

1 Spl. Civil Suit No. 129/2021.

Sau.Shweta Ramchandra Patil Vs.  
Shri.Anant Rama @ Rambhau Patil and  
others.

CNR No. MHRG-04-001543-2021.

**ORDER BELOW APPLICATION AT EXH. 05**

This is an application filed by plaintiff for temporary injunction restraining defendant No. 1 and his heirs, assignee, administrator, contractor, agent or any person claiming on his behalf to withdraw the enhanced compensation granted in L.A.R. No. 337/2016 for the suit properties mentioned in Schedule "A" at Serial Nos. 1 and 2 and execution proceeding bearing Spl.Darkhast No. 152/2017 filed to that effect, till the final decision of the suit.

02. It is also prayed for temporary injunctin restraining defendant No. 2 and his heirs, assignee, administrator, contractor, agent or any person claiming on his behalf to withdraw the enhanced compensation granted in L.A.R. No. 332/2016 for the suit properties mentioned in Schedule "A" at Serial Nos. 1 and 2 and the execution proceeding bearing Spl.Darkhast No. 52/2020 filed to that effect, till the final decision of the suit.

03. It is also prayed for temporary injunction restraining defendant No. 3 to 8 and their heirs, assignee, administrator, contractor, agent or any person claiming on their behalf to withdraw the enhanced compensation granted in

2 Spl. Civil Suit No. 129/2021.

L.A.R. No. 389/2016 for suit the properties mentioned in Schedule "A" at Serial Nos. 1 and 2 and the execution proceeding bearing Spl.Darkhast No. 199/2018 filed to that effect, till the final decision of the suit.

04. It is further prayed for temporary injunction restraining defendant No. 1 to 8 and their heirs, assignee, administrator, contractor, agent or any person claiming on their behalf, not to create third party interest in the plots which will be allotted to them for the acquisition of the acquired properties mentioned in the Schedule "A" i.e. admeasuring 600 sq.mtrs in Plot No. 47, Sector No. 59 and admeasuring 600 sq.mtrs. in Plot No. 25, Sector No. 27 and admeasuring 550 sq.mtrs. in Plot No. 23, Sector No. 44, situated in Dronagiri Node, till the final decision of the suit.

05. It is further prayed for temporary injunction restraining defendant Nos. 1 to 8 and their heirs, assignee, administrator, contractor, agent or any person claiming on their behalf, not to create third party interest in the plots which will be allotted to them under 12.5% Scheme for acquisition of the suit properties mentioned in Schedule "B", till the final disposal of the suit.

06) In a nutshell, the case of the plaintiff is that,-

**Description of suit properties –**

The following properties which are situated at village Bokadvira, were in the possession of deceased Ramabhau @ Rama Ganpat Patil.

**SCHEDULE "A"**

Sr.No.	Award	S.No.	H.No.	Area.
1	187/87 Bokadvira.	17	2	0-01-8
		64	2	0-16-3
		122	12	0-11-9
		147	1	0-02-5
		166	3	0-05-3
		39	8	0-27-0
		9	8	0-09-6
		26	4	0-20-3
		47	10	0-05-3
		114	5B	0-14-5
		145	1	0-02-5
		158	6	0-17-0
		168	1	0-05-6
		Total		1-39-3
2	187/A Bokadvira	138	2	0-13-7
3	4/88 Bokadvira	168	5B	0-5-1
4	74/86 Bokadvira	173	5	0-4-3
		174	6	0-13-7
		182	8	0-02-5
		184	11	0-09-5
		190	3A	0-11-5
		Total		0-41-1
5	50/85 Bokadvira	120	1	0-12-5
6	43 Bokadvira	169	7	0-04-6

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The aforesaid properties have been acquired by CIDCO on behalf of State of Maharashtra for New Mumbai Project, Bokadvira Unit Case No. 187, 187-A, 4/88, 74/86, 50 and 43.

The following properties are situated at village Bhendkhal, were in the possession of deceased Bhimabai Giridhar Patil.

