

**ORDER BELOW EXH.5 in R.C.S. No. 5/2012**

1 . This is an application for temporary injunction against the defendant as per order 39 Rule 1 and 2 of Civil Procedure Code.

2 . It is contended that plaintiff Janabai is the wife of Trimbak Gopal Nirgude. Prior to that Trimbak Gopal Nirgude married with defendant No.2 Bhimabai and they have one son and two daughters i.e. defendant No.1,3 and 4, but divorce took place between Trimbak and Bhimabai and thereafter marriage solemnized between plaintiff Janabai and Trimbak Nirgude, out of their wedlock, plaintiff Janabai gave birth two daughters i.e. plaintiff No.2 and 3.

3 It is contended that suit properties i.e. Gat No.36, 109, 152, 153, 154 etc are ancestral properties of plaintiffs and defendant No.1, 3 and 4, accordingly they all have undivided share in the suit properties. Defendant No.2 is a divorce wife, therefore, she has no right in the suit properties. But with the collusive hand defendants have recorded their name in the suit property. Defendants pressurize to Trimbak Nirgude to live with them. Therefore, prior to death of Trimbak Nirgude, he was living with the defendants under pressure. Defendants have also prohibited to Trimbak Nirgude to provide the necessary allowance to the plaintiffs for their live-hood, education etc. It is contended that after the death of Trimbak Nirgude by unlawful means defendants have possessed the suit property and taking the benefits of crops of it. When plaintiffs asked for their share at that time defendants refused and abused them and drove them out. Plaintiffs contended that on the basis of revenue entries, defendants try to create charge over the suit properties and also try to create the interest of third party. If defendants succeed then their undivided share will be effected and they will suffered irreparable loss. Hence, plaintiffs constrained to file present suit and application. Lastly, prayed that application for temporary injunction may kindly be allowed.

4 . The Defendants appeared and contested the application by

filing Written-Statement-Cum-Say at Exh.19. They denied the relationship with the plaintiffs. They denied that divorce took place between Trimbak Nirgude and Bhimabai Nirgude (defendant No2). Defendants denied that plaintiff Janabai is the wife of Trimbak Nirgude and plaintiffs No.2 and 3 are their daughters. Defendants denied the contents of application in toto. It is further contended that by showing false relation with deceased Trimbak Nirgude, plaintiffs trying to grab the suit property. It is contended that name of plaintiff No.1 is Janabai Karbhari Gore and her marriage performed with one Bhausahab Boraste R/o. Mauje Sakore-mig, Tal: Niphad and their marriage relation is still in existence. It is contended that till the death of Trimbak Nirgude, he residing with them in joint family. It is contended that deceased Trimbak Nirgude never reside with plaintiff Janabai nor plaintiff No.2 and 3 are their daughters. Plaintiff No.1 have its original name as Janabai Karbhari Gore and after the death of her father Karbhari Gore, she got her share. Out of it she sold Gat No.144 to her sister Sushila Bhaskar Gore. Thereafter, Janabai Gore further sold 80 R of Gat No.27 mauje Sangamner, Tal: Dindori through registered sale-deed. The above transaction shows that plaintiff No.1 surviving with the name of Janabai Karbhari Gore and not surviving as Janabai Trimbak Nirgude.

5 It is further contended that plaintiffs have filed Cri. M.A. No.134/2008 under Domestic Violence Act against the defendants and claimed partition of suit properties. It is further contended that deceased Trimbak Nirgude is the member of Zilla Parishad Nashik. He was also president for some period, therefore for the purpose of defamation of Trimbak Nirgude and to grab the suit properties, this suit is filed by the plaintiffs. Defendants contended that since long, they are cultivating the suit properties and till today they cultivate the same. Plaintiffs have no right or concerned with the suit properties, but with the collusive hands of revenue authority plaintiffs recorded their name in suit properties as

per ME No.2515, but due to such entry plaintiff will not get any right in the suit properties and they cannot claim partition in the suit properties. Plaintiffs have no prima facie case nor balance of convenience lies in their favour. Present suit is only filed for the purpose of their harassment. Lastly prayed for rejection of the application with costs

6. Perused application and Say. Heard learned Advocate Shri. D.R. Kaiche for plaintiffs, and Shri. J.P. Deshpande for defendants. Considering the rival pleadings of the parties and material placed on record, following points arise for determination. My findings recorded against each point with the reasons stated below.

<b><u>Sr.No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
i )	Whether plaintiffs have made out prima facie case?	....In the negative.
ii )	Whether balance of convenience lies in favour of plaintiffs ?	....In the negative
iii )	Whether plaintiffs will suffer irreparable loss, if temporary injunction is refused or rejected ?	....In the negative
iv )	What order ?	..As per final order.

**: REASONS :**

**As to Point No.1 to 4:**

7. For obtaining equitable and discretionary relief of temporary injunction, it is for the plaintiffs to show that, they have prima facie case. Therefore, first of all, it is necessary to see, whether plaintiffs have made out prima facie case or not. Heard, both the learned counsels and gone through the documentary evidence available on record.

