

**Common order below Exh.6 and 37 in Regular Civil Suit No.33/2018.**

1. Plaintiffs have filed an application under Order XXXIX rule 1 (a) of Code of Civil Procedure to restrain defendant No.1 from alienating the suit properties bearing Gut No.229 an area admeasuring 1 Hec 20 Are s/a village Mendla Tq. Ardhapur Dist. Nanded and Gut No.67 an area admeasuring O Hec 80 Are s/a village Wahedpur Tq. Ardhapur Dist. Nanded. The original defendant no.1 has filed an application u/o XXXIX Rule 1(c) of Code of Civil Procedure to restrain the original plaintiffs and original defendants No.2 to 5 (as mentioned in Exh.1), from obstructing possession of original defendant No.1 over the suit properties Gut No. 67 an area admeasuring O Hec 80 Are s/a village Wahedpur Tq. Ardhapur Dist. Nanded, Gut No.229 an area admeasuring 1 Hec 20 Are s/a village Mendla Tq. Ardhapur Dist. Nanded, Gut No.520 an area admeasuring 2 Hec O Are s/a village Gaur Tq. Purna Dist. Parbhani and Gram Panchayat House Property No.53/3 an area admeasuring 29 x 15.5 sq.feet s/a village Bamni Tq. Ardhapur.

2. It is the case of the original plaintiffs that, the suit properties bearing Gut No.229 and Gut No.67 are ancestral joint family properties of the original plaintiffs and original defendants and they are yet to be partitioned. It is further case of the original plaintiffs that, the original plaintiffs have earned the suit properties except Gut No.21 by their own labour.

3. It is further case of the original plaintiffs that, the land Gut No.67 an area admeasuring O Hec 40 R was purchased by the original plaintiff No.1 from Datta Pawde in the year 2005. However, the sale deed of Gut No.67 an area admeasuring O Hec 40 R was executed in

the name of the original defendant No.1 and at that time, the original defendant No.1 had no source of income. The whole consideration of the sale deed dated 21.11.2005 was paid by the original plaintiff No.1. Thereafter, the land Gut No.229 an area admeasuring 1 Hec 20 Are was also purchased by the original plaintiff No.1 on 15.04.2006, but the sale deed was executed in the name of the original defendant No.1 and at that time, the original defendant No.1 had no source of income. Both the sale deeds in respect of Gut No.67 and 229 were executed in the name of original defendant No.1 for the purpose of getting benefit of Government scheme.

4. It is further case of the original plaintiffs that, Gut No.67 and 229 are jointly cultivated by the original plaintiffs and original defendants and all have equal share in the suit properties. It is further case of the original plaintiffs that, after the marriage of original defendant No.1 in the year 2006, the original defendant No.1 was not helping to the original plaintiffs in family works and he was addicted to various bad vices. Thereafter, the original plaintiffs had given original defendant No.1, his share in the ancestral house.

5. It is further case of the original plaintiffs that, the land Gut No.67 and 229 are separate properties of the plaintiff No.1 though standing in the name of the original defendant No.1. The original plaintiffs have approached to the original defendant No.1 to do the partition of suit properties, but the original defendant No.1 failed to do so, and threatened to alienate the suit properties. Therefore, the original plaintiffs are constrained to file the present application.

6. On the other hand, the original defendant No.1 has filed his Say below Exh.24. The original defendant No.1 submits that, the

original plaintiffs have not included entire properties in the suit, therefore, the interim relief can not be granted to the original plaintiffs. It is specific case of the original defendant No.1 that, Gut No.67 and Gut No.229 an area admeasuring O Hec 40 Are and 1 Hec 20 Are respectively are purchased by the original defendant No.1 by his own source, particularly both the properties were gifted by his in-laws at the time of marriage. It is further case of the original defendant No.1 that, thereafter, the original defendant No.1 has also purchased O Hec 40 Are land out of Gut No.67 on 07.06.2004 by his own income source. Therefore, the original plaintiffs have no right in land Gut No.67 and 229. It is further case of the original defendant No.1 that, Gut No.520 is also his separate property and Gram Panchayat House No.53/3 is in his possession. It is further case of the original defendant No.1 that the original plaintiffs and original defendant No.2 to 5 are unnecessarily obstructing his possession over the suit properties bearing Gut No.67, 229, 520 and G.P. House No.53/3, therefore the original defendant No.1 is constrained to file an application u/o XXXIX Rule 1(c) of C.P.C. below Exh.37.

