

MHND270008912020**R.C.S. NO. 99 OF 2020
Komal vs. Maroti & Ors.**

ORDER PASSED BELOW EXH.5
(PASSED ON 08th SEPTEMBER, 2021)

1) This is an application for temporary injunction under Section XXXIX Rule 1 and 2 of the Civil Procedure Code (C.P.C.). against the defendants restraining them from alienating the suit property till disposal of the suit.

2) Defendant Nos.4, 5, 8 and 9 to 11 appeared and filed their Say. Case proceeded against defendant Nos. 1, 2, 3, 6, 7 as ex-party. The defendant Nos. 1 to 4 and 6 to 8 filed their Say at Exh. 30 and defendant no.9 to 11 filed their Say at Exh.69. I perused application and Say of defendants

3) I Heard Ld. Advocate S. V. Magre for the plaintiff. The Ld. Advocate Shri. K.D.Hamand for defendant Nos. 4, 5 and 8 and Ld. Advocate Shri. M.R. Jamnik for defendant Nos. 9 to 11.

4) Considering the arguments advanced by Ld. Advocate for plaintiff and considering say of defendant Nos. 4, 5, 8 and 9 to 11, following points arose for my determination and I record my findings thereon for the reasons stated below.

Sr.No.	POINTS	FINDINGS
1)	Whether plaintiff has made out prima facie case ?	Yes.
2)	Whether balance of convenience lies in favour of plaintiff ?	Yes.
3)	Whether plaintiff would suffer irreparable loss, if application for temporary injunction is rejected ?	Yes.
4)	What order ?	As per final order.

: REASONS :

AS TO POINT NOS. 1 TO 3:

5) All these points are inter-related to each-other, therefore, I am discussing them together.

6) The plaintiff filed this suit against defendants for partition and registered sale-deed bearing no.365/2008 executed in favour of defendant no.9 by defendant no. 1 and 2 is illegal and not binding, sale-deed bearing no. 185/2021 executed in favour of defendant no.10 by defendant no.9, sale-deed bearing 186/2021 executed in favour of defendant no.11 by defendant no.9 are illegal and not binding. Plaintiff also claim for perpetual injunction restraining the defendant from alienating the suit property and creating third party interest therein.

7) In this application the plaintiff is seeking temporary injunction restraining defendants from alienating the suit land till final disposal of this suit.

8) According to plaintiff she is co-parcener in Hindu Joint Family. She further submitted that suit properties i.e. land Gut no.101 admeasuring 11 R, land Gut no.102 admeasuring 1 H, 59 R, land Gut no.137 admeasuring 15 R, land Gut no.214 admeasuring 80 R, land Gut no.214 admeasuring 1 H 23 R and land Gut no.214 admeasuring 40 R situated at Pardi Vaijapur, Tq.Mudked, Dist. Nanded are ancestral properties of plaintiff and defendant Nos.1 to 8. For the sake of family arrangements defendant no.1 mutated the names of defendant No.2, 3, 4 in 7/12 extract. Partition not taken place between them. However, defendant no.1 to 8 smartly alienated the property without the consent of plaintiff and other defendants and the defendant no.1 and 2 alienated some portion of suit property in favour of defendant no.9 behind her back. Defendant No.9 purchased the suit property from defendant no.1 and 2 vide sale-deed no.365/2008. She is having birth right in the ancestral properties. She also submitted that during pendency of present suit defendant no.9 alienated the suit property to defendant no.10 to 11. There is apprehension that the defendants will alienated other property also. The plaintiff has prima facie case and balance of convenience also in her favour. If they alienated the suit land the plaintiff will suffer irreparable loss. On the contrary if they restrained from alienating suit land till final disposal of this suit they will not suffer any loss. Hence, prayed for allowing this application.

9) According to defendant Nos.9 to 11 they purchased suit land for valuable consideration. The suit is not maintainable against them and they are not willing to alienate the property. Accordingly they prayed to rejected the application. They denied all allegations made in the plaint by plaintiff. They also submitted that plaintiff has

no any prima facie case and balance of convenience is also not in her favour. If temporary injunction is not granted the plaintiff will not any loss. On the contrary defendants would suffer irreparable loss. Hence prayed for rejection of this application.

10) Defendant no. 4 5, 8 submitted that sale-deed bearing no. 365/2008 dated 14.07.2008 is executed by defendants after taking oral consent of all family members including plaintiff. They denied all allegations of plaint. They also pray to pass suitable order in favour of plaintiff and answering defendant.

11) The plaintiff filed on record 7/12 extract of land Gut no. 214, 101, 102, 137 and sale-deeds executed by defendant no.1 and 2 in favour of defendant no.9. She also filed sale-deeds executed by defendant No.9 in favour of defendant no.10 and 11. It appears that from 7/12 extract that the name of defendant no.1, 3, 9 is recorded in Revenue Record.

12) Defendant has not filed any document on record. The plaintiff came with the case that the suit properties are their ancestral properties and raised issue of partition stating that partition has not taken place and the defendant are trying to alienate the suit properties. Therefore, prima facie it appears that the plaintiff and defendants raised many issues in the suit in order to decide these issues evidence is required to be adduced and it will take more time. Now already dispute arose between plaintiff and defendants. The defendants already sold some portion of suit property during the pendency of suit. Therefore, the possibility cannot be avoided that, defendants will

alienate the remaining suit property. Therefore, if the defendants are not restricted there will be multiplicity of the proceedings and plaintiff will unnecessarily suffer irreparable loss.

13) However, as per Section 52 of The Transfer of Property Act, there is already bar to alienate the suit property during pendency of the suit. It means, the defendants are restricted to transfer the suit property during pendency of this suit by the statute itself. Therefore, if at this stage the defendants are restrained from alienating the suit land they will not suffer any loss. Moreover, as per Order XXXIX Rule 1 of the Civil Procedure Code (the C.P.C.) this court can grant temporary injunction restraining alienation of the suit property.

14) In view of above discussion prima facie, I am of the view that, the plaintiff has prima facie case and the balance of convenience is also lies in her favour. Moreover, if defendants are not alienated the suit property till final disposal of the suit, they will not suffer any loss. On the other hand, if defendants alienated suit property during pendency of the suit then the plaintiff would suffer irreparable loss. Therefore, the plaintiff is entitled for temporary injunction restraining the defendants from alienating the suit land. Hence, I answer point No. 1 to 3 affirmative.

AS TO POINT NO. 4:-

15) In view of affirmative answers as to points No. 1 to 3, this application is required to be allowed. Hence, in order to answer point No. 4, I pass following order.

:: ORDER ::

1	This application is partly allowed.
2	The defendants are hereby restrained from alienating the suit land bearing land Gut no.101 admeasuring 11 R, land Gut no.102 admeasuring 1 H, 59 R, land Gut no.137 admeasuring 15 R, land Gut no.214 admeasuring 80 R, land Gut no.214 admeasuring 1 H 23 R and land Gut no.214 admeasuring 40 R situated at Pardi Vaijapur, Tq.Mudked, Dist. Nanded by way of any mode, till final disposal of this suit.
3	Costs-in-cause.

Pronounced in open Court.

Sd/-

Place: Mudkhed
Date: 08.09.2021

(S. B. Dhembare)
Civil Judge Junior Division
Mudkhed Dist. Nanded.

CERTIFICATE

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

Name of the stenographer	:	A. A. Totre
Court Name	:	J.M.F.C. Mudkhed
Date	:	08-09-2021
Judgment signed by the		
Presiding Officer on	:	08-09-2021
Judgment Uploaded on	:	08-09-2021