

MHPU120005982024 	ORDER BELOW EXH.05 IN <u>REGULAR CIVIL SUIT NO. 108/2024</u> (Pratik Vitthal Dhudhane Versus Genba Bhau Dhudhane and others)
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Present application filed by the plaintiff for temporary injunction, as per Order XXXIX, Rule 1 and 2 of Code of Civil Procedure, 1908 (**hereinafter for the sake of brevity referred to as “CPC”**) in order to restrain the defendants No. 7 to 9 to attach and auction the suit property and to restrain defendants No. 1 to 6 from creating any third -party interest in the suit property.

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

02. The plaintiff contended that property mentioned in below tabular format is ancestral property of the plaintiff and defendant No.1 to 6.

Sr. No.	Gat No.	Area (H-R-P)
1	277	0.99
2	210	0.19.
3	312	01.23 out of that admeasuring 00.61.5 R
4	468	00.56
5	471	00.08
6	214	00.20 R
7	379	00.19 R

03. Further, House Property bearing Grampanchayat Property No.3, area ad-measruing 20 X 20 situated in village Nand Tal.Bhor, Dist. Pune and construction of area ad-measuring 40 sq. meter situated on survey No.168/1/C in village Bhor Tal. Bhor Dist. Pune.

(hereinafter for the sake of brevity aforesaid properties are mentioned as “the suit property”)

04. The plaintiff contended that defendant No.1 and 2 are grandfather, defendant No.3 is father, defendant No. 4 and 5 are uncle and defendant No.6 is sister of the plaintiff. The plaintiff contended that aforesaid properties are ancestral and joint Hindu family property of the plaintiff and defendant No.1 to 6. Further, suit property is yet to be parted between the parties. Further, house property is purchased from income of joint family. Hence, the plaintiff has share in said property.

05. The Plaintiff contended that out of the suit property some properties are mortgaged by defendant No.1 to 5 in favour of defendant No.7 & 8. However, the plaintiff is not concerned with said mortgage. Further neither consent of the plaintiff was obtained nor said mortgage created for benefit of joint family or any legal necessities. Per contra, defendant No.1 to 5 obtained said loan for their personal benefits. In this situation, if defendant No.7 to 9 will take possession of the suit property or if suit property will sale in auction in that case legal right of the plaintiff is defeated. Further, irreparable loss will cause to the plaintiff.

06. The plaintiff contended that on 15/07/2024 he requested to defendant No. 1 to 5 to give his share. However, they failed to give the same. Further, defendant No.9 issued notice to defendant No.3 and demanded possession of the suit property. In absence of partition defendant No.9 is not entitled to take possession of the suit property. Hence, plaintiff filed present suit for partition and injunction. The Plaintiff contended that suit property is ancestral and joint family property of the plaintiff and defendant No.1 to 6. Therefore, if defendant No.7 to 9 will take possession of the suit property in that case irreparable loss will cause to him. Hence, he prayed for injunction.

07. Defendant No.7 to 9 appeared and resisted the application by filing their joint say at Exh.30. They denied each and every contention of the plaintiff. They contended that plaintiff failed to add necessary parties in present suit. Therefore, suit is hit by non-joinder and mis-joinder parties. Further, there is no cause of action to file present suit. Furthermore, suit is not within limitation and not valued as per the law. The defendant contended that defendant No.7 is president of Nere Vibhag Patsanstha and defendant No.8 and 9 office bearers of said Patsanstha. The defendant contended that in the year 2004 the defendant No.1 to 5 obtained loan and executed following mortgage deeds :-

A) Defendant No.1 executed mortgage deed bearing registration No.1456/2004 dated 04/11/2004.

B) Defendant No.2 executed mortgage deed bearing registration No.1457/2004 dated 04/11/2004.

C) Defendant No.3 and one Sunita Vitthal Dhudhane executed mortgage deed bearing registration No.1568/2004 dated 22/11/2004.

D) Defendant No.4 executed mortgage deed bearing registration No.1470/2004 dated 05/11/2004.

E) Defendant No.5 executed mortgage deed bearing registration No.1455/2004 dated 04/11/2004.