7. The original plaintiffs have filed their Say to application Exh.37 below Exh.40. The original plaintiffs have denied all pleadings of original defendant No.1 in respect of Gut No.67, 229, 520 and G.P. House No.53/3. The original plaintiffs have pleaded in their written statement as per their plaint and prayed for rejection of application of original defendant No.1.

8. The following points arise for determination of this application and I have recorded my findings thereon along with reasons :-

| Sr. No. | Points                                                                                  | Findings                                                                |
|---------|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| 1.      | Whether original plaintiffs have made out prima facie case ?                            | No.                                                                     |
| 2.      | Whether balance of convenience lies in favour of original plaintiffs ?                  | No.                                                                     |
| 3.      | Whether original plaintiffs will suffer irreparable loss if injunction is not granted ? | No.                                                                     |
| 4.      | What order ?                                                                            | Application Exh.6 is rejected.<br>Application Exh.37 is partly allowed. |

### REASONS

As to point Nos.1 to 3 :

9. Considering nature of the contentions, all points are required to be considered together.

10. It is settled law that while passing an interim order of injunction under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, the Court is required to consider three basis principles, namely (a) Prima facie case, (a) balance of convenience and inconvenience and (c) irreparable loss and injury. In addition to the above mentioned three basis principles, a Court, while granting injunction must also take into consideration the conduct of the parties. It is also established law that, the Court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters, the Court must make all endeavours to protect the interest of the parties.

11. With the above principles, let us consider the claim of both the parties.

12. It is specific contention of the original plaintiffs that, the land Gut No.67, Gut No.229 are joint family properties and are yet to be partitioned. On the contrary, it is contention of the original defendant No.1 that, land Gut No.67, 229 and 520 are his self-acquired properties and house property G.P. No.53/3 are allotted to him and he is in possession of all these properties.

13. While considering contentions of both sides, it is required to see whether Gut No.67 and 229 are joint family properties of the original plaintiffs and original defendants. It is the case of the original plaintiffs that, O Hec 40 R land out of Gut No.67 and an area adm. 1 Hec 20 Are out of Gut No.229 were purchased by the original plaintiffs by his own income, and at that time, the original defendant No.1 had no source of income. While considering this aspect, I must mention here that, it is the case of the original defendant No.1 that, land Gut No.229 and Gut No.67 an area admeasuring O Hec 40 Are were gifted by in-laws at the time of his marriage. There is an affidavit of father-in-law of original defendant No.1 on record, who states that, he had paid consideration of the Sale Deeds in respect of Gut No.67 & 229. There are also affidavits of Shivkanta Balaji Panchal @ Laxmibai Balaji Panchal and Pushpabai Panchal, who were vendor on the sale deed in respect of Gut No.67 admeasuring O Hec 40 Are, who states in the affidavit that, consideration amount was paid by father-in-law of original defendant No.1. There is also affidavit of one person namely Ganesh Datta Pawde, who was attesting witness on sale deed dated 21.02.2005 in respect of Gut No.67 an area adm. O Herc 40 Are, who states that, consideration was paid by father-in-law of defendant No.1.

14. By considering the statements of all above affiants, I am inclined to hold that, at this stage, Gut No.67 an area admeasuring O Hec 80 Are and Gut No.229 adm. 1 Hec 20 Are are seen to be self acquired properties of the original defendant No.1. It is pertinent to note here that, whether the original plaintiff No.1 had paid consideration in respect of sale deeds in respect of Gut No.67 and 229 is a question of trial and it can not be decided without evidence.

