

MHPA110005822023**ORDER BELOW EXH.05.**

The plaintiff has filed present application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, seeking temporary injunction for restraining the defendants from alienating the suit property.

02. That, the following properties are subject matter of present application.

- 1- Land Survey No.28, ad-measuring 03 H 43 R,
- 2- House No.23/2/2,
- 3- Open Plot No.294/3/2,
- 4- Land Gut No.250/1/2, ad-measuring 01 H 71 R,
- 5- Shop No.100/3/3, ad-measuring 16 X 40,
- 6- House No.303/3/2, ad-measuring 5,000 Sq.ft.,
- 7- Land Survey No.641, ad-measuring 60 R,
- 8- Land Gut No.2/2, ad-measuring 17 R.

Hereinafter called as 'suit property'.

03. Having regard to the nature of application following points arise for my determination and I have recorded my findings against each of them for the reasons stated below:

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiff has <i>prima-facie</i> case ?	...In the negative.
2)	Whether the balance of convenience lies in favour of the plaintiff ?	...In the negative.

3)	Whether the plaintiff would suffer irreparable loss in case the temporary injunction is not granted ?	...In the negative.
4)	What order ?	...As per final order.

REASONS

POINT NOS.01 TO 03:

04. Perused the pleading along with documents filed on record. Heard both the Ld. Advocates for plaintiff and defendants.

05. The plaintiff has come with the case that she is the widow of Late Jaipalsinh Bajarangsinh Baisthakur. Late Jaipalsinh has two brothers, defendant no.1 and Late Bharatsinh. Said Bharatsinh is survived by defendant nos.2/A and 2/B as legal heirs. The defendant no.3 is younger son of defendant no.1. The plaintiff has no issue out of the wedlock with Late Jaipalsinh. Late Jaipalsinh has four sisters Chandrakalabai, Shantabai, Shakuntalabai and Ushabai. They have relinquished their shares, therefore, they have not been impleaded.

06. The suit property is ancestral and joint family property of plaintiff and defendants. Said Jaipalsinh had died on 14.02.2021 leaving the plaintiff as the only legal heir. He has 1/3rd share in the suit property and the plaintiff is claiming the same. The partition of suit property is yet to be taken place by meets and bounds. Prior to death Late Jaipalsinh was suffering from various serious diseases. Due to gangrene disease his left leg was amputated in the year 2021. On 10.02.2021 he was unconscious and was not at all in a state of disposition of property. Therefore, the Will-Deed dated 10.02.2021 is null and

void. In fact, the defendants in collusion with each other fabricated a false Will-Deed in favour of defendant no.3, Krishna Rajpalsinh Thakur. On 25.04.2023 the plaintiff had been to Gangakhed, at that time she requested the defendants to revoke the alleged Will-Deed and effect the partition. But the defendants refused and denied her share. Hence, she had to file present suit and claimed temporary injunction apprehending that defendants would sell out the suit property depriving her from her lawful share.

07. The defendant nos.1 and 2/A, 2/B resisted the suit vide their say at Exh.15 and 17, respectively denying the plaintiff's entire claim. It is the contention of defendants that the plaintiff is not legally wedded wife of Late Jaipalsinh. In fact, said Jaipalsinh was married to one Kavita Mohansinh Chavhan on 13.06.1993 at Tuljapur. Therefore, she has no locus-standi to file the present suit being the second wife.

08. The defendants further contended that suit Gut No.28, 250/1/2, 100/3/3 are the only ancestral properties of defendants and Late Jaipalsinh. But, the plaintiff being second wife has no right and interest in the said property. The plaintiff had filed Civil M.A.No.85/2021 claiming heirship certificate, wherein, she had admitted the Will-Deed in favour of defendant no.3. Therefore, the suit is barred by principle of estoppel.

09. Moreover, the Survey No.641 and Survey No.2/2 is the self acquired property of Late Bharatsinh. He had purchased the same vide the sale-deed dated 17.02.2004 and 17.02.1997. So also, Property No.303/3/2 is the self acquired one of

defendant no.1, Rajpalsinh. He had purchased the same vide the sale-deed dated 25.04.2001. The suit is barred by non-joinder of necessary parties since the plaintiff has not impleaded sisters of defendant no.1. Moreover, Late Jaipalsinh had sold out Property No.139/1/2 vide the sale-deed dated 10.01.2013 and Gut No.151 vide the sale-deed dated 28.03.2006. The plaintiff has not impleaded the said properties nor the purchasers. Therefore, the suit is liable to be dismissed for non-joinder of necessary parties and properties.

