



ORDER BELOW EXHIBIT 5 IN R.C.S. NO.1/2022
(Passed on Dt.01.09.2023)

01. This is an application made by plaintiff/ Applicant for restraining the **defts** from alienating the suit property under order- 39, rule-1 of the Code of Civil Procedure.

Brief facts of the case of plaintiff are as under :-

02. It is contention of plaintiff that she is a daughter of Kondiramji S/o Rajaramji Sarode who was resident of village Bellori Dhanora. Kondiramji Sarode had lands in Gut no. 44, 223, 222 and 6 houses. The Kondiramji Sarode was died on 13-12-2018, left behind legal heirs i.e three sons and one daughter and wife and daughter-in-law. Deft No. 1 is mother of plaintiff, deft No. 2,3 & 9 are brother of plaintiff. The plaintiff and deft No. 1 to 6 are member a Hindu Joint Family which having undivided Hindu Joint Family properties.

03. During his lifetime Kondiramji Sarode was an enthusiastic and healthy person who purchased the property Survey No. 21 (old),. But before his demise he became feeble and all their family affairs are managed by the deft no. 2 as being a Karta. Thereafter, due to family management, deft No.2 effected certain mutation entries.

Description of properties.

GUT NO.AND LOCATION	AREA	STANDS IN THE NAME OF
Gut No. 44 situated at Dhanora Chikhal	7-H. 36-R	Kondiramji Rajaramji Sarode
Gut No. 223 situated at Bellori Chikhli, Tq. Kinwat	1-H.55-R	Dilip Kondiram Sarode

Gut No. 223 situated at Bellori Chikhli, Tq. Kinwat	1-H.58-R	Nilabai Kondiram Sarode
Gut No. 223 situated at Bellori Chikhli, Tq. Kinwat	1-H.58-R	Vinod Kondiram Sarode
Gut No. 222 situated at Bellori Chikhli, Tq. Kinwat	1-H.00-R	Gangaram Kondiram Sarode
Gut No. 222 situated at Bellori Chikhli, Tq. Kinwat	1-H.02-R	Sunita Gangaram Sarode
Numbers OF HOUSE PROPERTIES situated at Bellori Dhanora, Tq. Kinwat	AREA	STANDS IN THE NAME OF
Property no. 360	464 Sq.Ft.	Sanjivani Dilip Sarode
Property no. 361	1600 Sq.Ft.	Nandabai Vinod Sarode
Property no. 362	1120 Sq.Ft.	Sanjivani Dilip Sarode
Property no. 363	1120 Sq.Ft.	Sunitabai Gangadhar Sarode
Property no. 359	464 Sq.Ft.	Sunitabai Gangadhar Sarode
Property no. 358	916.4 Sq.Ft.	Nilabai Kondiba Sarode

Concerned properties here and after referred as suit properties.

04. It is contention of plaintiff that suit properties mutated in the name of her brother and their wives. The plaintiff is daughter of Kondiramji. During the lifetime of Kondiramji has promised to allot a share to the plaintiff but before fulfilling his promise he had died. The plaintiff is a coparcener having natural rights over the suit properties. During the period of Covid-19 the plaintiff was suffered unstable economic condition, therefore, she came to deft. No. 1 and requested to provide her some foods, but deft. No. 2 to 6 denied for said. Therefore, she requested for partition of suit properties, but the defts. No.1 denied

due to pressure and burden of the defts. No. 2 to 6.

05. It is also contention of the plaintiff that she went deft. No. 7 and requested to her to suggest to the deft. No. 2 to 6 for partition but she also denied. Thereafter, at Bhaubeej-2021 the plaintiff has went to deft. no. 2,3 and 9 and after celebration of Bhaubeej, she demanded separate possession of suit properties but defendants denied on 6-11-2021. Without any family needs and consent of the plaintiff, the deft. No. 7 has sold some land in favor of deft. no. 8. therefore, the plaintiff asked for said, but deft No. 7 told her that she has no right to ask for such sale deed. When plaintiff collected the information, she noticed that in year 2001 deft No. 7 had sold the land gut no. 22 adm. 1-H.2-R of Bellori Chikhali to deft. no. 8.