**SCHEDULE "B"**

Sr.No.	Village	Unit Case No.	S.No.	H.No.	Area
1	Bhendkhal	33	161	2	0-8-4
2	Bhendkhal	33	161	3A	0-7-4
3	Bhendkhal	33	193	2A	0-17-12

The aforesaid properties have been acquired by CIDCO under Unit Case No. Bhendkhal 33 for New Mumbai Project.

(Here-in-after the aforesaid properties have been referred as "**suit properties**" for sake of brevity).

07. It is the contention of the plaintiff that, she and defendant No. 9 are legal heirs of deceased Champabai Ravindra Patil, who was a daughter of deceased Rambhau @ Rama Ganpat Patil. Defendant Nos. 1 and 2 are the real uncles of plaintiff. Defendant Nos. 10 to 14 are the authorized authorities to develop New Mumbai Project under M.R.T.P.Act.

The grand-father of plaintiff i.e. deceased Rambhau @ Rama Patil was the owner and possessor of suit properties mentioned in Schedule "A".

08. Genealogy of the plaintiff is as under :

**Genealogy**

Ganpat Patil (Deceased)

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Deceased Giridhar Patil	Deceased Rambhau @ Rama
Deceased Bhimabai Patil	Ganpat Patil
	Deceased Laxmibai Patil (Wife)

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Madhukar (son) Deceased	Anant (son)	Harichandra (son)	Champabai (daughter) deceased
Lilabai			Sharad
Shailesh			Sunil
Mangesh			(deceased)
Kamini			Shweta.
Sangeeta			
Sandesh			

09. On 9/4/1993, Rambhau @ Rama Ganpat Patil died and on 18/3/2006, Madhukar Rama Patil died. On 17/9/1992, the mother of plaintiff i.e. Champabai Ravindra Patil died. Deceased Champabai was a daughter of deceased Rambhau @ Rama Ganpat Patil. The plaintiff and defendant No. 9 are children of deceased Champabai. The suit properties mentioned at Schedule "B" were of deceased Giridhar Patil and

Bhima Patil who died issueless. Therefore, the said properties came in the name of defendants. The suit properties Schedule "A" and "B" have been acquired by the CIDCO for New Mumbai Project and acquisition proceedings have been initiated by the defendant Nos. 1 to 8 without impleading/adding the mother of plaintiff i.e. Champabai. Deceased Champabai is a legal heir of deceased Rambhau @ Rama Ganpat Patil. But, the defendant Nos. 1 to 8 did not include said deceased Champabai as a legal heir in the acquisition proceeding as well as in the various heirship proceedings. In order to deprive the rights of deceased Champabai and her heirs, defendant Nos. 1 to 8 have prepared partition deed on 4/6/2007 without consent of deceased Champabai. The plaintiff and defendant No. 9 have 1/4th share in the suit properties. The defendant Nos. 1 to 8 are trying to withdraw the compensation amount deposited in the acquisition proceedings and also trying to create third party interest in the plots allotted to them under 12.5% scheme. Hence, the plaintiff constrained to file the present application.

10. Defendant No. 1 has resisted the application by filing the say at Exh. 71. Defendant No. 2 has also resisted the application by filing his say at Exh. 65. Defendant Nos. 3 to 8 have also resisted the application by filing their say at Exh. 73. Their say/reply are similar in nature. In short, according to them, the suit is barred by limitation and the suit is hit by non joinder of necessary parties. The plaintiff has no relation with the defendants. Therefore, she has no right to file the present suit. The defendants denied the relationship of deceased

Champabai Ravindra Patil with deceased Rambhau @ Rama Ganpat Patil as daughter. They also denied the relationship of plaintiff with deceased Champabai, as daughter. The plaintiff has denied the partition dated 4/6/2007. Therefore, she ought to have filed the suit within three years from the date of said deed of partition. Once the partition is effected, the plaintiff cannot claim partition again after lapse of huge period.

