

ORDER BELOW EXH-5**(Passed on 16-12-2021)**

The Plaintiff filed present suit for partition, separate possession, declaration of ownership and injunction in which plaintiff moved instant application for temporary injunction under O 39 Rule 1 & 2 of The Code Of Civil Procedure to restrain defendant no.1 from alienating suit properties till final decision of suit. Perused the application and say of defendant no.1. Heard both the parties.

Brief facts of the case giving rise to move the present application in nutshell are as under :-

2- Plaintiff avers that defendant nos.1 and 2 are real brothers, defendant nos. 3 to 5 are sisters and defendant no.6 is mother of plaintiff. Defendant no.7 is wife of defendant no.1. The father of plaintiff and defendant nos.1 to 5 namely Dhanu Rathod died before many years. The field bearing Gut no. 532/7 admeasuring 40 R situated at Shivaji Nagar, Tq. Gangakhed (hereinafter referred as 'suit field' for short) and the house bearing Gram Panchayat no.16 admeasuring east-west 30 ft. south-north 20 ft. and open space admeasuring 36 X 20 situated at Mouje Dagadwadi Tq. Gangakhed Dist. Parbhani (hereinafter referred as 'suit house' for short) and both suit field and suit properties (hereinafter refereed as 'suit properties' for short) are the subject matter of suit. It is further averment of plaintiff that suit field was purchased jointly by plaintiff and defendant nos.1 to 6 from the joint income earned from their labour work, business and sugarcane cutting work. As defendant

no.1 is elder brother and Karta of the family, therefore, suit field was purchased on the name of defendant no.1. But however, the suit field was purchased from joint income of plaintiff and defendant nos.1 to 6. Moreover, the suit house is ancestral property of plaintiff and defendant nos.1 to 6. Previously the suit house was on the name of their father Dhanu Rathod. After the death of their father being Karta of the family suit house is transferred on the name of defendant no.1 and defendant no.7. Plaintiff has share in suit properties but however, defendant no.1 is trying to transfer and alienate the suit properties to the third party. If the suit properties are alienated then he will be deprived of his share in suit properties and will suffer irreparable loss. Therefore, plaintiff is constrained to file present suit along with instant application. It is averred by plaintiff that he has prima-facie case with balance of convenience in his favour. If the defendants are not temporarily restrained then there is possibility that defendants may create third party interest over the suit properties. Hence, plaintiff prayed for temporarily restraining defendant no.1 from alienating suit properties.

3- Defendant no.1 and 7 filed their written statement at Exh-16 and by way of pursis Exh-17 defendant no.1 adopted the contents of written statement as a reply to temporary injunction application. Defendant no.1 denied all allegations made against him and contended that there was no ancestral field of plaintiff and defendants. There was only one house and it was partitioned prior to 20 to 25 years before. Defendant nos.3 to 5 are sisters of plaintiff and defendant nos.1 and 2.

Their marriage was solemnized prior to 20 to 25 years and they are residing at their matrimonial houses. Plaintiff and defendant nos.1 to 6 never went for sugarcane cutting work. They are residing at their matrimonial houses, therefore, they never went for sugarcane cutting work alongwith plaintiff and defendant nos.1 and 2. Therefore, suit field can not be purchased from joint income earned from sugarcane cutting work and business. It is further contention of defendant no.1 that his son Murlidhar Rathod met with an accident with tractor bearing no. MH-12 7186 in the year 2005 under the jurisdiction of Shirur police station and he died due to accident. Therefore, he received sum amount and in the year 2006 he purchased suit field. Plaintiff and other defendants do not have right in that field. Therefore, plaintiff can not claim share in the suit properties. Plaintiff has plot in survey no.427/2 admeasuring 93 square ft. But however, plaintiff has not added that plot in the suit. Plaintiff and defendants are residing separately. Raising all these grounds defendant no.1 prayed for rejection of this application.

4- On the basis of averments made by plaintiff as well as contentions made by defendant no.1 following points arose for my determination and I recorded my findings with reasons thereon as under;

<u>Points</u>	<u>Findings</u>
1) Whether the plaintiff made out prima facie case in his favour ?	No
2) Whether the balance of convenience lies in favour of plaintiff ?	No

- 3) Whether irreparable loss would cause to the plaintiff, if the application is rejected ? No
- 4) What order ? As per final order.

