

MHNG150017112025



ORDER BELOW EXH. 05 IN RCS No. 73/2025

(Narayan and ors V/s. Ankush and ors)

01. By the present application, the plaintiffs have sought temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for restraining the defendants from creating third party interest as well as restraining them from causing obstruction to his possession of the suit property i.e. Survey No. 21 admeasuring 6.07 HR situated at Ladgaon (Rithi) Tq. Hingna Dist. Nagpur.

The case of the plaintiff in brief is that:-

02. They plaintiffs have filed suit for declaration, permanent injunction and for declaring the sale deeds as null and void and not binding upon the plaintiffs. The plaintiffs are relying upon the averments made in the main suit while hearing on the present application to avoid repetition and this Court may also refer and rely the averments made in the main plaint while deciding the present application. The fraud has been committed with the plaintiffs at the hands of the defendants. The dispute as regards to legal heirship is pending with the revenue authority as well as the order which was obtained by the defendants Nos. 1 to 5 is obtained with fraud even on the court. The plaintiffs are having good prima-facie case on

merits and balance of convenience also lies in favour of the plaintiffs. Defendants Nos. 6 to 8 are very rich persons and further the suit land is now comes under the project of new Nagpur and having high value. Defendants Nos. 6 to 8 either will create third party rights in the suit property or they can convert the land into non agricultural use for gaining more profits. In that event the very purpose of filing the suit will be frustrated. That therefore, it is necessary now to restrain the defendants Nos. 6 to 8 from further creating third party rights in the suit property or by changing nature of the suit property. No harm or prejudice will be caused to the defendants in case the temporary injunction is granted, however, if the temporary injunction is not granted, then the plaintiffs will suffer a great irreparable loss which cannot be compensated in terms of money. Therefore, this Court be pleased to grant temporary injunction thereby restraining the defendants Nos. 6 to 8 from creating third party rights in the suit property as well as from changing the nature of the suit property in any manner whatsoever and from disturbing the peaceful possession of the plaintiffs over the suit property during the pendency of the suit.

03. Defendant Nos. 1 to 5 filed their say at Exh. 13 and resisted the contents of this application. They submitted that the suit filed by plaintiffs for permanent injunction and for declaring the sale deeds as null and void and not binding upon the them is matter of record. Plaintiffs filed the suit on the admitted fact that, father of Defendant 1 to 5 Namdeo Samarth had two wives, first wife is Lilabai

out of this wedlock he begot Defendant Nos. 1 to 5 and during the subsistence of first marriage with Lilabai, Namdeo Samarth married to Anusayabai mother of Plaintiff Nos. 1 to 6 and late Madhukar Samarth. Thus, though marriage of Anusayabai is invalid Plaintiff Nos. 1 to 5 and late Madhukar are step brother and sisters of Defendant No. 1 to 5. It is on the admitted fact that, the suit property was purchased by father Namdeo Samarth and during partition suit property was fallen to the share of Rajesh Namdeo Samarth through his biological mother Lilabai Namdeo Samarth. It is further not disputed our real brother Rajesh died in 2000 subsequently to hatch the wrongful gain under the garb of litigation, hence present suit deserves to be dismissed and temporary injunction application is only deserve and deserves to be rejected.

04. They further submitted that plaintiffs did not demonstrate any so-called fraud on the part of answering defendants, rather answering defendants lawfully becomes the owner and obtaining legal heir certificate from the competent court of law their names has been recorded as owner in possession of suit property. It is absolutely false that, any dispute as regards to legal heirship is pending with any revenue authority rather revenue authority no right to issue of heirship and in the present case it is already decided by the competent court of law. It is false, that, defendants Nos. 1 to 5 is obtained legal heir certificate with fraud even on the court as alleged. The plaintiffs are no way legal heirs of deceased Rajesh who was the original owner of suit property by way

of partition nor they are the legal heirs of our mother Lilabai after whose demise the suit property succeeded by we defendants. Thus there is no case in favour of Plaintiffs, good and prima-facie case is far away, there is no locus standi or cause of action to the Plaintiffs merits of the case is far away so also Plaintiffs having no right, title, interest of any nature, no balance of convenience also lies in favour of the plaintiffs, hence there can not be any loss to the Plaintiff. On the contrary, defendant Nos. 1 to 5 being exclusive true successor legal heirs of suit. The facts to hatch the wrongful gain under the garb of litigation, hence present suit deserves to be dismissed and temporary injunction application is only deserve and deserves to be rejected.

