

Order below Exh.05

This is an application filed by the plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 ('C.P.C.' In short).

Brief facts as mentioned in the application are as under :-

2. The plaintiffs have filed suit for declaration and mandatory injunction in respect of CTS No.1605 more particularly Hotel Abhishek Beer Bar and Restaurant situated therein at Ganga Ves, Sinnar. The hotel Abhishek Beer Bar and Restaurant and its permit is the subject matter of the suit. (Hereinafter this property is referred to as the “***suit property***” for the purpose of brevity).

3. The plaintiffs submit that, the suit property is joint family property of the plaintiffs and their deceased brother Santosh Dhattrak. The plot was purchased out of joint family income from Indubai Vishnu Vanjari and Rajendra Vishnu Vanjari on 30.05.2008. It was purchased in the name of deceased Santosh in order to avoid future complications in the business. The plaintiffs and deceased Santosh started beer bar and hotel. It was started on 09.09.2009 in the name of deceased Santosh. Santosh died on 10.10.2010. Defendant No.2 is his legal heir. Defendant No.1 was widow

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of deceased Santosh. After her remarriage she went to her parental house. For want of renewal, the licence of the suit property is suspended. The application for renewal was rejected for absence of signature of defendant No.1. It is submitted that, defendant No.1 performed remarriage with Gopal Ramesh Varade. Hotel was running well due to sale of liquor. On 06.09.2024 the sale of liquor is stopped due to order passed by defendant No.3. Therefore, the family of the plaintiffs is put to starvation. Defendant No.3 ordered that, unless the dispute about legal heirs of deceased is not resolved, the licence is suspended. Citing these grounds, the plaintiffs prayed that, defendant No.3 may be directed to grant permission for sale of liquor in the name of defendant No.2.

4. Defendant Nos. 1 and 2 filed written statement and contended that, the suit property was self acquired property of deceased Santosh. During his lifetime, he used to run the hotel. He was also dealing in the sale and purchase of land. The permit was in his name. Defendant No.1 has not performed remarriage. The miscellaneous Application No.3/2014 is pending for the succession certificate. The plaintiffs have not approached the court with clean hands.

5. Defendant No.3 filed written statement at Exh.-19 and contended that, the licence for hotel Abhishekh was received in the name of deceased Santosh. As there was dispute between the legal heirs about the transfer of permit, it was suspended by passing order.

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6. Heard learned advocate Shri.S.K. Tambe for the plaintiffs and learned advocate Shri,A.K. Sonawane for defendant Nos.1 and 2. Points for determination along with my findings and reasons thereon are as under :-

<u>Points</u>	<u>Findings</u>
1. Do plaintiffs prove that, they have prima facie case in their favour ?	...No.
2. Do plaintiffs prove that, the balance of convenience tilts in their favour ?	...No.
3. Do plaintiffs prove that, they will suffer irreparable loss if the application is not allowed ?	...No.
4. What order ?	...Application is rejected.

REASONS

7. In support of their submission, the plaintiffs have placed on record numerous documents below list Exhs.3 & 22. These documents are considered at the appropriate stage of discussion in this order.

As to Point Nos.1 to 3 :-

8. I have discussed point No. 1 to 3 at once, as these points are inter-linked with each other. The plaintiffs have approached the court with a case that, defendant No.1 is widow of their brother namely, Santosh Dhattrak and defendant No.2 is son of defendant No.1 and Santosh. It is

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not in dispute that, suit property was purchased in the name of deceased Santosh. On perusal of sale deed at list Exh.3/1 it can be gathered that, the land in CTS No.1605, more particularly house No.1621 was purchased in the name of deceased Santosh. There is no whisper in the sale deed that the said property was purchased by deceased Santosh for himself and his brothers. The PR Card of the suit property at list Exh.3/2 also shows that, name of defendant Nos.1 and 2 is appearing as a legal representative of deceased Santosh. Nothing has been placed on record by the plaintiff to show that the suit property was purchased from the joint family nucleus in the name of deceased Santosh.

