

ORDER BELOW EXH. 5 IN Reg.C.S. NO. 778/2012

1. In a suit for declaration, partition and perpetual injunction plaintiffs have filed this application for restraining the defendants from creating third party interest and from parting with the possession of the suit properties.

2. Brief facts of application are as follows. :

Plaintiff no.1 to 3 are sisters. Defendant no.1 is their father, defendant no.5 is their step mother and defendant no.2 to 4 are their step brothers. Property bearing Survey No.336(1), Survey No.231(2), Survey No.335, Survey No.338(1) which are specifically mentioned in application para 1 are the disputed properties, henceforth they will be referred as "Suit Properties".

3. It is the contention of plaintiffs that, suit properties are ancestral and joint family properties. Plaintiffs are members of joint family properties. The suit properties obtained by defendant no.1 as Karta of joint family. The suit properties are purchased out of the income of joint family. Prior to marriage, these plaintiffs along with defendant no.1 had worked earned income and contributed for the purchase of the suit properties.

4. In June 2012, these plaintiffs came to know that, defendant no.1 has transferred the suit properties in favour of defendant no.2, 3 and 5. On going through the revenue documents, they learnt that on 19-09-1990 defendant no.1 has partitioned the suit properties in favour of defendant no.2, 3 and 5. These plaintiffs are having shares in the suit properties. Defendant no.1 has no right to dispose of the suit properties. They also learnt that, these defendants are trying to sell out the suit

properties to Builders, and hence, plaintiffs have filed this suit for partition, declaration and this application for restraining the defendants from creating third party interest and parting with the possession of the suit properties.

5. Defendants resisted said suit and filed their Written Statment at **Exh.26**. Thereafter these defendants filed adoption pursis at **Exh.27** and thereby adopted the contents of Written Statement as their reply to Exh.5. These defendants contended that, out of suit properties Survey No.335(1), admeasuring 28.9-R is not in existence. Plaintiffs are not concerned with the suit properties. Moreover, other properties bearing Survey No.331, Survey No.335, Survey No.338(1) are not the joint family properties. Defendant no.1 was 'protected tenant' in the suit properties and he purchased the suit properties as per **Bombay Tenancy Act Section 32-G** by paying the purchase price. The Certificate under **section 32-M** in favour of defendant no.1 is a conclusive evidence to show that, suit properties are self acquired properties of defendant no.1. The marriage of plaintiffs took place prior to 1994 and hence, these plaintiffs are not having any right in joint family properties, if any.

6. Suit properties are self acquired properties of defendant no.1. Defendant no.2 to 4 were taking care of defendant no.1 and 5 and hence, Survey no.231/3, Survey No.335 and Survey No.338/1 were transferred in the name of these defendants on 20-6-1990 vide M.E. No.1518 while Survey No.179 and Survey No.177 are sold by defendant no.1 to Vijay Narottam Agrawal and Madhu Vijay Agrawal vide registered Sale-deed dated 20-09-1991 to fulfil the necessity of joint family. These plaintiffs have no right in the suit properties. Hence, prayed that application be rejected.

7. Considering rival contentions of both the parties following points arise for my determination and I record my findings thereon for the reasons mentioned below.

No.	POINTS	FINDINGS
1	Whether the plaintiffs have made out prima facie case in her favour ?	...No.
2	Whether balance of convenience lies in favour of the plaintiffs ?	...No.
3	Whether an irreparable loss caused to the plaintiffs ?	...No.
4	What Order ?	... Application is rejected.