11. It is further their contention that, the plaintiff has mentioned the date of death of deceased Champabai Ravindra Patil and filed her death certificate. But, these defendants have no concern with the deceased Champabai Ravindra Patil. Therefore, the plaintiff has no right and concern with the suit properties. She has no right in the properties of deceased Rambhau @ Rama Ganpat Patil. The heirship certificate obtained by the defendants in Uran Court, are legal and obtained it by due procedure. The plaintiff did not object to the said certificates. The plaintiff did not object to the enhanced compensation reference proceedings or she did not file any application to implead her in it. The plaintiff has filed the application only to extract some money from defendants. Hence, it is prayed to reject the application.

12. Upon the contentions mentioned in the application and say of the defendants, the following points arise for determination, to which I have recorded my findings on it with reasons mentioned in the later part of the order.

**POINTS**

**FINDINGS.**

- |    |   |                         |
|----|---|-------------------------|
| 01 | Whether the plaintiff has prima facie case?   | In the affirmative.     |
| 02 | Whether balance of convenience lies in favour of plaintiff ?                          | In the affirmative.     |
| 03 | Whether the plaintiff will suffer irreparable loss if the injunction is not granted ? | In the affirmative.     |
| 04 | What order ?  | Application is allowed. |

**REASONS**

**AS TO POINT NOS. 01 TO 04.**

13. The plaintiff and defendants have filed some documents in the case which will be discussed at the appropriate stage.

14. The learned counsel of plaintiff submitted that, the plaintiff is a daughter of one Champabai. Defendant No. 9 is also son of deceased Champabai. Defendant Nos. 1 and 2 are real brothers of said deceased Champabai. Defendant Nos. 3 to 8 are heirs of deceased Madhukar. The suit properties are the ancestral properties of plaintiff and defendants. The suit properties are of deceased Rama Ganpat Patil, who was the father of deceased Champabai. It is the contention of the defendants that, deceased Champabai was not a daughter of

deceased Rama Ganpat Patil and plaintiff is not a daughter of deceased Champabai. In partition deed dated 4/6/2007 executed between defendant Nos. 1 to 8, deceased Champabai was not party to it. On 17/9/1992, deceased Champabai died. The defendant No. 2 has issued one notice through his counsel Smt. Pradhan and in that notice, it has been mentioned that, the Champabai is the daughter of deceased Rama Ganpat Patil. Heirship certificates granted by Uran Court have been cancelled in Civil Suit. In the Civil Suit i.e. R.C.S.No. 92/2015, the defendant No. 1 has admitted that, his sister was one Champabai. Deceased Champabai was married with one Ravindra Patil. School Leaving certificate, marriage certificate of plaintiff show the relationship. The plaintiff has filed suit for partition and separate possession. The defendant Nos. 1 to 8 are trying to withdraw the enhanced compensation amount and also trying to create third party interest in the plots to be allotted to them in lieu of acquired suit properties. Hence, it is prayed to allow the application.

15. Per contra, the counsel of defendant No. 1 submitted that, the plaintiff is not the daughter of deceased Champabai. The plaintiff has filed false documents in the case. Death certificate of deceased Champabai filed at Exh. 4/1 shows place of death at Panvel. However, entry of death is taken at Bokadvira, Taluka Uran. On the same date of death, an entry was taken which appears doubtful. Partition deed is taken place on 4/6/2007. Therefore, again partition cannot be claimed. The suit ought to have filed within three years from the date of

said partition deed. The plaintiff did not claim for possession of the suit properties. On 17/8/2012, lease agreement has been prepared. In spite of knowledge of land acquisition references, the plaintiff did not object it and after receiving compensation amount she has objected it. Therefore, she has not entitled for temporary injunction. The plaintiff did not object when the references were pending before the Court at Alibag. Therefore, conduct of plaintiff is to be seen. Hence, it is prayed to reject the application.