05. Defendant Nos. 6 to 8 also filed their say at Exh. 22 and resisted the contents of this application. They submitted that plaintiffs does not having any locus standi to claim any right in the property of their step brother, therefore, the present suit is vex and frivolous. That the in view of judgment/order dtd. 12-01-2018 passed in Dudhnath Yadav Vs. Ramashankar Yadav Suit No. 2219/2000: Hon. Bombay High Court (S.B.) decided the issue on relying on various judgment of Hon. Supreme Court of India. The Hindu Succession Act, 1956 does not giving any place to step brother or step son in the line of successors. Therefore, the plaintiffs have no cause of action to file this suit. The property was self acquired property of Late Namdeo Samarth and having given share to of Rajesh Samarth in partition it is become his self acquired property.

However, it is strongly opposed that the plaintiff having any right in said property. It is false and vehemently opposed that the plaintiff is cultivating the said property. It is not disputed that, Rajesh Namdeo Samarth died on 20/02/2000 so also Smt. Lilabai Samarth who being a sole Class I heir succeeded his suit property, she also died on 19/10/2016. It is not disputed that after demise of Lilabai the defendants Nos. 1 to 5 are the only Legal and Class I heirs and thereby owners and possessor of said property. In view of status & position of the plaintiff in the light of the substantive provisions of the Hindu Succession Act, and ratio laid down by Hon. Apex Court of India & Hon. Bombay High Court, the plaintiffs having no right to claim their interest in the said property. Therefore, the respective sale deeds executed and registered in favour of the defendant Nos. 6 to 8 are legal and valid and needs to be upheld in the interest of justice and suit is liable to be dismissed with exemplary cost.

07. Heard Ld. Advocate for both sides. Following points arises for my consideration. I recorded my findings thereon are as under-

| <u>Sr. No.</u> | <u>Points</u> | <u>Findings</u> |
|----------------|--|-----------------|
| 1. | Whether the plaintiffs have made out prima facie case ? | Partly Yes. |
| 2. | Whether the balance of convenience is in favour of plaintiffs? | Partly Yes. |
| 3. | Whether the plaintiffs will suffer irreparable loss, if this application is rejected ? | Partly Yes. |

4. What order ?

The
application is
partly allowed.

REASONS

Point Nos.1 to 3 : -

08. Point Nos. 1 to 3 are inter-connected, therefore, in order to avoid repetition, it is necessary to decide those points jointly.

09. As regards the present application for temporary injunction, the plaintiffs have in substance sought two distinct reliefs, namely,

firstly, to restrain the defendants from creating third-party interest in the suit property, and

secondly, to restrain the defendants from interfering with his alleged possession over the suit property.

10. Before proceeding further, a glance to the admitted facts is need to be given. These are as follows:

- i. It is also undisputed that Namdeo Samarth is the common ancestor who purchased the suit property by sale deed dated 21/02/1978.
- ii. It is also not in dispute that Namdeo Samarth had two wives one is Anusaya i.e. plaintiff No. 11 and another is lilabai.
- iii. It is not in dispute that plaintiff Nos. 1 to 6 and their deceased brother Namdeo are the sons and daughters of Madhukar

Samarth, who were begotten from plaintiff No. 11.

- iv. It is also not in dispute that defendant Nos. 1 to 5 are sons and daughters of Madhukar Samarth, who were begotten from his wife Lilabai.
- v. It is further admitted that defendant Nos. 1 to 5 got their names mutated in the revenue record and thereafter executed three sale deeds dated 08/07/025 in favour of defendant Nos. 6 to 8.

11. The present suit is filed for partition, declaration that the said sale deeds are not binding, and for perpetual injunction.

12. Regarding the first prayer (protection of possession):-
The plaintiffs are required to establish prima facie possession. However, upon perusal of the plaint and application, no material is placed on record to demonstrate actual or exclusive possession of the plaintiffs over the suit property. There is no pleading of any specific incident indicating an attempt by the defendants to dispossess them. On the contrary, the plaintiffs themselves assert that the property is joint family property and that they are co-owners. It is a settled principle of law that one co-owner cannot ordinarily seek injunction against another co-owner unless there is a case of ouster, exclusion, or threat of changing the nature of the property. No such circumstance is pleaded or prima facie established in the present case. Hence, no prima facie case is made out for grant of injunction in respect of possession.

