

**R.C.S. No.104/2016****Order Below Exhibit 5**

The present application is filed by the plaintiff seeking temporary injunction under order XXXIX Rule 1 (a) of Code of Civil Procedure restraining the defendants from alienating the suit land and from creating any third party interests thereon till final disposal of the suit.

2. The plaintiff contends that the present suit is filed by her seeking partition, declaration, separate possession and perpetual injunction in which the present application for temporary injunction is filed. The plaintiff further contends that defendant no. 1 is her brother. Gut no. 629 admeasuring about 0.78 R. situated at village Deola, Tal.-Deola, Dist.- Nashik (hereinafter referred to as "the suit land") is ancestral land of her and defendant no. 1. Partition has not been yet effected in respect of the suit land. Her father late Tulshiram Shivram Patil had received the suit land from the government as a tenant (Kul). However defendant no. 1 alienated 0.48 R. land out of the suit land to Vimalbai Baburao Deore vide Sale-deed dated 12-06-1985. On 8-02-1989, Vimalbai further sold the said land to Vijayabai Vishnu More. On 13-03-1992, Vijayabai was expired and her legal heirs including defendant no. 4 were succeeded to the title of the said land. On 1-11-2014 the other legal heirs of Vijayabai relinquished their share into the said land in favour of Umesh Vishnu More i.e. defendant no. 4. Thus as on today 0.48 R. land out of the suit land stands in the name of defendant no. 4. Further defendant no. 1 alienated remaining 0.30 R. land out of the suit land to one Vishnu dalpat More vide sale-deed dated 3-01-1986. After demise of Vishnu More, defendant no. 2 and 3 succeeded to the title of the said land. Thus, today the suit land stands in the name of defendant no. 2 to 4.

3. The plaintiff further contends that the suit land is her ancestral land and hence she has 1/2 share in the same. Hence she demanded partition of her share in the suit land from defendant no. 1, which he refused. At that time she realized that the suit land has been alienated by defendant no. 1. Since, the suit

land is in the name of defendant no. 2 to 4, she has apprehension that they may alienate the suit land. Hence she prayed that present application be allowed and defendants be restrained from alienating the suit land and from creating any third party interests thereon till final disposal of the suit.

4. Defendant no. 1 filed his say at Exh. 20 and admitted the suit. Defendants no. 2 to 4 resisted the present application vide their say at Exh. 15. They contend that the suit land was acquired by late Tulshiram Shivram patil (father of the plaintiff and defendant no. 1) as Tenant (Kul) and hence it was his self-acquired property. Hence late Tulshiram had right to alienate the suit land. Late Tulshiram Patil and defendant no. 1 alienated 0.48 R. land out of the suit land to one Vimalbai Baburao Deore vide Sale-deed dated 12-06-1985. On 17-01-1989 Vimalbai further sold the said land to Vijayabai Vishnu More. After demise of Vijayabai, her legal heirs including defendant no. 4 were succeeded to the title of the said land. On 1-11-2014 the other legal heirs of Vijayabai relinquished their share into the said land in favour of defendant no. 4. Thus as on today, 0.48 R. land out of the suit land stands in the name of defendant no. 4. Further late Tulshiram and defendant no. 1 alienated remaining 0.30 R. land out of the suit land to Vishnu dalpat More vide sale-deed dated 3-01-1986. After his demise, defendant no. 2 and 3 succeeded to the title of the said land. Thus now defendant no. 2 to 4 are owners and in possession of the suit land. The plaintiff has no concern with the suit land. Hence they prayed that the application be rejected.

5. Ld. Adv. for the plaintiff shri. B.W. Patil argued that the suit land was tenancy land (kul Jamin). Hence unless valid permission is obtained, the suit land cannot be transferred. The suit land is in possession of the defendants. If the application is allowed as prayed it will not cause any hardship to the defendants as their possession will not be disturbed. However, if the application is rejected and the defendants alienate the suit land, there will be multiplicity of the proceedings. Hence he prayed that the application be allowed.

6. Per contra ld. Adv. for the defendants no. 2 to 4 Shri. K.B. Wagh argued that the present suit is filed for declaration that sale-deed dated 12-06-1985 and sale-deed dated 3-01-1986 are null and void. However the present suit is filed in the year 2016, hence there is an enormous delay of almost 30 years in filing the present suit. Moreover, Vimalabai Deore who was party to the sale-deed dated 12-06-1985 is not arrayed as a party in the present suit. In the year 1989, Vimlabai alienated 0.48 R. land out of the suit land to Viajayabai More, however said Viajayabai is also not a party in the present suit. Hence, there is non-joinder of necessary parties in the present suit. Further, defendants no. 2 to 4 have purchased the suit land and they are owners of the suit land, hence they have right to alienate the suit land. Moreover, Late Tulshiram alienated the suit land in the year 1985. However, Hindu Succession 2005 Amendment Act is not retrospective. Hence now the plaintiff cannot claim that she has right in the ancestral land as a co-parcener. Hence he prayed that the present application be rejected.

7. Perused the application, say and other documents on record. Heard ld. Adv. for the plaintiff and ld. Adv. for defendants no. 2 to 4. On the perusal of the application, say and other documents on record, following points arose for my determination, its findings with reasons thereof are as under:

Sr. No.	Points	Findings
1	Whether the plaintiff proves the prima-facie case?	Negative
2	Whether the plaintiff proves that balance of convenience lies in her favour?	Negative
3	Whether the plaintiff proves that irreparable loss will be caused to her if the injunction is not granted as prayed?	Negative
4	What order?	The application is rejected.