16. The learned counsel of the defendant No. 2 submitted that, the case of plaintiff is nothing but, reopening of partition. In the year 1986, notification of acquisition was issued and the acquisition proceeding was come to an end. Death certificate of deceased Champabai is suspicious. Already partition deed is taken place. Agreement to lease is prepared in favour of defendants. Therefore, the plaintiff has no right to claim temporary injunction. There is no name of mother in the school leaving certificate of plaintiff. There is no explanation of the notice at Exh. 4/13 from where it has been obtained. The plaintiff has filed an application to implead her in Darkhast Proceeding at Alibag under Order 1 Rule 10 read with Sec. 151 of C.P.C. The plaintiff did not come with clean hands. Hence, it is prayed to reject the application.

17. The learned counsel for defendant Nos. 3 to 8 submitted that, the documents which filed alongwith the plaint, are only to be considered. There is no nexus with deceased

Champabai and plaintiff. It cannot be said that, the compensation which are to be received, cannot be termed in money. No injunction cannot be granted if relief is in monetary terms. The plaintiff did not take objection from the date of acquisition of land till the decision of the award. Therefore, she is not entitled for injunction. The plaintiff has no prima facie case. While disbursing the amount of compensation, the Court used to take Bank Guarantee, therefore, there is no need to grant injunction. Hence, it is prayed to reject the application.

18. It is not disputed that, the suit properties mentioned at Schedule "A", in the application as well as plaint were of deceased Rama Ganpat Patil and properties mentioned in the Schedule No. "B" were of deceased Giridhar Patil and Bhimabai Patil. Deceased Giridhar Patil and Bhimabai Patil had no issue. Therefore, their properties came to the defendants. It is also not disputed that, the Government of Maharashtra i.e. CIDCO has acquired the suit properties mentioned at Schedule "A" and "B" for Navi Mumbai Project and the defendants have filed some references for enhanced compensation and the CIDCO has deposited some amount in the said reference petitions and also allotted plots under 12.5% Scheme in favour of the defendants.

19. It is the contention of the plaintiff that, her mother i.e. deceased Champabai was the daughter of deceased Rama Ganpat Patil. However, it is the contention of the defendants that, deceased Champabai and the plaintiff has no

concern with them. In short, they denied the relationship of deceased Champabai as well as plaintiff. Now let us see, whether, deceased Champabai has any relation with the deceased Rama Ganpat Patil and the plaintiff has any relation with deceased Champabai ?

20. On perusal of copy of school leaving certificate of deceased Champabai Rambhau Patil at Exh. 70/1, it appears that, in the said certificate, it has been mentioned that, one Rambhau Patil was the father of said Champabai. Prima facie, it appears that, said Champabai is the daughter of Rambhau Patil. On perusal of evidence of Anant Rambhau @ Rama Patil i.e. present defendant No. 1 in R.C.S.No. 92/2015 at Exh. 45, it appears that, in the cross examination the said witness i.e. present defendant No. 1 deposed that, "his father had four children, his sister's name was Champabai Rambhau Patil and she was not alive. He has no knowledge about her heirs". On perusal of the evidence of Sandesh Madhukar Patil i.e. defendant No. 4 in R.C.S.No. 92/2015 at Exh. 57, it appears that, in the cross examination the said witness i.e. present defendant No. 4 admitted that, "in the heirship certificate filed by his father and uncle, his aunt Champa was not impleaded in it".

21. On perusal of notice issued by defendant No. 2 through her counsel at Exh.4/13, it appears that, on 5/10/2007, defendant No. 2 has issued notice through her counsel Sau. Vaishali Arvind Pradhan to the Chief Acquisition

Officer, CIDCO, CIDCO Bhavan, C.B.D. Navi Mumbai and called them not to transfer plot admeasuring 600 sq.mtrs., No. 47, Sector 59 in favour of present defendant No. 1. In the said notice, genealogy of Rambhau @ Rama Ganpat Patil and Laxmibai Rambhau Patil had been shown. In the said genealogy, it has been shown that, deceased Champabai Ravindra Patil is a daughter of deceased Rambhau @ Rama Ganpat Patil and the present defendant No. 9 Sharad is shown as a son of said deceased Champabai and the present plaintiff Shweta shown as a daughter of said deceased Champabai.

