

**ORDER BELOW EXHIBIT 5 IN R.C.S. NO.232/2023**

(Passed on this 18<sup>th</sup> day of Aug, 2023)

Heard the learned advocate Shri. M. V. Sathe for the plaintiff. Perused the plaint, documents, and application for temporary injunction.

2. It is the case of the plaintiff that the suit properties are his ancestral properties and joint family properties and he is having share in it. The defendant No. 1 to 7 trying to sell suit properties and trying to create third party interest over the same. If the defendant succeeds in their illegal acts, then the plaintiff will be put to irreparable loss. Hence, the plaintiff is praying for ad interim ex parte injunction against the defendant No. 1 to 7 until their appearance.

3. At this juncture it would be proper to rely on the guidelines given by the Hon'ble Apex Court in **Morgan Stanley Mutual Fund Vs. Kartick Das, 1994 AIR SCW 2801** while granting ex parte ad-interim injunction. The factors which should weigh with the Court in the grant of ex parte injunction are:

- (a) where irreparable or serious mischief will ensue to the plaintiff;
- (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
- (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- (d) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;
- (e) the court would expect a party applying for an ex parte injunction to show utmost good faith in making the application;
- (f) even if granted, the ex parte injunction would be for a limited period of time;

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.

4. The present suit is for Partition and separate possession. At this stage, after applying the above guidelines of the Hon'ble Supreme Court, the plaintiff has failed to bring forth any particular instance, or evidence in order to showcase her cause of action for granting ad interim ex parte injunction.

5. It would also not be proper to grant ad interim ex parte injunction against the defendants based solely on the contents of the application of the plaintiff. Moreover, rejection of ad interim ex parte injunction will not ensue irreparable or serious mischief to the plaintiff. Hence, it would be necessary to hear the defendants before granting injunction against them.

6. Thus, at this point the plaintiff has not made out any grounds for granting ex parte ad-interim temporary injunction in his favour. Hence, I do not find any extreme urgency to grant ex parte ad-interim temporary injunction against the defendants. Plaintiff's prayer for injunction can be considered after the defendants appear. Hence, following order is passed:

### **ORDER**

1. Issue show-cause notice to the defendants as to why injunction prayed by the plaintiff shall not be granted **R/o.05-09-2023**.
2. Emergent process and Special Bailiff, is allowed, if required.

Date: 18.08.2023

sd/-

(Shyam S. Kalaskar)  
Civil Judge, Junior Division,  
Lohara.