

**ORDER BELOW EXH. 5**

**1.** This is an application for grant of temporary injunction under Order 39 Rule 1 of Code of Civil Procedure ("C.P.C." for short). Read the application and reply of defendants at Exh.74. Heard Ld. Advocates for the rival parties.

**2.** Ld. Advocate for plaintiffs submitted that, the suit property, specifically prescribed in para no. 1 of the plaint, is joint Hindu Family Property of plaintiffs and defendant no. 1 to 3. This property is not yet partitioned between them. The property bearing field block no. 1140 is mutated in the name of defendant no. 1 and he has threatened to alienate it. The defendant no. 2 and 3 are also joined in hands with defendant no. 1. There is a prima facie case in favour of plaintiffs and balance of convenience lies in their favour. They will suffer irreparable loss, if the defendants no. 1 to 3 are not restrained from alienating or otherwise encumbering the suit property.

**3.** Ld. Advocate for defendants argued that, the suit property is orally partitioned in the year 1982 between the plaintiffs and defendants and they are in possession of their respective shares. Thereafter, the suit properties bearing field block no. 615, 646, 1138 and 1148 are purchased by the parties after that partition. Therefore, this property is not partible. On the other hand, the

plaintiff no. 1 had purchased certain agricultural land on 14/05/1997 from the income of joint family. But, this property is not included in the suit property. According to him, there is no prima facie case in favour of plaintiffs and balance of convenience also does not lie in their favour. It is submitted by him that the defendants no. 1 to 3 will suffer irreparable loss, if the temporary injunction is granted.

**4.** I have given thoughtful consideration to the arguments advanced by Id. Advocates for the rival parties. Hence, the following points arise for determination and my findings thereon for the reason are stated as under:

	<b>Points</b>	<b>Findings</b>
<b>1</b>	Whether plaintiffs are having a prima facie case for grant of temporary injunction?	No
<b>2</b>	In whose favour the balance of convenience lies ?	defendants.
<b>3</b>	Whether the plaintiffs will suffer irreparable loss if the temporary injunction as prayed is refused?	No.
<b>4</b>	What order?	As per final order

### **REASONS**

**5. As to point no. 1:**

The claim of temporary injunction needs to be

considered in view of the provisions laid down under order 39 Rule 1 and 2 of C.P.C. Order 39 Rule 1 opens with the wording, 'where in a suit, it is proved by affidavit or otherwise'. It means that the court can resort to affidavit filed by the party as well as various other circumstances like the documents produced. However, in the present case the plaintiffs as well as defendants have not filed affidavits in support of their respective claims. Hence, I find it appropriate to consider the documents produced by rival parties for deciding that whether the plaintiffs have made out a prima facie case for grant of temporary injunction.

**6.** The 7/12 extracts of suit property shows that, the names of defendants no. 1 to 3 are also present in its revenue record along with the names of plaintiffs. The suit is for partition and separate possession of the shares of plaintiffs in the suit property. Therefore, there is fair question raised for trial by the plaintiffs in this regard. However, the plaintiffs have sought temporary injunction against co-owners i.e. the defendants no. 1 to 3. But, there is no material on record to show that, the suit property bearing field block no. 1140 is in danger of being alienated by defendant no. 1 with the help of defendants no. 2 and 3. If this aspect is considered, it does not appear to be a serious question to be tried at the hearing, and there is no probability of plaintiff obtaining the relief of injunction at the conclusion of the trial on the basis of material placed on record. It is settled position of law that, if a fair question is not raised for determination, it should be taken that, no

prima facie case is established. Hence, I hold that, the plaintiffs have not made out a prima facie case and answer point no. 1 in the negative.

**7. As to point no. 2:**

In view of the case of plaintiffs themselves, the defendant no. 1 to 3 are having undivided share in the suit property. The documents produced by plaintiffs also shows the same thing. In such circumstances, if the temporary injunction as prayed is granted then the defendants will lose their right even to alienate their undivided share in the suit property. On the other hand, the plaintiffs will not be placed in any inconvenience for the reason that, their right and interest in their undivided share in the suit property will not be affected by grant of temporary injunction. Therefore, the comparative mischief, hardship or inconvenience which is likely to be caused to the defendants no. 1 to 3 by granting temporary injunction will be greater than that which is likely to be caused to the plaintiffs by refusing it. Hence, I answer point no. 2 accordingly.

**8. As to points no. 3 and 4:**

The dispute herein is about the immovable property. It follows that the grant or refusal of temporary injunction will cause irreparable loss to the either party. The documents produced by the parties shows that, the parties are in possession of different fragments of the suit property since long. It follows that, they are cultivating it and

receiving income arising out of this fragments of suit property. In such circumstances, the plaintiffs will not suffer irreparable loss, if the temporary injunction is refused for the reason that, the case of defendants is supported by the revenue record. Moreover, in a suit for partition the plaintiffs can be compensated by money as they will also be entitled to mense profits arising from the property which may fall to their shares in the partition. Hence, I answer point no. 3 in the negative.

**9.** Thus, a prima facie case is not made out by plaintiffs for grant of temporary injunction. The balance of convenience also does not lie in their favour. They will not suffer irreparable loss if the temporary injunction as prayed is refused. Moreover, the suit was instituted in the year 2004 and present application was also made along with it. The record shows that, the plaintiffs have not taken steps for expeditious hearing on it. If this aspect is considered it appears that, the conduct of plaintiffs is not free from blame. Hence, in answer to point no. 4, I pass the following order:

**ORDER**

Application stands rejected.

Place : Saswad  
Date : 24/10/2019

**(N.H. Tikhe)**  
Civil Judge Junior Division  
Saswad

## CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : M. D. Shirode, Stenographer, (L.G.)

Court Name : Shri. N. H. Tikhe  
Jt.Civil Judge Jr. Division, Saswad.

Date of Judgment : 24/10/2019

Judgment signed by presiding officer on : 24/10/2019

Judgment uploaded on : 01/11/2019