

MHPU120004122024	<u>ORDER BELOW EXH.05 IN</u>
	<u>REGULAR CIVIL SUIT NO. 90/2024</u>
	(Abhishek Nandkumar Bhide Vs Sadasshiv Alias Milind Rameshwar Bhide)

Present application is filed by the plaintiff for temporary injunctions, in order to restrain defendants No. 1 and 2 from transfer or to entrust development rights of the suit property, as per Order XXXIX, Rule 1 and 2 of Code of Civil Procedure, 1908 **(hereinafter for the sake of brevity referred to as “CPC”)**.

Brief facts of application of the plaintiff are as under :-

02. House Property bearing No. 613, CTS No 1540, area admeasuring 638 sq. mtrs., which is bounded as under :

East	Bhor Municipal Road
South	City Survey No. 1541, East West joint plot of the plaintiff, defendant and Dev Family
West	House No. 613 city survey number 1540 and in front of Bhelkewadi Nhavi Ali Road
North	East West Common lane

(more particularly described in para No. 1 of the application, hereinafter for the sake of brevity referred to as the suit property.)

03. It is contention of the plaintiff that late Sadashiv Bhide was great grandfather of the plaintiff. Further, Sadashiv have three sons namely Rameshwar, Manohar and Trimbakeshwar. Rameshwar is grandfather of the plaintiff. Rameshwar has legal heirs namely

Nandkumar, Sadashiv alias Milind, Usha and his wife. The plaintiff is son of Nandkumar.

04. The plaintiff contended that his father was working hence, he was residing at Nira, Tal. Purandar, Dist. Pune. However, he used to come at Bhor. Further, grandfather of the plaintiff was residing in the suit property along with his wife, daughter Usha and defendant No. 1 viz. Sadashiv. The plaintiff contended that defendant No. 1 always had wish to grab share of deceased father of the plaintiff. Further, on that count quarrel took place between defendant No. 1 and deceased Rameshwar. He contended that his father was suffering from Cancer. Therefore, defendant was intended to purchase share of his father and grandfather. Accordingly, in July 2002 without consent of the plaintiff defendant No. 1 purchased share of deceased father of the plaintiff in CTS No. 1540, 1541. He contended that said sale deed was executed by using pressure on deceased father of the plaintiff and by taking disadvantage of nature of his father. However, the plaintiff was unaware about aforesaid sale deed. Accordingly, he used to come in the suit property, as he has share in the suit property.

05. The plaintiff contended that the suit property is yet to be parted between the parties. In spite that on 18.04.2024 the plaintiff is come to know that defendant No.1 and 2 are in process to entrust the suit property and open land adjacent to the suit property to third person. Thereafter, the plaintiff made inquiry with defendant, at that time defendant No. 1 told that he purchased undivided share of deceased father and great grandfather of the plaintiff. Thereafter, he demanded copy of sale deed. However, defendant refused to give the same. Hence, on

21.04.2024 he published paper notice in daily news paper Prabhat. Accordingly, defendant No. 1 replied to said notice and informed that he will sale the suit property. He contended that his deceased father was taken treatment through NGO. Hence, financial position of the plaintiff family was sound.

06. The plaintiff contended that he has 1/9th share in the suit property and open land situated behind CTS No. 1540. Further, the partition is yet to be took place between the parties. In this situation if defendant No. 1 and 2 are succeed to develop the suit property or to create third party interest in the suit property than certainly irreparable loss will cause to the plaintiff. Hence, he filed present suit for partition and separate possession of his share. However, it will take time to try and decide present suit. He contended that he has *prima facie* case and balance of convenience lies in his favour. Hence, he prayed to restrain defendant No. 1 and 2 to sale, develop the suit property, open land situated behind the suit property and CTS No. 1541. Therefore, he has filed present application.

07. Defendant No. 1 resisted the application by filing his. He denied each and every contention of the plaintiff. Further, he contended that the suit property was owned by Rameshwar Sadashiv Bhide. Rameshwar has legal heir namely, Nandkumar, defendant No.1, Usha. Thereafter, by virtue of Release deed bearing 921/2009, Usha relinquished her right in favor of defendant No. 1. Since than defendant No. 1 is in possession of the suit property and used to maintain the same. He contended that deceased father of the plaintiff was suffering from cancer. Hence, some financial assistance was required. Accordingly,

deceased father of the plaintiff executed sale deed in favour of defendant No. 1 for total consideration of Rs.75,000/-. Further, mother of the plaintiff was given consent to sale deed. Furthermore, the plaintiff was present at the time of the sale deed and he made his signature. In spite that the plaintiff has filed present suit. He contended that in plaint the plaintiff failed to mention about cheating. Hence, suit is hit by order VI, Rule 4 of CPC.

08. He contended that sale deed executed in the year 2002 and same is challenged after lapse of 22 years. Hence, as per Article 58 of the limitation Act the suit is not tenable. Further, by virtue of the sale deed defendant No. 1 became owner of the suit property. Hence, he has right to enjoy the suit property. Per contra, the plaintiff is not concerned with the suit property. Further, the plaintiff is residing in Pune and he left Bhore prior to 25 years. He contended that partition took place between the parties prior to 60 years. Hence, the plaintiff has no right to challenge the same. Further, area of open land or CTS Number of open land is not mentioned in the plaint.