## REASONS

### As to point no. 1

8. In support of her application, the plaintiff has filed on record certified copies of 7/12 extracts of the suit land, certified copies of mutation entry no. 131, 878, 1049, 1264, 1493, 1449, 1027, 3148, 3131, certified copy of sale-deed dated 3-01-1986, certified copy of sale-deed dated 12-06-1985. As against this, the defendants filed on record certified copies of 7/12 extract of the suit land.

9. It is contended by the plaintiff that the suit land is ancestral land of her and defendant no. 1. As per provisions of Hindu Law, "ancestral property means property which has flown from fathers' father or father's father's father." To support her contention, the plaintiff has placed on record mutation entries of the suit land. I perused the said mutation entries. However none of the mutation entries mention anything about the suit land being ancestral land. Moreover, the plaintiff has herself pleaded in plaint Paragraph no. 3 that her father late Tulshiram Patil had received the suit land as a tenant (Kul). Mutation entry no. 131 and 878 filed by the plaintiff also suggest that the suit land Gat no. 629 is a tenancy land. According to the plaintiff's contention herself, the suit land is received by her father as tenant. Hence, if the said land is tenancy land received by the plaintiff's father, the said land cannot be ancestral land as well. These two statements are contradictory to each other. Thus prima-facie it does not appear from the contentions of the plaintiff as well as from the documents filed on record that the suit land is ancestral land of plaintiff and defendant no. 1. Thus, prima-facie, the plaintiff has failed to show that the suit land is ancestral land and that she has share into the same.

10. It is settled law that a person can alienate his self-acquired property. As already discussed, it prima-facie appears that the suit land was received by plaintiff's father late Tulshiram Patil as a tenant and hence it does not appear to

be ancestral land. On perusal of sale-deed dated 3-01-1986, it appears that late Tulshiram Patil and defendant no. 1 alienated 0.48 R. land out of the suit land to Vimalbai Baburao Deore. It is mentioned in mutation entry no. 1264, that Vimalbai sold the said land to Vijayabai Vishnu More. It is mentioned in Mutation entry no. 1493 that after demise of Vijayabai, names of her legal heirs were brought on record of the said land. It is mentioned in Mutation entry no. 3148, other legal heirs of Vijayabai relinquished their share in favour of defendant no. 4. Further, on perusal of sale-deed dated 12-06-1985, it appears that Tulshiram Patil and defendant no. 1 alienated 0.30 R. land out of the suit land to Vishnu Dalpat More. It is mentioned in Mutation entry no. 1449, that after demise of Subhash Bhavrao More, names of defendant no. 2 and 3 were brought on record of the said land as legal heirs of Subhash More. 7/12 extracts of the suit land bears name of defendant no. 2 to 4 in its holder's column. Hence prima-facie it appears that the suit land is owned and possessed by defendant no. 2 to 4.

11. Moreover, even if as per the contention of the plaintiff it is assumed that, the suit land was ancestral land, then also as per the provisions of section 6 of Hindu Succession (Amendment) Act, 2005, "alienation of co-parcenary property made before 20<sup>th</sup> December 2004 will not be reopened." Admittedly suit land was alienated in the year 1985 and 1986. At this juncture, it is necessary to look into the provisions of section 6 of Hindu Succession (Amendment) Act, 2005.

*6. Devolution of interest in coparcenary property.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-*

- (a) by birth become a coparcener in her own right in the same manner as the son;*
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;*
- (c) be subject to the same liabilities in respect of the said coparcenary property as*

*that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:*

*Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.*

12. Hence as per the proviso to above section, if the co-parcenary property is alienated before 20<sup>th</sup> December 2004, then such disposition or alienation is not affected by the said amendment. Thus even if assuming that the suit land was ancestral land as per the plaintiff's contention, the plaintiff has prima-facie failed to establish that she has right to claim share in the suit land.

13. It was argued by Id. Adv. for the plaintiff that the suit land is Tenancy land and hence it cannot be alienated without prior permission of concerned authorities. However admittedly the suit land is already alienated and is in possession of defendant no. 2 to 4. Moreover, the said issue can be determined during the trial of the suit and at this stage, only prima-facie possession has to be seen. In the present case, admittedly the suit land was purchased by the predecessors of defendant no. 2 to 4. The possession of defendant no. 2 to 4 over the suit land is also not disputed by the plaintiff. Hence question as to the prior permission for alienation of the suit land is a triable issue and it can be decided during the trial after both the parties have given sufficient opportunity to lead evidence in that regard.

14. Moreover, the plaintiff is challenging the sale-deeds executed in the year 1985 and 1986 in the year 2016. Hence the present application is also hit by the principle of delay and laches.

15. Thus the plaintiff has failed to prove the prima-facie case. Hence I answer point no. 1 in negative.

**As to point no. 2 and 3**

16. As already discussed, the plaintiff has prima-facie failed to prove

that the suit land is ancestral land and she has share into the same. On the other hand, the defendants have prima-facie established that their right and possession over the suit land. Hence if the application is allowed, the defendants will be restrained from alienating their property and hence they would suffer irreparable loss. Thus the defendants would suffer greater hardship if the present application is allowed than the hardship which may be caused to the plaintiffs by rejecting the present application. Thus, the balance of convenience lies in favour of the defendants. As already discussed, irreparable loss would be caused to the defendants if the present application is allowed. Hence I answer point no. 2 and 3 in negative.

Considering all the above grounds, I pass the following order :

**O R D E R**

1. The application (Exh. 5) is hereby rejected.
2. Costs in cause.

( Dictated and pronounced in open court )

Sd/-

Place : Kalwan  
Date : 24.01.2020

( A. C. Joshi )  
Jt. Civil Judge, J.D., Kalwan