

Order below Exh. No.05 In Spl.C.S. No.47/ 2024

(Parth Thorat Vs. Vikram Thorat)

This is an application filed by the plaintiffs under order 39 rule 1 and 2 of the Code Civil Procedure 1908 (CPC). Brief facts as mentioned in the application are as under.

2) Land in Gat no.643/3,957,963,958,640 situated at Nirhale, Tal.Sinnar and land in block no.279/2/1 at Fulenagar, Tal.Sinnar, is subject matter of the suit. These properties are specifically described in Para 1 of the application.(Hereinafter referred to as 'suit property' for the purpose of brevity). The plaintiff submit that plaintiff no.1 is son and plaintiff no.2 is wife of defendant no.1. The defendant no.2 is father of defendant no.1. Defendant no.4 and 5 are children of defendant no.2. The suit property is ancestral property came to the share of defendant no.2. Therefore the plaintiff and defendant no.1 to 5 have share in the suit property. In spite of this defendant no.2 and 3 got mutated their names in the suit property. Defendant no.1,4 and 5 are also in collusion with them. There is matrimonial dispute between plaintiff no.2 and defendant no.1. In order to deprive plaintiff no.2 from her rights, defendant no.1 to 5 have effected partition. They have recorded names of defendant no.2 and 3 only. The plaintiff has 1/15th share in the suit property but the defendant refused to give his share.

3) The plaintiffs further submit that, certain land in

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block no.279 has been acquired for Surat, Nashik, Ahmednagar green field project. Defendant no.1 to 5 are likely to take benefit of the said acquisition & compensation. On 02.01.2024 the plaintiffs requested the defendant for share but they refused. On 02.01.2024 the plaintiff also filed objection before defendant no.6 but he asked the plaintiff to obtain injunction from the court. The plaintiffs have prima facie case and balance in convenience in their favour. Defendant no.2 and 3 are trying to alienate the suit property to third person, if that happen the plaintiffs will suffer irreparable loss. Therefore the plaintiffs prayed that defendant no.1 to 5 may be restrained from alienating the suit property or creating charge thereon. The plaintiffs also prayed that defendant no.6 may be temporarily restrained from disbursing the amount of the compensation for acquisition of land in block no.279 to the defendants.

4) Defendant no.1 to 5 resisted the application by filing say at Exh.25 and contended that the description of the suit property is incomplete. The relationship between plaintiff no.1 and defendant no.1 is not disputed. It is contended that plaintiff no.2 was previously married with one Pravin Bhausahab Parbat. She has extracted huge amount from her first husband. Her marriage with defendant no.1 is her second marriage. She is not ready to cohabit with defendant no.1. She has claimed the amount of Rs.25,00,000/- to grant divorce to defendant no.1. The plaintiff no.2 is residing at Pune and doing a service with handsome salary. Plaintiff no.1 is residing in Ashwi Budruk, Tal.Sangamner Dist. Ahmednagar

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with his grand parents.

5) It is further contended that the land in block no.279 was purchased by defendant no.2 from Trambak Narayan Mali on 16/02/1978 by registered sale deed no.266/1978. It is further contended that brothers of defendant no.3 namely Kachru Tajne and Ramchandra Tajne paid the amount for purchased of this land. This land was not purchased out of joint family income. Rest of properties are also not joint family properties. Therefore, the plaintiffs have no right to claim partition in the suit property. Lands in the name of defendant no.3 are her Stridhan property. There is no partition between defendant no.1 to 5. 1/5th share of defendant no.1 is also not ascertained. It is not certain as to which portion of block no.279 will be acquired. Therefore, defendant no.2 will not get any compensation. Citing these grounds defendant no.1 to 5 prayed for rejection of the application.

6) Heard Shri.S.V.Kshatriya learned advocate for the plaintiffs and Shri.S.M.Sangle learned advocate for the defendant no.1 to 5. Perused record of the case. Points for determination along with my findings and reasons thereon are as under :-

Sr. No.	Points	Findings
1.	Do plaintiffs prove that they have prima-facie case in their favour, as averred?	..Yes

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2. Do plaintiffs prove that they have balance of convenience in their favour ? ..Yes
3. Do plaintiffs prove that they will suffer an irreparable loss, if application in rejected? ..Yes
4. What order? ..Application is Partly Allowed

7) In support of their rival claim both the parties have placed on record various documents. Relevant documents are considered at the appropriate stage of discussion in this order.