8. Plaintiffs came with the case that, she performed marriage with Trimbak Nirgude after the divorce took place between Trimbak Nirgude and defendant No.2 Bhimabai Nirgude. However, in that regard no any document filed by the plaintiffs. Therefore, it appears that at this stage, plaintiffs have not brought on record to show that the divorce took

place between Trimbak Nirgude and Bhimabai Nirgude. Therefore, it appears that plaintiff No.1 Janabai is the second wife of Trimbak Nirgude. On the other hand, defendants denied the marital relation between plaintiff No.1 and deceased Trimbak Nirgude. Therefore, it is for the plaintiffs to brought some document to show that she is a wife of Trimbak Nirgude. In that regard, I perused documents filed as per list Exh.39, which disclosed that there are birth and leaving certificates of plaintiff No.2 and 3, which shows that plaintiff No.1 is their mother and deceased Trimbak Nirgude is their father. On perusal of election card and Adhar card, which disclosed that plaintiff No.1 is the wife of Trimbak Nirgude. On perusal of M.E. No.2515 at Exh.3/10 which disclosed that deceased Trimbak Nirgude has two wives namely Bhimabai and Janabai. All these documents shows that plaintiff Janabai is the wife of Trimbak Nirgude. However, still the question is remained, whether she is a legally wedded wife of Trimbak Nirgude or her marriage with Trimbak Nirgude is valid or not. According to plaintiffs, she is legally wedded wife of Trimbak Nirgude and her marriage took place with Trimbak Nirgude after the divorce of Trimbak and Bhimabai Nirgude. From the above contentions, it disclosed that Bhimabai is the first wife of Trimbak Nirgude and plaintiff Janabai is the second wife, but in absence of any positive evidence on record in respect of divorce took place between Trimbak and Bhimabai, at this stage, it cannot be hold that marriage between Trimbak and Janabai is valid. Therefore, it can be said that their marriage is either void or voidable and accordingly child born from void or voidable marriage can claim partition of parents (i.e. self acquired) property and not in ancestral co-parcenary properties. On this point I referred case in **Bharata Matha and others Vs R. Vijaya Rangnathan and others dated 7.5.2010 Supreme Court of India (AIR 2010 S.C. 2685)**, it was held by Hon'ble Lordship Shri. B.S. Chavan and

Shri. Swatantrakumar that “ A child born of void or voidable marriage is not entitled to claim inheritance in ancestral co-parcenary property, but is entitled only to claim share in self acquired properties, if any”.

9. Considering the above said case laws and the case in hand, it reveals that in present suit at this stage, plaintiff No.1 has not brought any record to show the marriage took place between her and deceased Trimbak Nirgude, after the divorce taken from Bhimabai Nirgude. Therefore, at this stage it cannot be hold that Marriage of plaintiff Janabai and deceased Trimbak Nirgude is valid and plaintiff No.2 and 3 born from valid marriage or from lawful wedded life. From the above reasons, if it is assumed that plaintiff No.2 and 3 born from void or voidable marriage of deceased Trimbak Nirgude and plaintiff No.1, then plaintiffs are not entitled to claim inheritance in ancestral properties, but entitled only to claim share in self acquired property of deceased Trimbak Nirgude. If one perused the pleading of plaintiffs, in which they have specifically pleaded that suit properties are ancestral properties and defendant No.1,3 and 4 and they have not pleaded anywhere that suit property are self acquired properties of Trimbak Nirgude. If it is so then it reveals that at this stage, plaintiffs have no prima facie case and they cannot sought relief of temporary injunction against the defendants. From the above said discussion, it reveals that at this stage plaintiffs have not made out prima facie case nor balance of convenience lies in their favour. If temporary injunction is granted then defendants would suffer more hardship and they will not enjoy their right in ancestral properties. On the other hand, if at the stage of evidence plaintiffs proved their contentions and prove their suit case then they can agitate their right over the suit property. But, at this juncture plaintiff not brought any record to show that marriage took place between plaintiff No.1 and deceased Trimbak Nirgude after the divorce of Bhimabai Nirgude nor brought any record to show that plaintiffs No.1 to 3 have right to claim in undivided

share in ancestral co-parcenary the suit property. Therefore, it appears that, at this stage plaintiff No.1 to 3 not entitled to claim inheritance in ancestral co-parcenary property. From the above said reason, it appears that at this stage, plaintiffs have no case to issue temporary injunction against the defendant Therefore, I answered as to Point No.1 to 3 in the negative and proceed to pass following order.

**: ORDER :**

- i ) Application below Exh.5, for temporary injunction is rejected.
- ii ) Costs in main cause.

Date: 12.02.2013  
Dindori.

(M.I. Lokwani)  
Civil Judge Junior Division,  
Dindori.