

MHND260006222021



Order Below Exh. 05

This is an application filed under Order XXXIX rule 1, 2 of Code of Civil Procedure for grant of Temporary Injunction. As per plaintiffs, they are daughters of Baba S/o Vithoba Kadam. Defendant no. 2 is wife of deceased Baba Kadam. Defendant no. 3, 4 and 5 are sons of defendant no. 1 and 2. Defendant no. 10, 11 are sisters of plaintiffs. One brother of plaintiffs namely Ramrao S/o Baba Kadam died before five years back leaving behind defendant no. 6 as widow, defendant no. 7 and 8 as son and defendant no. 9. Defendant no. 12 is daughter of deceased Ramrao and wife of Kuntabai. Defendant no. 13 is wife of defendant no. 5.

2. Plaintiffs further contended that their father had following properties a. Gut no. 23 to the extent of adm. 38R L.R. Rs. 1.75 Ps. bounded as under...

East : Degaon – Daur Shiv

West : Land of Gangabai Taterao Kadam

South : Land of Balaji Parasram

North : Land of Manika Shamji

and to the extent of 0H. 61R L.R. Rs. 2.81 Ps. bounded as under...

East : Land of Gangabai Taterao

West : Land of Shamrao Bhimrao Kadam

South : Land of Balaji Parasram Kadam

North : Land of Manika Shamji

totaling to 0H. 99R L.R. Rs. 4.56 Ps.

b. Gut No. 28 adm. 0H. 60R L.R. Rs. 2.56 Ps.

c. Gut No. 32 adm. 0H. 22R L.R. Rs. 1.12 Ps.

d. Gut No. 34 adm. 0H. 24R L.R. Rs. 1.22 Ps.

e. Gut No. 38 adm. 0H. 37R L.R. Rs. 1.87 Ps.

f. Gut No. 41 adm. 0H. 37R L.R. Rs. 1.77 Ps.

g. Gut No. 45 adm. 0H. 26R L.R. Rs. 1.29 Ps.

h. Gut No. 46 adm. 0H. 30R L.R. Rs. 1.48 Ps.

- i. Gut No. 56 to the extent of 0H. 67R L.R. Rs. 2.40 Ps. bounded as under...
- East : Land of Uttam Baliram Kadam
West : Land of Sudam Babarao Kadam
South : Land of Jayshri Madhav Kadam
North : Land of Gyanoji Taterao Kadam
And to the extent of 0H. 66R L.R. Rs. 2.36 Ps. bounded as under...
- East : Land of Prayagbai Naroba
West : River
South : Land of Jayshri Madhav Kadam
North : Land of Gyanoji Taterao Kadam
totaling to 1H. 33R L.R. Rs. 4.77 Ps.
- j. Gut No. 58 adm. 1H.17R L.R. Rs. 4.37 Ps.
All situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded
- k. Gut No. 425 adm. 0H. 43R L.R. Rs. 1.56 Ps.
- l. Gut No. 426 adm. 0H. 44R L.R. Rs. 1.65 Ps.
- m. Gut No. 428 adm. 4H. 24R L.R. Rs. 17.58 Ps. to the extent of 0H. 45R L.R. Rs. 1.86 Ps. bounded as under...
- East : Land of Arun Ganpatrao Kadam
West : Way
South : Malegaon-Degaon Shiv Road
North : Land of Anusayabai Babarao Kadam
- n. Gut No. 429 to the extent of 0H. 61R. L.R. Rs. 2.66 Ps. bounded as under...
- East : Land of Maroti Shankar Zirale
West : Land of Satyajit Biradar
South : Land of Sudam Babarao Kadam
North : Land of Ranjit Shankar Zirale
And to the extent of 1H. 40R L.R. Rs. 6.03 Ps. bounded as under...
- East : Land of Anusayabai Babarao Kadam
West : Land of Defendant No. 14 Satyajit and thereafter river
South : Land of Panchfulabai Bhaurao Jadhav
North : Land of Irba Hanmanta
totaling to 2H. 01R L.R. Rs. 8.69 Ps.
All situated at Malegaon Tq. Ardhapur Dist. Nanded

o. Gut No. 16 adm. 1 H. 37 R L.R. Rs. 6.19 Ps. situated at village Dour Tq. Ardhapur Dist. Nanded. (Herinafter referred to as **“Suit properties”**)

3. Plaintiffs contended that there was no partition between the parties. Properties are ancestral one. Two civil suit bearing RCS No. 9/2021 and 11/2021 pending between defendants. Defendant no. 1 and 2 are old aged persons, defendant no. 3 taking disadvantage of their age created certain falsed documents in the name of Satyajit. Elder son Ramrao S/o Baba is karta family suit land were nominally mutated in the name of defendants. Defendants were supplied share of crops to plaintiffs till 2019. from the year 2020 defendants stoped to gave share of crops to plaintiffs hence they filed present suit for partition and seprate possession. As the property is in the name of defendants there is very possibility that they may create third party interest over the suit properties hence prayed for grant of temporary injunction restraining them from creating third party interest.

4. Defendant no. 1 to 3 and 11 appeared and filed their Written Statement below Exh. 34. since other defendants not appeared before this court hence this court proceeded ex-parte against them. As per defendant no. 1 to 3 and 11 there was previous partition in the year 1984 and accordingly mutation entry bearing no. 481 of dated 01.11.1985 was sanctioned.

