



ORDER BELOW EXH. NO. 98 IN R.C.S. No. 121/2007

(Rani Sakharam Korahale & ors. Vs. Sakharam Mahadeo
Korahale & ors.)

(Passed on 18th March, 2025)

This application is moved by plaintiff under Order XXXIX rule 1 and 2 of Code of Civil Procedure.

DESCRIPTION OF SUIT PROPERTIES-

02. As described in para 1 of the plaint and this application. (Hereinafter referred as 'suit property' for brevity).

PLAINTIFF'S STORY-

03. As per plaintiffs, they are daughters of defendant no. 1. The suit properties are ancestral joint family property from their common ancestor Mahadev. Till date partition has not been effected. The present suit was dismissed for default of plaintiff on 29.09.2016 which came to be restored on 25.01.2024 in view of order passed in Civ. M.A. 1115/2023. During this period from dismissal to restoration, defendant no. 1 have created third party interest in favour of defendant no. 6 and 7 on 09.04.2021. Further defendant no. 6 and 7 have executed sell deed dated 24.12.2021 in favour of defendant no. 9. Thus, plaintiff is in need of urgent relief in the form of restraining defendant no. 1 and 9 from further creating third party interest in the suit property till the decision of this suit. Hence this application.

DEFENDANT'S DEFENCE-

04. Defendant no. 1 have filed say at Exh. 113 and resisted this application on the ground of being false, frivolous and not tenable at this stage. Further as per defendant since the filing of

suit in 2007, its dismissal in 2016 and till today plaintiff had not been delegant enough to be entitled for any discreationary relief. Even the prior applications of plaintiff for temporary injunction at Exh. 32 is pending and Exh. 5 has been not pressed by plaintiff. This shows that there is no urgency for plaintiff. Further the alleged sell deeds executed in 2021 are not lis pendence as the suit was dismissed on that day. Further without partition between defendant no. 1 and 2, plaintiff cannot seek relief only from defendant no. 1. Hence the suit as well as the application deserves to be rejected.

05. Heard learned Advocate for the plaintiff and defendant no. 1 at length.

POINT OF DETERMINATION:-

06. The following points arise for determination of this application and I have recorded my findings thereon along with reasons.

Sr. No.	Points		Findings
1.	Whether plaintiff proves prima-facie case ?	...	Yes.
2.	Whether balance of convenience tilts in favour of plaintiff ?	...	Yes.
3.	Whether plaintiff will suffer irreparable loss if injunction is not granted ?	...	Yes.
4.	What order ?	...	As per the final order.

REASONS

AS TO POINT NOS. 1 TO 3 :-

07. Considering the nature of the contentions, all points

are required to be considered together.

08. Perused the record in detail. I have gone through documents available on record. Admittedly the original suit RCS no. 121/2007 was dismissed for default of plaintiff on 29.09.2016. After that Civil M.A. 35/2017 was filed for restoration along with condonation of delay which was allowed 13.01.2023 subject to cost. Then Civil M.A. 11/2023 was decided on 25.01.2024 and RCS no. 121/2007 came to be restored. Further as the suit was dismissed at the stage of hearing, so there is no interim applications pending as per previous record. Thus the suit is proceeding on merit hereinafter.

09. As per plaintiff during this period of dismissal to restoration, defendant no. 1 have created third party interest in favour of defendant no. 6 and 7 who further alienated the suit property to defendant no. 9. This transactions were executed in the year 2021. The record of rights and the mutation entries support this contention. Further despite of due service, defendant no. 9 have not submitted his say. Hence the contentions of plaintiff remained unchallenged.

10. Further, from the say of defendant no. 1, it is clear that he has not denied the relationship of daughter and father between him and plaintiffs. Further even the execution of sell deeds in the year 2021 by defendant no. 1 in favour of defendant no. 9 are not denied. Furthermore, the record of rights which have presumptive value prima facie show that third party interest has been created by defendant no. 1 in favour of defendant no. 9 through defendant no. 6 and 7. Thus, the apprehension of plaintiff that further third party interest will be created by defendant no. 1 and 9 cannot be rulled out in toto. Even it will create more complication in the suit

and lead to multiplicity of proceeding. Further it is well settled position of law that section 52 of TP Act does not operate as bar to grant temporary injunction in cases where required. Therefore, in the interest of justice and to preserve the present nature of suit property, I am of opinion to restrain defendant no. 1 and 9 from creating further third party interest in the suit property till final decision of this suit.

11. Thus, in view of above discussion plaintiff shows their prima facie case. If more sale deeds like in favour of defendant no. 9 get executed, it will create more complications causing irreparable loss to plaintiff and lead to multiplicity of proceedings and add complications to this suit. Therefore, balance of convenience tilts in favor of plaintiffs. So, I answer points nos.01 to 03 in the affirmative and for point no.04, I pass following order :-

ORDER

1. Application is allowed.
2. Defendant no. 1 and 9 either in person or through friend, relative, agent, legal heir or lawful representative are restrained from creating third party interest in respect of suit property till further order.
3. Suit shall proceed accordingly.
4. Cost in main cause.

Place :- Daund.

[**Smt. S. A. Virani**]

Date :- 18.03.2025.

Jt. C.J.J.D., Daund, Dist. Pune

CERTIFICATE

I affirm that the contents of this P.D.F. file of Order are same, word to word, as per the original Order.

Name of Steno	:-	S. R. Banda
Name of the Court	:-	Smt. S. A. Virani, Jt. C.J.J.D., Daund, Dist. Pune.
Order date	:-	18.03.2025.
Order signed by the Presiding Officer on	:-	18.03.2025.
Order uploaded on	:-	18.03.2025.