10. Lastly, the defendant no.3 resisted the suit vide his say at Exh.21. He also reiterated the contents of written statements filed by defendant nos.1 and 2. However, he has come with the theory of Late Jaipalsinh having executed Will-Deed in his favour bequeathing his shares in Gut No.28, 250/1/2, P.T.R.No.23/2/2 and P.T.R.No.294/3/2. He executed the Will-Deed on 10.02.2021 and died on 14.02.2021. He was in sound state of mind and body while executing the Will-Deed. Therefore, the plaintiff is not entitle to challenge the same. Hence, prayed to reject the application.

11. Perused the record. Heard the Ld. Advocates concerned. The record reveals that the plaintiff had filed Civil M.A.No.85/2021 on 03.05.2021 claiming the heirship certificate being the legal heir of Late Jaipalsinh along with defendant no.3. The said application appears to have been not yet decided. Therefore, the plaintiff is yet to be legally declared as legal heir of Late Jaipalsinh. On the contrary, the defendants have denied plaintiff's marital status with Late Jaipalsinh. They contended that one Kavita Chavhan is the first wife of Late Jaipalsinh.

12. The perusal of various P.T.R. Cards, Tax Receipts and sale-deeds filed on record transpire that suit Survey No.28, House No.23/2/2, P.T.R.No.100/3/3 and Gut No.250/1/2 stand in the name of defendants along with Late Jaipalsinh. The plaintiff has not come with the theory of exclusion at the instance of defendants. Significantly, the name of Late Jaipalsinh still appears to record of rights and P.T.R. Cards. Therefore, the apprehension of plaintiff that the defendants would sell out the suit property, seems to be not well founded. The defendant no.3 said to have filed petition for probate for the alleged Will-Deed executed by Late Jaipalsinh. Therefore, the defendant no.3 himself would safeguard the property bearing Gut No.28, 250/1/2, P.T.R.No.23/2/2 and P.T.R.No.294/3/2 as he independently claimed rights therein.

13. It is pertinent to note that the defendants have not denied the nature of suit property i.e., Gut No.28, 250/1/2, 100/3/3 being the ancestral property. Moreover, the documents on record also reveal so. It is well settled principle of Hindu Law of Succession that sale of undivided share in ancestral property is not illegal one. The purchaser of such share has no remedy except the partition and he cannot claim the specific share until partition. Therefore, on this count also the apprehension of plaintiff is fictitious. Here, I am guided by the case of **Hardeo Rai Vs. Sakuntala Devi**, wherein, the Hon'ble Apex Court held that, *"A coparcener can sell his undivided interest. However, the purchaser cannot get possession except by way of suit for partition"*.

14. The defendants have come with the theory that House No.303/3/2, Survey No.641 and Survey No.2/2 are self acquired properties of defendant no.1 and Late Bharatsinh. The sale-deeds on record dated 25.04.2001, 17.02.2004 and 16.08.1995 reveal that the said properties came to have been purchased individually by defendant no.1 and Late Bharatsinh. Therefore, it is matter of evidence that the said properties are joint family properties or purchased out of the joint nucleus. By that time the said properties have to be considered as self acquired ones of defendants.

15. It is significant to note that the plaintiff has apprehended alienation on the part of defendants. But, there is no any recent or immediate past instance of any such attempt on the part of defendants so as to conclude that defendants are about to alienate the suit property.

16. Since the plaintiff has not come with the theory of exclusion on the part of defendants, so her apprehension seems to be not well founded. If at all the plaintiff has any interest in the suit property through the Late Jaipalsinh, the said right and interest is duly protected as the name of Late Jaipalsinh still appears on the record of rights. Moreover, the plaintiff has also the due protection of **Section 52 of Transfer of Property Act**. The Section 52 of said Act is ample one to allay the apprehension of plaintiff. Therefore, I found no prima-facie case nor the balance of convenience by the side of plaintiff warranting the grant of protection under Order 39 Rule 1 and 2 of C.P.C. Since the defendants have partly admitted the nature of suit property being ancestral and partly claimed being self acquired, so, I

found irreparable loss to plaintiff. Accordingly, answering the points in negative, I pass the following order.

ORDER

1. The application Exh.05 stands rejected.
2. Cost in main cause.

Date :- 03.09.2024

(A.R. Sayed),
Civil Judge, Senior Division,
Gangakhed.