09. He contended that the suit property is dilapidated condition. Therefore, same need to repair. If same is not done then there is life threat to present defendant. He contended that *prima facie* no case in favour of the plaintiff. Further, balance of convenience lies in favour of the defendant. Hence, he prayed to reject the application.

10. Defendant No. 2 filed his written statement and resisted the application. He contended that suit property is owned by his grandfather. Further, his grandfather has three sons namely Trimbakeshwar, Rameshwar and Manohar. Further, he has 1/3rd share in the suit property.

he contended that the suit property is yet to be parted between the parties. Further, the plaintiff is only concerned with 1/3rd share of his father. He contended that he never tried to sale or develop the suit property. Hence, the plaintiff has no right to claim any relief against the defendant No. 2. He contended that present suit is filed to harass the defendant. Hence, he prayed to reject the application and suit.

11. Defendant No. 3 and 4 also filed their written statement, however present application is only against defendant No. 1 and 2. Hence, contention of the written statement of defendant No. 3 and 4 are not reproduced herein.

12. Heard Ld. Advocate for the plaintiff and defendant. Ld. Advocate for the plaintiff argued that the suit property is ancestral property of the plaintiff and defendants. Hence, as per settled Hindu law the plaintiff has birth right in the suit property. Further, deceased father of the plaintiff has no right to sale share of the plaintiff. Furthermore, defendant No. 1 cheated deceased father of the plaintiff and executed sale deed. He argued that financial position of the plaintiff family was sound. Hence, there was no need to sale the suit property. He argued that from contentions of defendant No. 1 its clear that they are in process to create third party interest in the suit property. Hence, it is necessary to restrain the defendants by way of interim injunction. Hence, he prayed to allow the application. In support of his contention he relied on Judgment of Hon'ble Supreme court in case of *Darubai and another Vs Kamlabai and others 2026 Live Law (SC) 581 and K.S. Shivappa Vs Smt. K. Neelmma (2025 INSC 1195)*.

13. On the other hand, Ld. Advocate for defendant No. 1 argued that sale deed is executed in the year 2002. Further, the plaintiff has knowledge of the sale deed. Hence, prima facie the suit is barred by law of limitation. He argued that deceased father of the plaintiff executed sale deed in favour of defendant No. 1. Hence, the plaintiff has no right to challenge the same. He argued that the suit property is dilapidated conditions. Hence, if injunction is granted it will cause irreparable loss to the defendant No. 1. Hence, he prayed to reject the application. In support of his contention he relied on Judgment of Hon'ble Supreme Court in case of *Beerreddy Dasaratharami Reddy Vs V. Manjunath (AIR 2022 Supreme Court 65.)* Ld. Advocate of the defendant No. 2 argued in consonance with her contention of the written statement.

14. The following points arise from my determination, on which I have recorded my findings, with reasons, therefor-

Sr. No.	Points	Findings
1.	Does the plaintiff made out that he has prima facie case ?	.. No
2.	Does the plaintiff prove that he will suffer irreparable loss, if injunction is not granted ?	.. No
3.	Does the plaintiff further prove that balance of convenience lies in his favour ?	.. No
4.	What order ?	..Application is rejected

15. It is settled law that in order to grant the injunction application, the court must consider following ingredients :

- a. Prima Facie case
- b. Balance of convenience
- c. Irreparable loss.
- d. Conduct of the parties.

- REASONS -

AS to Point No. 1 :-

16. Point No. 1 is related to prima facie case. A word prima facie case is not defined in Code of Civil Procedure, 1908. However, in various judgments of Hon'ble Supreme Court it held that a word prim facie means a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. In short prim facie case means possibility of success of the party. After perusal of the pleading of the plaintiff, it is specific case of the plaintiff that the suit property is ancestral property of the plaintiff and defendant. Hence, he has right and share in the suit property. On the other hand, defendant No. 1 contended that deceased father of the plaintiff sold his share to defendant No. 1. Further, the plaintiff has knowledge about said sale deed. Further, partition took place between the parties. Hence, the plaintiff is not entitled for reliefs.

17. In aforesaid backdrop, it is necessary to mention that present application is for interim injunction, the scope of the interim injunction is limited purpose. It is settled law that while considering the interim

application, the court cannot finally adjudicate dispute between parties or adjudicate title of the parties. The court only concern with the prima facie case. Further, object of the interim injunction is to save the subject matter of the suit till final adjudication of the suit. In touchstone of aforesaid settled legal position, it needs to decide present application.