22. From the aforesaid documents, prima facie it appears that, the defendant No. 1, 2 and 4 are itself admitted the fact that, deceased Champabai was a daughter of deceased Ramabhau @ Rama Ganpat Patil. Therefore, it cannot be said that, the said deceased Champabai had no concern with deceased Ramabhau @ Rama Ganpat Patil.

23. The plaintiff has filed her school leaving certificate at Exh. 70/2. On perusal of the said certificate, it appears that the name of plaintiff is shown as "Pratibha Ravindra Patil". On perusal of marriage card of plaintiff at Exh. 70/3, it appears that, her name was shown as Pratibha (Shweta) a daughter of Shri. Ravindra Gopal Patil. On perusal of marriage certificate at Exh. 70/4, it appears that, her name was shown as Pratibha Ravindra Patil and she married with one Ravindra Ramchandra Patil on 7/5/2001. The plaintiff has filed an affidavit regarding change of her name after marriage at Exh.

70/6.

24. It is the objection of the defendants that, the place of death of deceased Champabai is shown in the death certificate as Panvel. But, the entry was taken at Bokadvira village. Moreover, the date of death and date of registration is one and the same. I am of the view that, where the deceased Champabai died and when an entry of her date of death was registered, are not material to deny her relationship with deceased Rambhau @ Rama Ganpat Patil. Therefore, the said objection has no force.

25. It is the contention of the defendants that, on 4/6/2007, partition deed has been taken place between defendant Nos. 1 to 8. Therefore, the plaintiff cannot open partition again in the case. On perusal of the said copy of said partition deed filed at Exh. 4/12, it appears that, neither deceased Chapabai nor the plaintiff and defendant No. 9 was party to the said partition deed. It is not the case of defendants that, deceased Champabai had given any consent to the said deed. Therefore, it cannot be said that, the said partition deed is binding to the deceased Champabai and the plaintiff. Therefore, the contentions raised by the defendants has no substance.

26. The plaintiff has filed copies of applications for heirship certificates filed by defendants for grant of heirship certificate in Uran Court. On perusal of the said applications, it appears that, deceased Champabai was not party to the said

proceeding. Therefore, the said heirship certificates are not binding to the deceased Champabai.

27. The defendants have filed a copy of in M.A.No. 14/2014, showing that, one Smt. Shashikala Ravindra Patil is the mother of defendant No. 9. On perusal of the said document, it appears that, said Shashikala Ravindra Patil has filed said application against the defendant No. 9 under Sec. 12 of Protection of Women From Domestic Violence Act. However, the defendant No. 9 has filed his reply on the said application. On perusal of the said reply it appears that, the applicant in the said application i.e. Shashikala was the second wife of Ravindra Gopal Patil and she had no issue and name of mother of the opponent i.e. present defendant No. 9 was one Champabai Patil. Therefore, the said document will not helpful to the defendants to disprove the relationship of deceased Champabai with deceased Ramabhau @ Rama Ganpat Patil.

28. It is the contention of the defendants that, the plaintiff has willfully has not objected for references of the acquisition proceedings and heirship certificates. Therefore, she has not entitled for injunction. It is to be noted that, it is the contention of the plaintiff that, after her marriage she went for cohabitation with her matrimonial house and she was busy in it. Therefore, she could not collect the required information of the suit properties and could not contact to the defendant Nos. 1 to 8. Considering the said fact, it appears that there is some substance to the contention of the plaintiff. Therefore, it cannot

be said that she has willfully not objected the previous proceedings.

29. In order to substantiate the submission of learned counsel of the plaintiff, he relied upon the following decisions :

