arise. Hence, point no.2 and 3 are

answered in the negative. Resultantly , in answer to point number 04, I proceed to pass the following order.

**ORDER**

1. The application Exh. 6 stands rejected.
2. No order as to costs.

Date: 30.04.2024

**(Raghavendra N. Dev)**  
Civil Judge Jr. Division,  
Degloor, Dist. Nanded

**CERTIFICATE**

I affirm that the contents of this P.D.F. File Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Jr. Clerk	Shri. A.K. Mohammad
Name of Court	Shri. Raghavendra N.Dev, C.J.J.D. and J.M.F.C., Degloor
Date of Dictation	30/04/2025
Judgment signed by the P.O. on	30/04/2025
Judgment/Order uploaded on	30/04/2025