08. The defendants contended that the plaintiff did not mention in respect of aforesaid mortgage deeds. Further, the plaintiff failed to produce said mortgage deeds alongwith the plaint. Hence, suit is hit by Order VII Rule 14 of C.P.C. The defendants contended that defendant No.1 to 5 obtained aforesaid loan for legal necessities of joint family and they assured in respect repayment of aforesaid loan amount. However, they did not pay single penny from said loan amount. Hence, defendants initiated action against defendant No.1 to 5 as per Section 101 of Maharashtra Co-operative Societies Act. In said proceeding also defendant No.1 to 5 failed to appear. Hence, on 02/09/2021 notice issued against defendant No.1 to 5 in daily newspaper Pudhari. Thereafter also defendant No.1 to 5 failed to pay loan amount. Therefore, defendant No.7 to 9 went to take possession of the suit property i.e. house property situated in survey No. 168/1/C. However, due to some technical problem or issue they were unable to get possession of the suit property. Therefore, in order to prolong attachment of the suit property the plaintiff filed present suit.

Further, the plaintiff himself is advocate hence, by clever drafting he filed present suit. They contended that the plaintiff suppressed material facts from this court. Moreover, the defendant No.7 to 9 by following due procedure obtained certificate as per section 101 of Maharashtra Co-operative Societies Act. Therefore, as per Section 164 of Maharashtra Co-operative Societies Act two months' notice prior to filing present suit is mandatory. However, the plaintiff failed to give said notice. Hence, on that count also the suit is not tenable. Further, defendant No.7 to 9 obtained certificate as per section 101 in the year 2008. However, till today defendant No.1 to 5 did not challenge said certificate the defendant contended that by way of present suit the plaintiff challenged entire auction procedure. Hence, this court has no jurisdiction to try and decide the present suit.

09. The defendant contended that the plaintiff has no prima-facie case. Further, the plaintiff suppressed material fact and not come with clean hands. Hence, balance of convenience and irreparable loss will not cost to him. On the other hand, public money is involved. Therefore, if injunction is granted irreparable loss will cause to defendant No.7 to 9. Hence, they prayed to reject the application with cost of Rs. 2,00,000/-.

10. Defendant No. 1 to 6 failed to file their say. Hence, suit is proceeded without their written statement.

11. Heard Ld. Advocate for the plaintiff and defendants. They argued in consonance with their respective contention. Further,

defendant No. 1 to 5 did not file their say. However, they supported claim of the plaintiff. In addition to that Ld. Advocate for the plaintiff relied on following judgments :

(A) Shivgonda Balgonda Patil and others vs The Director of Resettlement and others AIR 1992 BOMBAY 72.

12. On the other hand, Ld. Advocate for defendant No. 7 to 9 relied on following judgments :

(B) Special Recovery Officer Annasaheb Chougule Urban Co-operative bank Ltd. Kolhapur Vs Suhas Balkrishna Shete 2014 (3) Mh.L.J. 859.

(C) Tirupati Ginning and Pressing Factory Akola Vs M/s. Balaji Ginning and Pressing Industry Akola and others 2008 (5) Mh.L.J. 393.

(D) Devgiri Nagari Sahakari bank Ltd Vs Zubidabegum Asadulla Khan and others 2012(6) Mh.L.J. 457.

(E) Pukharaj Mohanlal Vyas and others Vs Sanmitra nagri Sahkari Pata Sanstha ltd. And another 2007 93) Mh.L.J. 575.

13. 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 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.

14. 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.

15. At the outset, during argument Ld. Advocate for the plaintiff argued that the suit is not touching to the business of the society. On the other hand, Ld. Advocate for the defendant No. 7 to 9 argued that indirectly the plaintiff challenged certificate issued under Section 101 of MCS Act. In this respect it is necessary to mention that earlier the defendant No. 7 to 9 moved the application as per Order VII, Rule 11 of CPC, wherein the defendant raised dispute about maintainability of the suit. However, My Ld. Predecessor decided the

application and concluded that this Court has Jurisdiction. Therefore, it would be not appropriate to decide the same issue again. Further, I have perused judgments of Hon'ble Bombay High court in case of Tirupati, Devgiri and Pukhraj (supra), wherein the Hon'ble Court held that recovery certificate cannot be challenged and suit directly touched business of the society could not have been entertained without issuing notice contemplated under Section 164 of the MCS Act. However, said issue is already decided by predecessor of this Court. Therefore, it would be not appropriate to decide the same. Hence, ratio laid down in aforesaid judgments is not applicable at this stage.

- R E A S O N S -

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 prima 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 he has share in the suit property. Therefore, if defendant No. 7 to 9 will attach and auction the suit property, in that case he will suffer irreparable loss. On the other hand, defendant No. 7 to 9 contended that they followed due process of law and obtained certificate as per Section 101 of the Maharashtra

Co-Operative Act, 1964 (**Hereinafter referred to as 'MCS Act'**). Hence, the plaintiff is not entitled for reliefs. In this backdrop it needs to decide present application.