- 1 The Hon'ble Calcutta High Court in case of **Sachi Prasad Mukherjee Vs. Pampa Kumar and others, reported in AIR 2004 Calcutta 310.**
- 2 The Hon'ble Apex Court in the case of **Dalpatkumar and Another Vs. Prahlad Singh and others, reported in (1992) 1 Supreme Court Cases 719.**
- 3 The Hon'ble Apex Court in the case of **Gajara Vishnu Gosavi Vs. Prakash Nanasaheb Kamble and others, reported in (2009) 10 Supreme Court Cases 654.**
- 4 The Hon'ble Punjab and Haryana High Court in the case of **Bachan Singh Vs. Swaran Singh, in C.R.No. 4549 dt. 6/3/2020.**
- 5 The Hon'ble Karnataka High Court in the case **Fakirasab Vs. Syedusab and others, reported in ILR 2004 KAR 4076.**
- 6 The Hon'ble Apex Court in the case of **Arunachala Gounder (Dead) by LRs. Vs. Ponnusamy and others, in Civil Appeal No. 6659 of 2011 decided on 20/1/2022.**

30. I have gone through the aforesaid decisions. In serial No. 1 supra, the plaintiff/petitioner sought partition of the suit property and also filed an application seeking temporary

injunction on finding that, his brother/co-sharers was creating third party interest therein, having got the entire property recorded his name. The said application rejected by the Trial Court and the Lower Appellate Court. The Hon'ble High Court has set aside the said order and observed that, when it could not be said without doubt that, the brother acted with clean hands, an allegations of fraud made by plaintiff/petitioner regarding sell of suit property with an intention to deny is legitimate share could not be said to be baseless. It is held that, the petitioner/plaintiff made out a strong prima facie case for going to trial and refusal of injunction may cause him irreparable loss and injury.

31. In serial No. 2 supra, the Hon'ble Apex Court observed that, "Order 39 Rule 1 (c) provides that, temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise that, the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by an order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing .... or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit until the disposal of the suit or until further order. Pursuing to the recommendation of Law Commission clause (c) was brought on statute by Section 86 (i)(b) of the Amending Act, 104 of 1976, with effect from February 1, 1977. Earlier there to there was no express power except the inherent

power under Sec. 151 of C.P.C. to grant ad-interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do for refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the Court on exercise of power of granting ad-interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that, grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that, (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of is being entitled to the relief asked for by the plaintiff/defendant, (2) The Court's interference is necessary to protect the party from the species of the injury. In other words, irreparable injury or damage would ensue before the legal right could be established at trial, and (3) that, the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it".

32. In serial No. 4, Their Lordships held that, "(i) a Co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster prejudicial or adverse to the impress of the

co-owner out of possession, (ii) mere making of construction or improvement of, in the common property, does not amount to ouster, (iii) if, by the act of the co-owner in possession the value or utility of the property is diminished then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property, (iv) if the acts of co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest”.

33. In serial No. 5 supra, Their Lordship held that, while considering an application for grant of injunction, the right and need of respective parties should be considered and the scheduled property should also be protected and preserved so that, if ultimately, the plaintiff who is the initiator of the suit, success in the suit, he would not be put to irreparable and uncompensatable loss. The object is to be keep the property in status quo so that, it would be available to the plaintiff if he ultimately succeeds in the suit.

34. The facts and circumstances in Serial No. 3 and 6 are different. The present application is for temporary injunction filed by plaintiff under Order 39 Rule 1 and 2 of C.P.C. But, in the said cases, said suits have been decided by the Courts after adducing evidence in that cases. Therefore, with due respect, I submit that, the said decisions are not applicable.

35. Per contra, the learned counsel of the defendant No. 2 relied upon the following decisions in support of his submissions :

- 1 The Hon'ble Apex Court in the case of Anathula Sudhakar Vs. P. Buchi Reddy reported in 2008 (4) SCC 594.
- 2 Our Hon'ble Parental High Court in the case of Atmaram Ganu Nagrale Vs. Baliram Ganu Nagrale, reported in 2010 (2) ALL M.R. 675.
- 3 The Hon'ble Apex Court in the case of Ram Saran Vs. Ganga Devi, reported in AIR 1972 SC 2685.
- 4 The Hon'ble Orissa High Court in the case of Jemma Vs. Raghu, reported in AIR 1977 Orissa 12.
- 5 The Hon'ble Madras High Court in case of R. Govindasamy (died) and others Vs. Kasthuri Aimmal and others, reported in AIR 1998 Madras, 218.
- 6 The Hon'ble Apex Court in the case of Dorab Cawasji Warden Vs. Coomi Sorab Warden, reported in AIR 1990 SC 867.
- 7 The Hon'ble Apex Court in the case of Mohd. Mehtab Khan Vs. Khushnuma Ibrahim, reported in AIR 2013 SC 1099.
- 8 The Hon'ble Gauhati High Court in the case of R.K.Madhuryyajit Singh and another Vs. Takhellambam Abung Singh and others reported in AIR 2001 Gauhati 181.

