

**Reg. Civil Suit No. 103/2011****Shri. Jayvant Nimbaji More****...Plaintiff****Vs.****1) Smt. Sayibai Nimbaji More  
and others...****...Defendant****Order below Exh.5**

1. Present suit filed by for partition, separate possession. Alongwith the suit, present application filed for temporary injunction restraining the defendant No.7, not to alienate or sell the suit property.

1-A) The suit properties situated at village Saygaon,  
Tal.Yeola, Dist. Nashik -

- |                |   |                      |
|----------------|---|----------------------|
| 1. Gat No. 642 | - | area - 2.56 Hectors, |
| 2. Gat No. 643 | - | area - 0.91 Hectors, |
| 3. Gat No. 601 | - | area - 0.26 Hectors, |
| 4. Gat No. 628 | - | area - 0.51 Hectors, |
| 5. Gat No. 600 | - | area - 0.26 Hectors, |
| 6. Gat No. 629 | - | area - 1.64 Hectors, |

1-B) The suit properties situated at village Nagarsul,  
Tal.Yeola, Dist. Nashik -

- |                |   |                      |
|----------------|---|----------------------|
| 1. Gat No. 871 | - | area - 3.76 Hectors, |
| 2. Gat No. 508 | - | area - 2.42 Hectors, |

1-C) The suit properties situated at village -  
Babhulgaon Bk, Tal.Yeola, Dist. Nashik -

1. Gat No. 5/3/2C - area - 2.00 Hectors,
2. Gat No. 5/3/2A - area - 0.67 Hectors,

1-D) The suit properties situated at village Vaibothi,  
Tal.Yeola, Dist. Nashik -

1. Gat No. 106 - area - 2.79 Hectors,

1-E) The suit properties situated at village Saygaon,  
Tal.Yeola, Dist. Nashik -

1. Gram-panchayat House No.132 and 133
2. The right of taking water and right of constant coming and going from the well situated in Gat No.642 to the field Gat No.643.

The above said properties are the subject matter of this suit, hereinafter for our convenience called as "suit property".

2. Contention of the plaintiff that, suit property was originally owned by Nimbaji More. In his lifetime, he has made family arrangement and divide the suit properties in between his heirs, but, there was no partition in between the parties by metes and bound. In view of the family arrangement, no division of the property made, no boundary fixed in between parties, therefore, till today, the Hindu joint family exists in between the parties and till today, suit properties jointly owned by the parties. Now, defendant No.7 wants to alienate the property stands on his

name. If, he has sold the property, then plaintiff will loose his right to get share from the said property. There will be complication in the division and hence, prayed for restraining defendant No.7 to alienate the suit property till the decision of this suit.

3. Defendant opposed the application by filling written statement vide Exh.32. Contention of the defendant that, there was a partition in between the parties in the lifetime of Nimbaji more particularly, on 21/05/1994. All the parties have admitted said partition accordingly, it was drafted and submitted in the Tahasil Office, Yeola. Accordingly, mutation was effected. Later on, defendant No.3, Sudhakar has sold his share to defendant No.6. Till today, defendant No.6 is in possession of the purchased property of Sudhakar. Therefore, application is not tenable hence, prayed for rejection.

4. Perused the application and say. On going through the pleadings of the parties following points arise for my determination along with my findings thereon, for the reasons given below,

<b>Point Nos.</b>	<b>Points</b>	<b>Findings</b>
1	Does plaintiff prove that, prima-facie case lies in his favour ?	...In negative
2	Does plaintiff further prove that, the balance of convenience lies in his favour ?	...In negative

Point Nos.	Points	Findings
3	Does plaintiff prove that, he will suffer irreparable if, relief of temporary injunction is refused ?	...In negative
4	What order ?	As per final order

### **- REASONS -**

5. In support of the pleadings, parties have filed on record many documents. I will take aid of respective documents at the relevant stage.

#### **AS TO POINTS NOS. 1 TO 3 :-**

6. I have clubbed all the points together for discussion as because, the common question involved therein. Therefore for want of repeatation, I have clubbed all these point together for discussion.

7. Herein this case, plaintiff alleges that, there was no partition in between parties by metes and bounds. Division shows as took place in the year-1994, is the family arrangement and therefore, there was no division, no dyke in between the property. On the contrary, contention of the defendant that, the said partition is affected by metes and bounds, it was acted upon and in view of that partition, the parties to the said partition deed

got their respective share. In this respect, I have gone through the Mutation Entry No.912. The mutation entry speaks that, on 21/05/1994, the partition application was filed. It was filed by deceased-Nimba Khandu More and he has effected the partition in between his son of the properties standing on his name. After going through the said mutation, therein mentioned all the details about the exact portion, exact area and the location of it where it situated, which portion was handed over to whom. Another important aspect is that, defendant contended that, after the execution of partition, defendant No.3, Sudhakar has sold his certain portion of land to defendant No.6 and that purchased property is in possession of the defendant No.6 as owner. Therefore, in my opinion, document specifically supports the case of defendant that, there was a partition in between parties.

8. Herein this case, it is not the theory of plaintiff about the reopening of partition. The alleged partition effected in the year-1994, almost 19 years back. In during that period, why plaintiff keeps mum and had not objected while transferring the share of defendant No.3 to defendant No.6 is the question. Therefore, after going through the record, it reveals that, suit property partitioned in between parties. As per the allegations of the plaintiff that, today also, Hindu Joint Family exists. Plaintiff and defendant are the joint family members and suit property is joint Hindu family property is not acceptable without any proof that, the said partition was not acted upon and it was a bias partition and favours to one of the members of the joint family. Therefore, in my opinion, no sufficient document filed on record by the

plaintiff, no affidavit filed on record to support the contention of the plaintiff that, today joint Hindu Family consists even though there was a partition of the suit property then also all the properties of the family are the joint Hindu family properties. Therefore, if, certain restriction put on the defendant to alienate his share is nothing but, to restrain him from enjoying his property. If at all, defendant No.7 alienate certain portion then effects of les-pendence affecting on the said alienation therefore, plaintiff not sufficiently proved that, his legal interest more particularly, the balance of convenience and irreparable loss lies in his favour hence, I answer all the Point Nos.1 to 3 in negative and I pass following order,

**- Order -**

The application stands rejected.

Yeola, Dist. Nashik,  
Dated : 26/03/2012

**(S.D. Kulkarni)**  
**Civil Judge, J.D., Yeola.**