As to point Nos. 1 to 3:

8) These points are interlinked with each other. Therefore I have discussed them together for the sake of convenience. The relationship between the parties is not disputed, it is not disputed that on account of matrimonial dispute proceedings are pending between plaintiff no.2 and defendant no.1 in various courts. The 7/12 extract of block no.643/3, 957,963,640, and 279/2/1 at list Exh.3/1, 3/6 shows that the suit properties are standing in the name of defendant no.2 and 3. The copy of application filed by the plaintiffs with SDO Niphad dated 02.01.2024 shows that the plaintiffs have raised objection regarding mutation of names in the 7/12 extract of block no.279/2/1 in pursuance of acquisition. The copy of award at list 3/1 shows that certain land from block no.279 has been acquired for the purpose of Surat, Nashik

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and Ahmednagar green field project.

9) It is vehemently argued on behalf of the defendant that the land in block no.279 was purchased by defendant no.1 with the amount paid to him by brothers of defendant no.3. In support of their argument the defendants have placed on record certified copy of sale deed no.265/1978 at list Exh.29/1. This sale deed shows that land in block no.2925 was purchased in the name of defendant no.1. The copy of consolidation extract at list Exh.35 filed by defendant shows that, this Gat no.2925 was later on converted into block no.279. On careful scrutiny of sale deed at list Exh.29/1 it can be gathered that there is no mention at the financial assistance rendered by brothers of defendant no.3 while purchasing the land. This fact is not supported by affidavit of any independent person. It is vehemently argued on behalf of the defendants that the agricultural land in the name of defendant no.3 is her Stridhan. It is to be borne in mind that agricultural land cannot be turned into Stridhan merely because it is standing in the revenue record in her name. Admittedly there is a presumption of joint family but there cannot be presumption of joint family property. At present the revenue record placed on record by the plaintiffs prima facie shows that, the suit property is a ancestral property of the plaintiff no.1 and defendant no.1 to 5. If defendant no.1 to 5 get the suit property partitioned between them or dispose of the same, it will seriously prejudice right of plaintiff no.1 who is minor.

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10) The plaintiff have also prayed for temporary injunction against defendant no.6 that it shall not disburse the compensation amount to defendant no.1 to 5 in respect of acquisition of land in Gat no.279. In that regard the documents filed by the plaintiff at list Exh.3/7 shows that the plaintiffs raise objection regarding the mutation of name in consequence of the acquisition. In that regard it is necessary to note that, plaintiff no.1 can raised objection before the competent authority regarding disbursement of compensation amount which may in turn refer the dispute for adjudication. In view of section 41(h) of the Specific Relief Act, plaintiffs have alternative and efficacious remedy in respect of the amount of compensation. Therefore, defendant no.6 cannot be temporarily prohibited from disbursing the amount by exercising jurisdiction under order 39 Rule 1 and 2 of CPC. In the light of above discussion I hold that the plaintiffs have established prima facie case and balance in convenience in their favour. If defendant no.1 to 5 alienate the suit property and create third party interest there in, the plaintiffs will suffer irreparable loss. Hence, I have answered point no.1 to 3 in the affirmative.

As to point no.4 :

11) As discussed earlier the plaintiffs have established three essential ingredients for the grant of temporary injunction in their favour. However, they are not entitled for injunction against defendant no.6. In view of affirmative

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findings of point no.1 to 3 and in answer to point no.4 I passed following order.

ORDER

1. The application is partly allowed.
2. Defendant No.1 to 5 are temporarily restrained from alienating the suit property or from creating third party interest therein till final disposal of the suit.
3. Costs in caused.

Date : 05.08.2025.

**Sd/-
(R. S. Kanade)
Civil Judge, S.D., Sinnar.**