36. I have gone through the aforesaid decisions.

The facts and circumstances in the said cases and in the present case are totally different. Therefore, with utmost respect, I submit that the aforesaid decisions are not applicable to the facts of the present case. In serial No. 1 supra, the plaintiffs were filed suit for permanent injunction to restrain the defendants. The question was when the suit for simplicitor suit for injunction can be filed. But, in the present case, the plaintiff has filed a suit for partition and separate possession of the suit properties and the suit properties prima facie appears to be of her ancestral properties.

37. In Serial No. 2 to 5 and 8, already the suits in the said cases have been decided by the Lower Courts and appeals have been filed before the Appellate Courts. The decisions in the said cases are after adducing evidence by both the parties. However, the present application is filed for temporary injunction restraining the defendants from withdrawing the compensation amount of the suit properties and not to create third party interest in it. Therefore, with utmost respect, I submit that, the aforesaid decisions are not applicable to the facts of the present case.

38. In Serial No.6 the question was when the relief of interlocutory mandatory injunction can be granted by the Court and the Hon'ble Apex Court has given some guidelines for it. The said guidelines are-

1) The plaintiff has a strong case for trial. That is it shall be of a higher standard than a prima facie cast that, i.e.

normally required for a prohibitory injunction.

2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

3) The balance of convenience is in favour of one seeking such relief.

39. In serial No. 7, the plaintiff had filed a suit for recovery of possession under Sec. 6 of Specific Relief Act, for dispossession by the defendants. The Trial Court refused to grant relief of interlocutory mandatory injunction of possession to the plaintiff. However, the Hon'ble High Court granted the said relief. But, the Hon'ble Apex Court has disposed of the said appeal by observing that, "the appellate court would normally not be justified in interfering with the exercise of discretion under the appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonable and in a judicial manner the fact that the appellate would have taken a different view may not justify interference with trial court exercise of discretion.

40. To substantiate his submission, learned counsel of the defendant Nos. 3 to 8 relied upon the following decisions :

1 Our Hon'ble Parental High Court in case of **Bhagyashree Vs. Bhide V.M. Dixit, reported in 2015**

**SCC OnLine Bom 143.**

- 2 The Hon'ble Apex Court in case of **Best Sellers Limited Vs. Aditya Birla Limited, reported in (2012) 6 SCC 792.**
- 3 The Hon'ble Apex Court in the case of **Mandali Ranganna Vs. T. Ramchandra and others, reported in (2008) 11 SCC 1.**

41. I have gone through the aforesaid decisions. The facts and circumstances in the said cases and in the present case are different. Therefore, with utmost respect, I submit that, the aforesaid decisions are not applicable to the facts of the present case. In serial No. 1 the plaintiff had filed special civil suit for partition against the total 31 defendants including the appellant i.e. defendant No. 1. All the defendants are co-sharers and the plaintiff demands 1/24 th share in the suit property and also prayed for perpetual injunction restraining the defendant No.1 from carrying out construction of the suit property and creating third party interest so also prayed for mandatory injunction that the defendant No. 1 be ordered to demolish the construction carried out by her on the suit property. Out of 24 flats, 4 flats are sold and the entire 8<sup>th</sup> floors is occupied by a person who funded the project. There are 4 flats in each floor. But, that is not the situation in the present case. Hence, with due respect I submit that the aforesaid decision is not applicable.