15. There is a xerox copy of sale deed in respect of Gut No.520. The sale deed was executed in the year 2011 and it was in favour of the original defendant No.1. It is pertinent to note here that, there is no specific pleading from the side of the original plaintiffs in respect of Gut No.520 particularly whether it is joint family property or not. Therefore, the sale deed prima facie shows that land Gut No.520 is self-acquired property of original defendant No.1.

16. While considering the aspect of Gram Panchayat House property No.53/3, I must mention here that it is admitted by the original plaintiffs themselves that they had allotted the original defendant No.1 his share in the house property. It is pertinent to note that, the tax assessment extract of G.P. House No. 53/3 stands in the name of the original plaintiff No.1. Therefore, I am inclined to conclude that the G.P. House No.53/3 is joint family property of the original plaintiffs and original defendants though it is in possession of the original defendant No.1.

17. While considering above aspects, in my opinion, the original plaintiffs do not have prima facie case and balance of convenience in their favour at this stage. It is pertinent to note here

that, the original plaintiffs have not added house property in the present plaint. It is settled position of law that, in the suit of partition and separate possession, all the properties belonging to the parties are required to be added, otherwise, the suit is not maintainable. On this count also, the application of original plaintiffs deserves to be rejected.

18. On the basis of copies of sale deeds and affidavits of various affiants, in my opinion, the case of the original defendant No.1 is prima facie strong and balance of convenience lies in his favour, particularly in respect of Gut No.67, 229 and 520.

19. It is pertinent to note here that, though G.P. House property No.53/3 is in possession of original defendant No.1, but it is settled position of law that, injunction can not be issued against co-parcener. In the present case, neither the party has pleaded that, there was earlier partition in respect of their ancestral properties. Therefore, G.P. House No.53/3 is also undivided property of original plaintiffs and original defendants and in my opinion, all the parties have equal rights in house property. Therefore, original defendant No.1 is not entitled to seek interim relief in respect of G.P. House property No.53/3.

20. While considering above discussion, I am inclined to hold that if the interim relief is granted to the original plaintiffs, the original defendant No.1 would suffer irreparable loss or injury and it can not be compensated lateron. Therefore, the original plaintiffs are not entitled to get interim relief at this stage. Whereas, if the interim relief is granted to defendant No.1 in respect of Gut No.67, 229 and 520, the plaintiffs and defendant NO.2 to 5 would not suffer irreparable loss or

injury at this stage.

21. In such circumstances, the application below Exh.6 is required to be rejected and application filed below Exh.37 is required to be partly allowed in respect of Gut No.67 an area admeasuring 0 Hec 80 Are, Gut No.229 an area admeasuring 1 Hec 20 Are and Gut No. 520 an area admeasuring 2 Hec 0 Are. Hence I answer these points in the above manner.

**As to Point No.4 :**

19. While considering the above discussion, application below Exh.6 is required to be rejected and application Exh.37 is required to be partly allowed. Hence, following order.

**O R D E R**

1. Application Exh.6 filed by the original plaintiffs is rejected.
2. Application filed by original defendant No.1 below Exh.37 is partly allowed. The original plaintiffs and original defendants No.2 to 5 are hereby temporarily restrained from obstructing possession of the original defendant No.1 over the suit properties i.e. land Gut No.67 an area admeasuring 0 Hec 80 Are s/a village Wahedpur, Gut No.229 an area admeasuring 1 Hec 20 Are s/a Mendla (Kd) Tq. Ardhapur and Gut No. 520 an area admeasuring 2 Hec 0 Are s/a village Gaur Tq. Purna Dist. Parbhani (as mentioned in claim clause of the counter claim below Exh.35), till the final disposal of the suit.
3. Costs in cause.

Date : 15.09.2018.

(S.M. Sarode),  
Civil Judge, JD, Ardhapur.

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                 | : | Mangesh Manmohan Shirodkar                              |
| Court                                 | : | Civil Court Junior Division,<br>Ardhapur, Dist. Nanded. |
| Date of pronouncement of Order        | : | 15-09-2018                                              |
| Order signed by the Presiding officer | : | 15-09-2018                                              |
| Order uploaded on                     | : | 04-10-2018                                              |