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 concerned 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 present suit, after considering the documents on record, it is admitted position that the plaintiff is member of family of defendant No. 1 to 6. Further, it is admitted position that defendant No. 1 to 5 executed mortgage deed in favour of defendant No. 7 and 8. However, it is specific case of the plaintiff that said deeds did not execute for benefit or legal necessity of joint family. Per contra, said deeds executed by defendant No.1 to 5 for their personal benefits.

18. The basic contention or core case of the plaintiff that the suit property is ancestral property of himself and defendant No. 1 to 6. Therefore, without demarcation of share it can not be attached or auctioned. In order to show nature of the property the plaintiff filed revenue record such as 7/12 extract and mutation entry. After perusal of the same, more particularly Mutation Entry No. 52 it appears that some properties are ancestral property of the plaintiff and defendant No 1 to 6. However, it is pertinent to note that name

of defendants recorded on 7/12 extract according to their share. Further, encumbrances of mortgage deeds also recorded on other right column of the suit property. Further, it is necessary to mention that defendant No. 1 to 5 differently executed mortgage deed in respect of their respective share. Therefore, at this stage it seems that parties are acted as per their respective shares. No doubt, revenue records are not conclusive proof of the partition. In Shivgonda (supra) the Hon'ble Bombay High court held the same. However, it is settled law that long standing revenue entries are having presumptive value. Further, as stated earlier its prima facie appears that the parties are acted as per revenue entries. Hence, ratio laid down by Hon'ble Bombay High court in Shivgonda (supra) is not applicable to facts of present case.

19. It is case of the plaintiff that he demanded share from defendant No. 1 to 5. However, they refused to give the same. Hence, he filed present suit. However, interestingly defendant No. 1 to 6 in their argument admitted share of the plaintiff and contention of the plaintiff. If really defendant No. 1 to 6 wants to give share to the plaintiff in that case they had opportunity to give the same prior to filing of the suit. However, as per own version of the plaintiff defendant failed to do so. Now, defendant No.1 to 6 supported claim of the plaintiff. It shows that they all are interested to keep abeyance the proceeding of recovery initiated by defendant No. 7 to 9. As stated earlier, conduct of the parties is also material to decide injunction application. Considering the same, in present suit conduct of the plaintiff and defendant No. 1 to 6 is doubtful.

20. The Ld. Advocate for the plaintiff vehemently argued that defendant No. 7 to 9 obtained certificate in the year 2008 and at this belated stage they initiated recovery proceeding. In this respect it is worth to mention that as per provisions and rule framed under Maharashtra Co-operative Society Act the plaintiff has liberty to file appeal or to raise his grievance before competent or appropriate authority. Therefore, equally efficient remedy is available to the plaintiff to dispute certificate obtained under Section 101 of MCS Act. In this situation as per Section 41(h) of the Specific Relief Act the plaintiff is not entitled for relief. In Special Recovery Officer (Supra) The Hon'ble High court held that suit filed without availing the remedy is not maintainable. In present suit undoubtedly the plaintiff prayed for partition. However, considering entire pleading of the plaintiff it appears that if injunction is granted it will be amount to stay the proceeding initiated under Section 101 of MCS Act. Considering aforesaid discussion cumulatively, it appears that the plaintiff has no prima facie case. Accordingly, I recorded my answer to point No. 1 in negative.

As to Point Nos. 2 and 3:-

21. Point Nos. 2 and 3 are related to balance of 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 his favour and

irreparable loss will cause to him if injunction is refused. It is contention of the plaintiff that if defendant No. 7 to 9 attach and auctioned the suit property in that case irreparable loss will cause to him. In earlier discussion, I already held that the plaintiff has no prima facia case. Therefore, if injunction is granted it amounts to stay recovery proceeding initiated by defendant No. 7 to 9 as per Section 101 of MCS Act. Further, defendant No. 7 is financial institution. Hence, if recovery proceeding is stopped by way of injunction, it will affect business of the defendant No. 7. Therefore, balance of convenience is not lies in favour of the plaintiff and no irreparable loss will cause to him. Accordingly, I answer in negative to point No. 2 and 3.

As to Point No. 4:-

23. Considering discussion of point No. 1 to 3 it manifests that the plaintiff has no prima facie case, further balance of convenience is not lies in his favour and irreparable loss will not cause to him. Therefore, he is not entitled for injunction as prayed. Accordingly, I passed the following order :-

- O R D E R -

The Application (Exh. 5) is rejected.

Date:-21.06.2025.

(S.D.Shirsat)

2nd Jt Civil Judge Jr.Dn.Bhor.