42. In Serial No. 2 supra, the plaintiff prayed for specific performance of the agreement and in the alternative for

damages for expenses and losses to Rs. 20,12,44,398/- if the specific performance of agreement was refused by the Court. In Serial No. 3 supra, it is observed by Their Lordships that, conduct of parties is also a relevant consideration while granting temporary injunction. A person seeking injunction after long lapse of time by allowing the other party to deal with the property exclusively. It is held that ordinarily not entitled to injunction. But, in the present case, the plaintiff after her marriage went for cohabitation with her matrimonial house and she was busy in it. Therefore, could not contact with defendants. Moreover, the defendant Nos. 1 to 8 did not take any consent of said Champabai or the plaintiff to the alleged partition deed and did not implead her as legal heir in any proceeding relating to the heirship certificates or enhanced compensation references. Therefore, it cannot be said that said Champabai and the plaintiff had willfully avoided to object the said proceedings. Therefore, with utmost respect, I submit that the aforesaid decision is not applicable to the facts of the present case.

43. From the aforesaid discussion, prima facie it appears that the mother of plaintiff i.e. Champabai was the daughter of deceased Rambhau @ Rama Ganpat Patil and the plaintiff is the daughter of said deceased Chamapabai. The plaintiff has filed suit for partition and separate possession of the suit properties. Prima facie it appears that the plaintiff is legal heir of deceased Champabai. The plaintiff has prima facie case and balance of convenience lies in her favour. If the

defendant Nos. 1 to 8 withdraw the enhanced compensation amount granted in the Land Acquisition References and create third party interest in the suit properties, irreparable loss will cause to the plaintiff and multiplicity of the litigation would create. Therefore, I answer Point Nos. 1 to 3 in the affirmative. Plaintiff is entitled for temporary injunction as claimed in the application. Considering the provisions under Order 39 Rule 1 and 2 of C.P.C. I have no hesitation to allow the application. For point No. 4, I proceed to pass the following order :

**ORDER**

- 01 The application Exh. 05 is allowed.
- 02 Defendant No. 1 and his heirs, assignees, administrators, contractors, agents or any person claiming on his behalf are hereby temporarily restrained from withdrawing the enhanced compensation granted in L.A.R. No. 337/2016 for suit properties mentioned in Schedule "A" at serial No. 1 and 2 and the execution proceeding bearing Spl. Darkhast No. 152/2017 filed to that effect, till the final decision of the suit.
- 03 Defendant No. 2 and his heirs, assignees, administrators, contractors, agents or any person claiming on his behalf are hereby temporarily restrained from withdrawing the enhanced compensation granted in L.A.R. No. 332/2016 for suit properties mentioned in Schedule "A" at serial Nos. 1 and 2 and execution proceeding bearing Spl. Darkhast No. 52/2020 filed to that effect, till the final decision of the suit.

- 4 Defendant Nos. 3 to 8 and their heirs, assignees, administrators, contractors, agents or any person claiming on their behalf are hereby temporarily restrained from withdrawing the enhanced compensation granted in L.A.R. No. 389/2016 for suit properties mentioned in Schedule "A" at serial Nos. 1 and 2 and execution proceeding bearing Spl. Darkhast No. 199/2018 filed to that effect, till the final decision of the suit.
- 5 Defendant Nos. 1 to 8 and their heirs, assignees, administrators, contractors, agents or any person claiming on their behalf are hereby temporarily restrained from creating any third party interest in the plots which will be allotted from the acquisition of the acquired properties mentioned in the Schedule No. "A" i.e. admeasuring 600 sq.mtrs. in plot No. 47, Sector No. 59 admeasuring 600 sq.mtrs in plot No. 25, Sector No. 27 and admeasuring 550 sq.mtrs. in plot No 23, Sector 44, situated at Dronagiri Node, till final decision of the suit.
- 6 Defendant Nos. 1 to 8 and their heirs, assignees, administrators, contractors, agents or any person claiming on their behalf are hereby temporarily restrained from creating any third party interest in the plots which will be allotted under 12.5% Scheme for the acquisition of the acquired properties mentioned in the suit properties in Schedule "B" till the final disposal of the suit.
- 7 Cost in cause.
- 8 Dictated and pronounced in open Court.