9. Learned advocate for the plaintiffs vehemently argued that, defendant No.1 has got remarried. Therefore, she is not entitled to succeed estate of deceased Santosh. He also argued that, in the year 2018, the loan availed by deceased Santosh in the name of hotel Abhishek Hotel has been repaid. He invited attention of the court to the certificate issued by liquidator of Sinnar Vyapari Sahakari Bank on 03.10.2018. This document shows that, the loan on the suit property was cleared. However, it is not show as to who repaid the loan. It is pertinent to note that, the plaintiffs have not mentioned the fact about issuance of heirship certificate in the name of defendant Nos.1 and 2 along with their mother Parvatabai. This heirship certificate was issued by the 2nd Jt. CJJD, Sinnar on 01.08.2017. This heirship certificate is placed on record by defendant Nos.1 and 2 at list Exh.24/1. It shows that, civil court has issued heirship certificate in the name of defendant

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Nos.1 and 2 and Parvatabai Dhattrak. The plaintiffs might be well aware about this order as Parvatabai is their mother, But they have not disclosed this fact while approaching the court for the relief of temporary injunction. It is settled legal proposition that, a person who seeks the equitable relief of injunction must approach the court with clean hands. The plaintiffs by suppressing the fact of issuance of heirship certificate have not acted in good faith.

10. It is also argued on behalf of the plaintiffs that, the defendant No.1 has remarried and gave birth to a girl child. In support of their argument, birth certificate is filed at list Exh.3/5. It is a birth certificate issued by the Municipality, Nandurbar in respect of birth of Sohavi Gopal Warade. Name of mother of a child is shown as Archana Gopal Warade. It is pertinent to note that, the plaintiffs have mentioned the name of defendant No.1 as Archana Gopal Warade in the plaint. However, they have not placed on record any document to show that, Archana Gopal Warade and Archana Santosh Dhattrak is the same person,

11. The plaintiffs have also relied on the copy of information received from Municipality, Nandurbar under the Right to Information Act. The copy of said letter is at Exh.22. It shows that, the information about the Adhar Card number of Archana Gopal Warade was not issued as it was not available with the Municipality, Nandurbar. Therefore, evidence placed on record by the plaintiffs is prima facie not sufficient to show that defendant No.1 remarried after death of her husband.

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12. It is pertinent to note that, defendant No.3 has filed written statement at Exh.19 and contended that, the licence for hotel Abhishekh was received in the name of deceased Santosh. As there was dispute between the legal heirs about the transfer of permit, it was suspended by passing order. Learned advocate for the plaintiff invited attention of the court to the order passed by defendant No.3. It is as list Exh.3/3. It shows that, defendant No.3 observed that, he received applications from defendant No.1 and the plaintiffs for renewal of licence. But the application filed by the plaintiff was not signed by defendant No.1. As the application for transfer of permit was not received after the lapse of 14 years and there was dispute between the legal heirs, defendant No.3 suspended the licence and restrained for sale of liquor on the basis of said licence. It is also mentioned in the order that, mother of the plaintiffs Parvatabai died on 02.08.2023.

13. As the heirship certificate was issued by the competent court in the name defendant Nos.1, 2 and Parvatabai they could have apply for renewal of a permit as legal heirs of deceased Santosh Dhatrak. As Parvatabai died, now defendant Nos.1 and 2 may apply for renewal of permit. The plaintiffs have failed to show that prima facie the suit property was jointly purchased by deceased Santosh and them, There is no prima facie case and balance of convenience in their favour. They failed to show that, prima facie they are entitled to run the business of beer bar and restaurant on the strength of permit in the name of deceased Santosh. Therefore, they do not suffer irreparable loss if the application is not allowed.

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Hence, in the light of above discussion, I have answered point Nos.1 to 3 in the negative.

As to point No. 4 :-

14. The plaintiffs have not established three necessary ingredients for the grant of temporary injunction. Therefore, the application deserves to be rejected. Hence, in view of negative findings to point Nos. 1 to 3 and in answer to point No. 4, I pass following order,

ORDER

1. The application is rejected.
2. Costs in cause.

Date : 09.05.2025.

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