

Order below Exh. 5 in Regular Civil Suit No. 103 of 2011

1. This is an application for temporary injunction restraining the defendants from alienating the suit properties till the decision of the suit.

2. It is contended in the application that the land Gat no.322, adm. 10 R bounded as under :

To the east – Gat no.323
To the west – Gat no.381
To the south – Gat no.321
To the north – Gat no.

The land Gat no.340 adm. 01 H. 8.3 R bounded as under :

To the east – Gat no.338, 339
To the west – Gat no.341
To the south – Gat no.332
To the north – Gat no.342, 344

The land Gat no.423 adm. 64.7 R bounded as under :

To the east – Gat no.421, 422
To the west – Gat no.427
To the south – Gat no.424
To the north – Gat no.430

The land Gat no.490 adm. 58 R bounded as under :

To the east – Gat no.491
To the west – Gat no.488
To the south – Gat no.473
To the north – Gat no.489

The land Gat no.601 adm. 79.4 R bounded as under :

To the east – Gat no.178

To the west – Gat no.631

To the south – Gat no.598, 599

To the north – Gat no.602, 603

situated at village Taloshi, Tal.Igatpuri, Dist.Nashik are the 'suit properties'.

3. It is contended in the application that the suit properties are ancestral and Hindu joint family properties of the plaintiff and defendant nos.1 to 6 and their partition has not been effected. The plaintiffs as well as defendant nos.3 to 5 are having 1/5th share in the suit properties. However, the defendant nos.1 to 5 without consent of plaintiffs sold the Gat no.423 to defendant no.7 on 3.8.2007. The said transaction is not binding on the share of plaintiffs. So also the defendant nos.1 to 5 illegally sold Gat no.322, area 10 R to defendant no.8 on 25.11.2010. The said transaction is also illegal and not binding on the share of plaintiffs. The defendant nos.1,3,4 & 5 in collusion also transferred 29 R of Gat no.490 on 23.9.2010 in the name of defendant no.5. They have also transferred 34 R area of Gat no.601 in the name of defendant no.4 and 47.4 area in the name of defendant no.5 on 23.9.2010. The said transfer is illegal and done only with intention not to give share to the plaintiffs. The plaintiffs asked the defendants for partition and separation of their share in Oct./Nov.2010. However, the defendants refused the said request and threatened the plaintiffs. Therefore, the plaintiff

issued notice to defendant nos.3 to 5 through RPAD and UPC. However, in spite of receipt of notice the defendants have not acted upon the same. The defendants are intending to transfer the remaining properties also. There is also possibility that defendant nos.7 & 8 will transfer the suit properties to other persons. Therefore, it is necessary to restrain the defendants. Hence, the plaintiffs prayed for allowing the application.

4. The defendant nos.1, 2, 4 & 5 strongly resisted the application by filing their say vide Exh.20. They have denied the contents of the application. It is contended in the say that the partition was effected between plaintiffs and defendants on 21.1.2001 as the compromise was took place and accordingly partition deed was executed on 22.1.2001. Therefore, the suit is hit by the principle of estoppel. The plaintiffs and defendants are in possession of their share as per the partition effected. As per the partition Gat no.423 was given to defendant no.1. However, the defendant no.1 sold the said property for family needs. As per the partition 29 R of Gat no.490 was given to defendant no.5 and remaining 25 R was given to defendant no.4 and 25 R was delivered to defendant no.5. The plaintiff no.2 was also given 25 R area of Gat no.601. The plaintiffs have filed false suit to harass the defendants and therefore they prayed for rejection of the application.

5. The defendant no.3 has filed pursis Exh.22 and thereby adopted the say and written statement filed by defendant nos.1, 2, 4 & 5.

6. In spite of service of notice the defendant nos.6 to 8 failed to appear and therefore suit proceeded ex parte against them.

7. On the rival submission of both the sides, following point arises for my determination and I have recorded my findings with reasons thereon is as below :-

<u>Points</u>	<u>Findings</u>
1. Whether plaintiffs made out prima-facie case in their favour ?	... In the affirmative
2. Whether balance of convenience lies in favour of plaintiffs ?	... In the affirmative
3. Whether irreparable loss will be caused to plaintiffs if temporary injunction is refused ?	... In the affirmative
4. What order ?	... As per final order.

:: REASONS ::

As to Point nos. 1 to 4 :-

8. Heard both the counsels for the respective parties. It is the specific case of the plaintiffs that the suit properties are the ancestral and Hindu joint family properties and they are having share in the suit properties. However, the defendant nos.1 to 5 have sold the suit properties to defendant no.7 on 3.8.2007 and to defendant no.8 on 25.11.2010 and amongst themselves. According to the plaintiffs, they are having right, title & interest

in the suit properties, it is the ancestral property and therefore they prayed for injunction not to alienate the suit properties till the decision of the suit.

9. The suit is strongly resisted by the defendant nos.1 to 5 contending that defendant no.1 is the Karta of the family and therefore he has sold the suit properties for the legal necessity. However, plaintiffs have no right to ask for the partition. There was already partition effected in the year 2001 and accordingly name of the plaintiffs and defendants were mutated in the revenue record and they are enjoying their share.

10. From perusal of record it appears that it is the specific case of the plaintiffs that it is the ancestral and Hindu joint family property and there was no partition and only for adjustment some properties were given to defendant nos.1 to 5 to maintain their family. However, they sold the properties illegally amongst themselves and to defendant nos.7 and 8. Now plaintiffs are coming with a case that it is the ancestral property and therefore they are having share in the suit properties. Therefore, they are praying for injunction not to alienate the suit properties.

11. Prima facie from perusal of 7/12 extracts no name of the plaintiffs are appearing in the suit properties A to D. However, it is not denied by the defendants that these are the ancestral and Hindu joint family properties of the plaintiffs and themselves. On the contrary, the defendants are claiming that there was partition. When the defendants are claiming that

there are partition, then it is for them to prove the same. However, not a single document is filed on record by the defendants to show that there was partition between the plaintiffs and defendant nos.1 to 6. However, when they are coming with a case that there was partition. It means that it is the ancestral property and therefore prima facie on the basis of admission of the defendants themselves it can be said that the suit properties are ancestral and joint family properties of the plaintiffs and defendant nos.1 to 6.

12. Though the defendant no.1 is the father of plaintiffs. However, it is not the case of the defendants that they are living jointly and he is the family Karta and therefore he cannot be restrained. It is not the specific case of the defendants that defendant no.1 is the Karta and therefore certainly he cannot be restrained. Because the fact that these are the ancestral properties was not denied by the defendants. In such circumstances, if injunction not to alienate to the extent of share of the plaintiffs is not granted, then certainly irreparable loss will be caused to the plaintiffs and it will create unnecessary complications in the suit as already two transactions were done in respect of the suit property. Therefore, as it is not denied by the defendants that suit properties are ancestral and joint family properties, in my view plaintiffs are having prima facie case and balance of convenience also lie in their favour. If injunction not to alienate is not granted, they will suffer irreparable loss. Hence, I answer point nos.1 to 3 in affirmative and in answer to point no.4 I

pass following order -

:: O R D E R ::

- 1) The application is allowed.
- 2) The defendants are hereby restrained from alienating the suit properties and creating third party interest to the extent of undivided share of the plaintiffs, till the decision of the suit.
- 3) No order as to costs.

Date : 01.02.2014.

Place: Igatpuri.

(N. A. Patel)

Civil Judge, Jr. Dvn., Igatpuri.