06. It is also contention of plaintiff that defendants are in hurry to dispose off the properties, if defendants succeed to sell out the suit properties. Then plaintiff will face heavy irreparable loss which cannot be compensated by any other means. Hence, plaintiffs have paid for temporary injunction against defendants to restrain them from creating thirty party interest of allegations of suit property.

Brief facts of the case of defts 1,3,5,6,7 & 9 are as under :

07. Defts. No.1,3,5,6,7 & 9 are appeared and filed their written statement at Exh. 40. The contention made in written statement Exh 40 are read as say of defts. No. 1,3,5,6,7 & 9 for present application. Defts. No. 1,3,5,6,7 & 9 have not opposed the case of the plaintiff.

Brief facts of the case of defts 2 & 4 are as under :-

08. But the deft no. 2 & 4 denied all the allegations made by plaintiffs vide their written statement at Exh. 43, said W.S. treated as say

of present application vide Pursis Exh. 44. Deft.No 2 and 4 denied that suit properties are ancestral and joint family properties.

09. It is contention of deft. No 2 and 4 that Land situated in survey no. 222 standing in the name of deft no. 7 was not owned by deceased Kondiram. The suit properties were partitioned by deceased Kondiram after partition, possession of the respective shares of the defendants was given to them. Hence, they are in peaceful possession over their respective share in the properties. The deceased Kondiram retained gut No. 44 to himself to be partitioned after his death among the plaintiff and deft No. 1,2,3 and 9.

10. It is contention of deft. No 2 and 4 that land survey no. 223 partitioned among deft no. 2,3 and 9. However, 4 acres of land out of survey No. 223 come to the deft no. 2 but said is mutated in the name of deft No. 1, out of love and affection. However, deft.No 2 has possession over said 4 acres land out of survey no. 223. The land situated in Gut. No.222 was purchased by deft No 2 and 4 from deft No 8, said is self-acquire property of deft No 2 and 4. The plaintiffs have no concern with the suit property. Therefore, defendants prayed for rejection of the present application.

11. Heard Mr. S,V.Hatkar, advocate for the plaintiff and Shri S.P.Shirpue, advocate for the deft. Shri S.S.Tajane, advocate for the deft No 2 and 3. Perused record and proceedings. I have also gone through the relevant provisions of the Code of Civil Procedure (CPC).

12. On going through contentions and submissions of both sides, following points arise for my determination and I record its findings thereon, with reasons, as under-

Sr. No.	Points	Findings
01)	Does plaintiff prove that they have made out prima facie case ?	 In affirmative
02)	Does plaintiff prove that balance of convenience lies in their favour ?	 In affirmative
03)	Does plaintiff prove that they would suffer irreparable loss, if temporary injunction is not granted as prayed for ?	 In affirmative
04)	What order ?	 The application is allowed.

REASONS

AS TO POINT NO. 1 :-

13. In establishing a prima facie case, plaintiffs need not establish their title. It would be sufficient for them to show that they have a fair question to raise as to existence of their right. While examining the question of prima-facie case the court has to satisfy that the claim was not frivolously vexatious, in other words there is a serious question to be tried.

14. The relations of parties are not completely disputed by defendants. Rather, deft. No. 1,3,5,6,7 and 9 admitted the claim of plaintiff. Accordingly, it appeared that deft No.01 is mother of plaintiff, defendant no. 2,3 & 9 are brother of plaintiffs. Therefore, it is not disputed plaintiffs and defendants are / was member of joint family.

15. It appears from contention of both parties that Kondiramji Rajarami Sarode was father of plaintiff, deft No. 2, 3 & 9 and husband of deft no. 1. According to plaintiff and deft no. 1, 3, 5, 6,7 and 9 suit

properties is ancestral and joint family property. However, deft no. 2 and 4 opposed the application and claim of the plaintiff. They denied the nature of suit property and ancestral joint property. Deft No. 2 and 4 also contention that property situated in survey no. 233 already partitioned and land situated in Gut. No.222 was purchased by deft No 2 and 4 from deft No 8, said is self-acquire property of deft No 2 and 4.

16. Though, defts. No 2 and 4 have claimed, that suit properties are their self-acquired properties and already partitioned. But they have no contention in respect of their earning source except from ancestral properties. At present stage, the story that suit properties were already partitioned could not consider as said fact may established upon the evidence of both parties. At this stage, with prime-facie appears that suit properties are ancestral and joint family property of the parties or purchased from nucleuse of income of joint family property or ancestral property.