13. Regarding the second prayer (restraint on alienation): The plaintiffs contend that the suit property is ancestral property and that they have a share therein. The defendants, while admitting the original ownership of Namdeo Samarth, contend that by a partition deed dated 29/06/1981, the property fell to the share of Rajesh Namdeo Samarth, who thereafter became absolute owner, and upon his death, defendant Nos. 1 to 5 inherited the same and validly sold it.

14. However, the defendants have not produced the alleged partition deed dated 29/06/1981 to substantiate their contention that the property became the exclusive property of Rajesh. In absence of such document, the nature of the property—whether ancestral/joint family property or self-acquired property allotted exclusively—remains a matter of trial.

15. Defendants placed their reliance upon the mutation entry dated 29/06/1981. Its copy is annexed with 27/02. Upon perusal of said mutation entry, it is seen to be mentioned therein that during the life time of Namdeo, he executed the partition deed dated 29/06/1981 of the suit property. However, said partition deed is not on record. Whether it is registered or not? Is also not seen to be came on record. Moreover, the suit property is seen to be purchased by Namdeo Samarth. There is no pleading or material on record to show that it was purchased from the nucleus of joint family.

Therefore, the alleged partition deed is seen to be executed of separate property by deceased Namdeo. Now the question that whether he has right to execute alleged partition deed or whether it is valid or not? Is required to be considered on merit.

16. Ld. Advocate for defendant Nos. 6 to 8 argued that plaintiffs being steps brother of deceased Rajesh or being steps of sons or daughters of deceased Lilabai, they are not having any share so, question of granting injunction does not arise. In support of this submission, he placed his reliance upon the case of the *Dudhnath Yadh V/s. Ramashankar Yadav* (Suit No. 2219/2000 decided on 12/01/2018). In said case, it is observed that the word "son" appearing in class-I of the schedule to that Act would thus include an adopted son but there is clearly no warrant for including a step-son within the meaning of the expression "son" used in class-I of the schedule. However, in the present suit, the plaintiffs are claiming their share in the suit property by alleging that it is their father's property. As discussed earlier, whether the suit property become separate property of Rajesh Samarth or his mother or not ? is triable issue in this suit. Therefore at this juncture, no substance is found in the above submission of defendants. So also, the observations given in above cited case are not seen to be applicable to matter in hand.

17. At this stage, the plaintiffs have raised a triable issue regarding their share in the suit property. If the defendants are not restrained from further alienating the property, it may result in multiplicity of proceedings and complicate the rights of the parties.

Thus, a prima facie case exists only to the limited extent of preventing further alienation. From the record, the name of defendants are seen to be mutated in the revenue record of the suit property therefore, the possibility of creating further interest in the suit property can not be ruled. Therefore, if the injunction order regarding alienation is not passed in favour of plaintiffs, the multiplicity of interest will be created and it will cause great irreparable loss to the plaintiffs. Therefore, the balance of convenience regarding the prayer of alienation is seen favour of plaintiffs.

18. As discussed earlier, the plaintiffs succeeded to establish three required ingredients of temporary injunction i.e. prima facie case, balance of convenience and irreparable loss in his favour only for getting relief to restrain plaintiffs from creating third party interest in the suit property and not for other relief. Hence, point Nos. 1 to 3 are answered in partly affirmative.

Point No. 4

19. As discussed earlier, the plaintiffs succeeded to establish three required ingredients of temporary injunction i.e. prima facie case, balance of convenience and irreparable loss in his favour only for getting relief to restrain defendants from creating third party interest in the suit property and not for other relief. Therefore, this application is liable to partly allowed. Hence, following order is passed.

ORDER

1. The application is partly allowed.
2. The defendants are hereby temporary restrained from creating third partly interest in the suit property till further order or till conclusion of this suit.
3. Costs in final cause.

Place:- Hingna.
Date:- 08/05/2026

(V .H. Khedkar)
C.J.J.D. Hingna,
Dist. Nagpur