5. Contesting defendants further contended that originaly only about 4 acres of land Gut No. 28 an area 60 R, Gut No. 38 an area 37 R, Gut No. 56 an area 67 R, Gut No. 10 an area 15 R agricultural land is acquired in the partition effected among the defendant No. 1 Baba and his brothers. The said about 4 acres land is the dry land and not feasible for cultivation as it being small pieces of lands. The defendant no. 1 Baba, his wife and other family members cultivated the land of others, to do the business of agriculture produce and earn from these sources. from sources they purchased other lands in the name of defendants as described in Para No. 4 A to E of written statement. Defendants further denied suit land is ancestral one and creation of false and bogus documents and defendant no. 3 as per defendants plaintiffs not added property of land in Gut No. 10 and residential house of village Khurda Tq. Ardhapur. Further defendants contended that, there is no hardship would cause to plaintiffs if injunction is not granted. Hence prayed to reject this application.

6. Following points arose for my determination, to which, my findings with reasons thereon as are as under :-

Sr. No.	Points	Findings
1.	Whether the prima facie case rests in favour of plaintiff's ?	No.
2.	Whether the balance of convenience tilts in plaintiff's favour?	No.
3.	Whether plaintiff's will suffer irreparable loss if temporary injunction is not granted ?	No.
4.	What order?	The application is rejected.

Point No. 01 to 03

7. All above points arising out of same documents and oral arguments. Hence, discussed together to avoid repetition.

8. Read application, say heard learned Advocate for plaintiffs and defendants. Plaintiffs relied upon documents below list Exh. 7.

Sr. No.	Documents
1.	Copy of 7/12 extract of Gut No. 23 adm. 0H. 99R situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded
2.	Copy of 7/12 extract of Gut No. 28 adm. 0H. 60R situated at Degaon (Kurada) Tq. Adhapur Dist. Nanded
3.	Copy of 7/12 extract of Gut No. 32 adm. 0H. 22R situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded
4.	Copy of 7/12 extract of Gut No. 34 adm. 0H. 24R situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded
5.	Copy of 7/12 extract of Gut No. 38 adm. 0H. 37R situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded
6.	Copy of 7/12 extract of Gut No. 41 adm. 0H. 37R situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded
7.	Copy of 7/12 extract of Gut No. 45 adm. 0H. 26R situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded
8.	Copy of 7/12 extract of Gut No. 46 adm. 0H. 30R situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded

9.	Copy of 7/12 extract of Gut No. 56 adm. 1H. 33R situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded
10.	Copy of 7/12 extract of Gut No. 58 adm. 1H. 17R situated at Degaon (Kurada) Tq. Ardhapur Dist. Nanded
11.	Copy of 7/12 extract of Gut No. 425 adm. 0H. 43R situated at Malegaon Tq. Ardhapur Dist. Nanded
12.	Copy of 7/12 extract of Gut No. 426 adm. 0H. 44R situated at Malegaon Tq. Ardhapur Dist. Nanded
13.	Copy of 7/12 extract of Gut No. 428 adm. 0H. 45R situated at Malegaon Tq. Ardhapur Dist. Nanded
14.	Copy of 7/12 extract of Gut No. 429 adm. 2H. 01R situated at Malegaon Tq. Ardhapur Dist. Nanded
15.	Copy of 7/12 extract of Gut No. 16 adm. 1H. 37R situated at Dour Tq. Ardhapur Dist. Nanded
16.	Two copies of Adhar Card of plaintiffs

9. Learned Advocate for plaintiff contended that there is no previous partition between the parties. Plaintiffs and defendants are relatives. Property is ancestral one. Mutated in the name of defendants. There is very possibility that they may alienate suit property hence prayed for temporary injunction.

10. Learned Advocate for defendant no. 1 to 3 and 11 argued that there was previous partition between the parties in the year 1984 suit is hit by consolidation and holding act, plaintiffs not shown the property is joined family or ancestral property. Finally prayed to reject the application.

11. Considering the facts and circumstances of the present case this court is guided by ratio of Hon'ble Supreme Court in the case of *Makers Development Services (P) Ltd. v. M. Visvesvaraya Industrial Research & Development Centre*, (2012) 1 SCC 735 : It is settled law that while passing an interim order of injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, the court is required to consider three basic principles, namely, (a) prima facie case, (b) balance of convenience and inconvenience, and (c) irreparable loss and injury. In addition to the abovementioned three basic principles, a court, while granting injunction must also take into consideration the conduct of the parties.

12. Prima facie suit properties is mutated in the name of defendants there is no proof of defendants are going to alienate suit property to anybody. Though the relations in between parties are admitted but there was suit bearing no. 9/2021 and 11/2021 were pending for grant of perpetual injunction in between the parties. Plaintiffs could have appeared in that suits since the suit properties are one of those of which plaintiffs are claiming partition. Plaintiffs are coming with similar set of facts upon which present application for temporary injunction is prayed for in both the suits. Though plaintiffs admitted in their claim that there was civil suits were pending between the parties but they not stated the reason about why they did not appeared in that suit as their substantial rights were going to be affected due to said civil suit.

13. Further the submission of defendants with regard to aplicability of legal aspects i.e. Fragmentation on Holdings Act and non-joinder of misjoinder of necessary parties needs further evidence from respective parties. Certainly no impediment would cause to plaintiffs if injuction is not granted. On the contrary, greater hardship would cause to defendants if relief of temporary injunction is granted, as balance of convenience lies in favor of defendants no irrebilable loss would cause to plaintiffs if temporary injunction is refused. Considering all these aspects of the matter my findings to point no. 01 to 03 in the negative and in answer to point no. 04 I pass following order:-

Order

1. Application is rejected.
2. Cost in cause.

Place : Ardhapur

Dt. 19.04.2023

sd/-

(Q. R. Syed)

Jt. Civil Judge Junior Division,
Ardhapur.