17. The plaintiff also filed copy of 7/12 extract of G.No.44,222 & 223 along with Exh.04. It appears from said that property situated in Gut No. 44 stands in the name of Kondiram Sarode, property situated in Gut no. 223 stands in the name of Dilip Sarode, Lilabai Sarode and Vinod Sarode and property situated in Gut no. 222 stand in the name of Gangabai Sarode, and Sunita Sarode.

18. Plaintiff also filed copies of Gaon Namuna No. 8 along with exh. 4 it appeared from copies of Namuna No. 8 that property no. 360 of village Bellori Dhanora stands in the name of Sanjeevani Sarode, property No. 361 stands in the name of Nandabai Sarode, property No. 362 stands in the name of Sanjeevani Sarode, property No. 359, 363 stands in the name of Sunitbabi Sarode. Property No. 358 stands in the name of Lilabai Sarode.

Plaintiff is also filed copy of sale deed No. 1129/2001 which executed favor of deft.No. 8

19. Defendant No.2 and 4 opposed the contention of the plaintiff. At, this stage, it is appeared from contention of the plaintiff and deft no. 1, 3, 5,6 & 7 that suit property is ancestral property. Therefore, at this stage, it is prima-facie appears to be ancestral property or joint family property.

20. It is contention of the plaintiff that defendants are trying to alienate the suit property. In view of order 39, rule 1 of C.P.C., Court may grant temporary injunction, if it is proved that property, in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree.

21. Needless to say that this is a suit for partition. Though It is defense that partition had taken placed but said need to be proved by evidence. At this stage, defendants had not brought any registered document to consider suit property is already partitioned. Accordingly, it prima-facie appears that property is undivided. It is the duty of Court to preserve the subject matter of suit. Therefore, whatever a final decision of the present suit may be, but it needs to preserve the suit property. In view of discussions supra, I am of the considered opinion that serious question is to be tried in the instant suit and plaintiffs proved prima-faice case. I, therefore, record affirmative finding of the point No. 1.

AS TO POINT NO. 2 :-

22. '*Balance of convenience*' means the comparative mischief or inconvenience to the parties. In arriving at the balance of convenience, the court has to weigh the mischief likely to be caused applicant, if the interim relief is refused. At the same time, it has also to compare the

injury likely to be caused to the other side, if the interim relief is granted.

23. As regards balance of convenience and inconvenience, if the defendants are not restrained by an order of injunction from alienating the suit property and ultimately the suit succeeds, the plaintiffs are to suffer more than that will be suffered by defendants. If the injunction is granted and suit ultimately fails, the defendants will not suffer loss or injury.

24. In view of discussions supra, I am of the considered opinion that balance of convenience lies in favour of plaintiffs. Hence, I record affirmative finding of point No.2.

AS TO POINT NO. 3 :-

25. '*Irreparable injury*' means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the applicants in case of success in the suit would not place them in the position in which they were before injunction was refused. In view of the discussions and findings of points No. 1 and 2, plaintiffs would suffer irreparable loss or injury, if temporary injunction is not granted as prayed for. Therefore, I record affirmative finding of point No. 3.

AS TO POINT NO. 4 :-

26. The phrases prima-facie case, balance of convenience and irreparable loss are not rhetoric phrases for incantation but words of width and elasticity to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. In the

instant case, plaintiffs proved these three points. Therefore, the temporary injunction is required to be granted against the defendants. In the result, following order is passed.

ORDER

01. The application of temporary injunction is allowed.
02. The defendants no. 1 to 7 and 9 are hereby temporarily restrained from alienating the suit properties, stands in their names by any way or creating any third party interests over it, till the final disposal of suit.
03. Cost in cause.

Kinwat

Date : 01.09.2023

(S.B.Ambhore)

C. J. J. D., Kinwat

MHND180000912022
R.C.S. No. 1/2022
Anusayabai Vs. Nilabai.

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ORDER / EXH. 5

Certificate

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

Name of the Jr.clerk	:	Rathod S.N.
Court Name	:	Court of C.J.J.D., Kinwat
Date	:	01/09/2023
Order signed by		
the Presiding Officer on	:	01/09/2023
Order uploaded on	:	02/09/2023

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