REASONS

As to Point No. 1 to 3 :-

5- As these three points are interlinked with each other so they are being dealt with together for the purpose of brevity. In order to grant application for temporary injunction the plaintiff has to prove three factors i.e. prima-facie case, balance of convenience and irreparable loss in his favour. In addition to these factors plaintiff has to come before the court with clean hands.

6- The learned counsel for the plaintiff submitted that field bearing Gut no.532/7 is purchased from joint family income. As defendant no.1 is Karta of the family therefore property is purchased on the name of defendant no.1. The house property is ancestral property. Defendant no.1 is trying to sell the suit properties therefore, it is necessary to restrain defendant no.1 from creating any third party interest over the suit properties. Per contra, learned counsel for defendant no.1 submitted that defendant nos. 3 to 5 are married sisters of plaintiff and defendant no.1 and they are residing at their matrimonial house. They

never went for cutting sugarcane. The suit properties are self acquired properties of defendant no.1. The partition of joint family property has already took place. Therefore, prayed for rejection of this application.

7- It is averment of the plaintiff that the suit field is purchased from joint income and house property is ancestral property of plaintiff and defendant nos.1 to 6. Per contra, it is contention of defendant no.1 that partition of house property has already taken place. The suit field is self acquired property of defendant no.1. At this juncture in view of contentions made by the plaintiff and defendant no.1, it is necessary to peruse the record and documents so as to ascertain the possession of parties over suit properties.

8- Plaintiff filed alongwith list of documents Exh.4 verified copy of his Adhar card, copy of mutation entry no.131, 7/12 extract of Gut no.532/7 and gaon namuna no.8 of house property bearing no.16. On the contrary defendant no.1 filed alongwith list of documents Exh.15 7/12 extract of field survey no.427/12, verified copy of sale-deed of gut no.532/7, verified copy of passbook of account no.0501101140379 and xerox copy of form no.A.

9- Upon the perusal of copy of PTR of house property no.16 it prima-facie appears that it stands on the name of defendant no.1 and defendant no.7. Upon the perusal of 7/12 extract of field Gut no.532/7 it prima-facie appears that it is on the name of defendant no.1. Moreover,

upon perusal of sale-deed of field Gut no.532/7 it prima-facie appears that it is purported to be executed by one Fakirchand Dalsing Rathod in favor of Murli Dhanu Rathod who is defendant no.1. Upon the perusal of mutation entry no.131 it prima-facie appears that original owner of field Gut no.532/7 was one Fakirchand Dalsing Rathod and he sold it to one Devidas Rama Rathod and Murlidhar Dhanu Rathod. Upon perusal of 7/12 extract of 427/2 it prima-facie appears that 93 R land is on the name of plaintiff. It is significant to mention here that plaintiff avers that suit field is purchased from joint income of plaintiff and defendants nos 1 to 6. But however, Upon perusal of copy of 7/12 extract, sale deed and mutation entry it prima-facie appears that it stands on the name of defendant no.1. Except bare words plaintiff has brought nothing on record to show that suit field was purchased from joint income of him and defendant nos. 1 to 6. Moreover, plaintiff avers that suit house is ancestral property and it was previously on name of father of plaintiff and defendant nos. 1 to 5. But however upon perusal of copy of PTR of house property it prima-facie appears that it stands on the name of defendant no. 1 and his wife who is defendant no.7. plaintiff has brought no evidence on record to show that suit house is ancestral property and it was on name of father of plaintiff and defendant nos. 1 to 5.

10- Moreover, upon the perusal of record it appears that suit properties are in possession of defendant no.1. Furthermore, whether suit field is purchased from joint income and suit house is ancestral property or self acquired property of defendant no.1 or partition of house property

took place or not are matters of evidence and it is required to be decided on merit.

11- At this juncture in view of above observation I am of the considerate opinion that plaintiff failed to establish prima-facie case in his favour. Therefore, the balance of the convenience does not lie in favour of plaintiff. If the application is allowed then the defendants will face irreparable loss. On the other hand, if this application is rejected no irreparable loss will cause to the plaintiff. Hence, I recorded my findings as to point nos.1 to 3 in negative.

As to Point No. 4 :

12- As I answered point nos. 1 to 3 in negative therefore, in answer to point no. 4 , I pass the following order.

ORDER

- 1) Application is rejected.
- 2) Costs in cause.

Date : 16/12/2021

(Miss. Maimuna Sultana M.)
Civil Judge (Jr.Dn.),
Gangakhed