18. Present suit is for partition, declaration and perpetual injunction. In suit for partition the plaintiff firstly proved that the suit property is ancestral property of the plaintiff. Therefore, firstly it needs to ascertain whether the plaintiff *prima facie* proves that the suit property is ancestral property. In order to establish the same, the plaintiff heavily relied on revenue record. It is admitted position that Sadashiv is common ancestor of the plaintiff and defendant. Further, it is admitted position that Sadashiv had three sons namely Trimbakeshwar, Rameshwar and Manohar. Furthermore, it is admitted position that the Rameshwar is great grandfather of the plaintiff. It seems that relations between parties are admitted by each other. Further, from perusal of Property Card it appears that suit property was purchased by deceased Sadashiv i.e. grandfather of the plaintiff. It is necessary to mention that the defendants also admitted the said facts. However, it is specific defence of the defendant that deceased father of the plaintiff executed sale deed in favour of defendant No. 1. Hence, the plaintiff has no right to claim share in the suit property.

19. A copy of sale deed is filed along with list at Exh. 3/1. After perusal of the same it appears that deceased grandfather, father of the plaintiff executed sale deed in favor of defendant No. 1. Further, mother of the plaintiff is consenting party to said sale deed. It is relevant to note that sale deed was executed in the year 2002 and duly registered before

registrar of assurances. Accordingly name of defendant No. 1 recorded on property card of the suit property. Further, it is necessary to mention that during lifetime of deceased father or grandfather of the plaintiff they never challenged said sale deed or mutation entry. Furthermore, it is specifically mentioned that deceased father of the plaintiff was suffering cancer and due to financial assistance and repay of loan said sale deed was executed. Further, it is admitted position that Sadashiv was owner of the suit property. It seems that after death of Sadashiv his son namely Trimbakeshwar, Manhoar and Rameshwar inherited the suit property. Accordingly, in the year 1964 their name mutated on property card of the suit property. It appears that after death of deceased Sadashiv as per Section 8 of Hindu Succession Act the property devolve upon his heirs. Hence, prima facie there is no evidence to show that the plaintiff has birth right in the suit property. Admittedly, deceased grandfather of the plaintiff was legal heir of said Sadashiv. However, by virtue of the sale deed said Rameshwar along with father of the plaintiff sold their respective share to defendant No.1. It is relevant to note that deceased Rameshwar during his life time sold his share along with his son namely Nandkumar (father of the plaintiff) to defendant No. 1. Hence, it appears that deceased grandfather and father of the plaintiff sold their share during their lifetime. I have gone through the judgment cited by the plaintiff, in Darubai (*Supra*) after death of deceased property devolve to all legal heirs as per Section 8 of Hindu Succession Act. However, one legal heir sold the share as Karta. Accordingly, the Hon'ble Court held that she has no right to sale the property as Karta. However, in present case as stated earlier after death of Sadashiv property devolve upon his legal heirs and one of his legal heirs sold his share during his lifetime. Hence, I respectfully submits that ratio laid down in said case is not applicable to case in hand. Further, fact of

K.S.Shivappa (Supra) are altogether different hence ratio laid down in said case is not applicable to case in hand.

20. Furthermore, the plaintiff is claiming relief in respect of suit property i.e. CTS No. 1540, open land behind to CTS No. 1540 and CTS No. 1541. However, area of open land is not mentioned in the plaint. Furthermore, CTS No. 1541 is not part of the suit property. In spite that the plaintiff is claiming relief in respect of CTS No. 1541. Considering the aforesaid discussion cumulatively, it appears that deceased father and grandfather during their lifetime executed sale deed in favour of defendant No. 1. Further, prima facie the plaintiff failed to show that the suit property is ancestor property. Hence, the plaintiff has no prima facie case in his favour. Accordingly, I answer point No. 1 in negative.

As to Point Nos. 2 and 3:-

21. Point Nos. 2 and 3 are related to balance on convenience and irreparable loss. These two points are related to each other, hence in order to avoid repetition of discussion, I discuss them together.

22. According to settle principles of law, the applicant must be proved that balance of convenience lies in their favour and irreparable loss will cause to them if injunction is refused. It is contention of the plaintiff that if the defendants will alienate the suit property irreparable loss will cause to him. In aforesaid discussion, I already observed that deceased grandfather and father of the plaintiff executed sale deed in favour of defendant No. 1. Further, I concluded that the plaintiff failed to show prima facie case in his favour. In this situation balance of convenience not lies in favour of the plaintiff. Further, after perusal of the photographs of the suit property it appears that the suit property is old

and dilapidated condition. In this situation it appears that some structural repairs are to be required. in this situation if injunction is granted it will create hurdle in repairing works also. Therefore, no irreparable loss will cause to the plaintiff. Further, I have gone through judgment cited by the defendant. Fact of said case and case in hand are different. Hence, ratio laid down in said case is not applicable to case in hand. Accordingly, I answer point Nos. 2 and 3 in negative.

As to Point No. 4 :-

23. The plaintiff failed to prove that he has prima facie case, further balance of convenience is not lies in his favour and irreparable loss will not cause to him. Hence, the plaintiff is not entitled for injunction in respect of the suit property. Accordingly, I passed the following order :

- O R D E R -

The application (Exh. 5) is rejected.

Date:-30.07.2026.

(S.D.Shirsat)
Jt Civil Judge Jr.Dn. Bhor