:: REASONS ::

POINT NO.1 to 4. :-

8. Advoate for plaintiffs argued that, suit properties are joint family properties. Suit properties were purchased by defendant no.1 out of joint family income. Therefore, these plaintiffs are having share in the suit properties. Inspite of that defendat no.1 has illegally transferred some of the suit properties in favour of defendant no.2, 3 and 5 and they are further trying to dispose of the suit properties. As these plaintiffs are coparcener by birth, hence these properties cannot be disposed off in such a manner. In support of their contentions they relied upon following three citations. :-

1	<i>Vineeta Sharma Vs. Rakesh Sharma & Ors. reported in 2021 All SCR 82.</i>
2	<i>Dashrath s/o Halkeprasa Yadav Aged about 93 years, Occ. Nil R/o Nanni Niwas, Radha Nagar, Morshi Road, Amravati, Tq.and Dist. Amravati Vs. Kamtaprasad s/o Halkeprasad Yadav, Aged about 69 years, Occ. Nil and Ors. reported in 2021 (1) AIR Bom. R 718.</i>

3	<i>Shobha Purushottam Zilpe Vs. Ramdas Dadaji Buradkar & Ors. reported in 2018(5) AIR Bom.R 485.</i>
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9. Advocate Shri. Patil for defendants vehemently argued before the court that, suit properties are not joint family properties, but they are self acquired properties of defendant no.1. As the properties are self acquired properties, therefore, the defendant no.1 is having right to dispose off the suit properties as per his wish. The case law of “Vineeta Sharma (supra)” and other citations relied by Advocate for plaintiffs are not applicable to the present case. Hence, prayed that application is liable to be rejected.

10. Heard both the learned Advocates at length. Perused the record and citations. The present suit was filed in the year 2012. There is amendment to **Section 6 of the Hindu Marriage Act** and the rights of daughter as coparcener are recognized. The landmark judgment is that of “Vineeta Sharma (supra)” whereby “*the daughter had been recognized and treated as coparcener with equal rights and liabilities as that of son. The coparcener right is by birth. It is not at all necessary that the father of daughter should be living on the date of amendment. The daughters had become entitled to claim partition with coparcenery, they can seek partition and the shares of the daughters will have to be determined in the changed scenario. Patition effected prior to 20-12-2005 are saved*”.

11. The Hon’ble Bombay High Court in the case of “Dashrath s/o Halkeprasa Yadav (supra)” has observed that, “*if the suit properties were not partitioned either by partition deed or by decree of competent civil court before the cut off days, then it is the settled law that daughter in this case would be entitled to shares in joint family properties as per section 6 of Hindu Marriage Act*”.

12. The Hon'ble Bombay High Court in the case of "*Shobha Purushottam Zilpe (supra)*" has observed that, "*the right to coparcenery properties now having been recognized since birth, the aspect of the plaintiff being married prior to the year 1994 is therefore, not found relevant*".

13. In view of these citations, I proceed to scrutinize whether the plaintiffs have succeeded to prove prima facie case, balance of convenience and irreparable loss in their favour.

14. The plaintiffs to prove that they have share in the suit properties have to initially and prima facie prove that, the suit properties are either ancestral properties or joint family properties. Plaintiffs have contended that, suit properties are joint family properties. It is purchased by defendant no.1 out of the income of the joint family properties and they have also contributed to joint family income.

15. It is a admitted fact that, defendant no.1 has partitioned and kept suit properties bearing Survey No. 179 and Survey No.177 to his share while Survey No.231, Survey No.335 and Survey No.338 are given to the share of defendant no.2 to 4 as per Mutation Entry No.1598.

16. As per Mutation Entry No.933 dated 31-12-1965 property bearing Survey No.335, Survey No.338/1, Survey No.177 are purchased by Maruti Alya Patil i.e. defendant no.1 by paying the purchase amount as per the provisions of **section 32-G of the Bombay Tenancy Act** and accordingly Certificate is issued under **section 32-M**. Here it is pertinent to note that, properties were purchased on 31-12-1965. As per the School Leaving Certificate of plaintiff no.1 her birth date is 01-08-1964, birth date of plaintiff no.3 is 01-06-1971. Thus, it is very clear that, at the time when defendant no.1 purchased the suit properties, at that time, age of plaintiff no.1 was one year four months and plaintiff no.2 and

3 were born after that. Therefore, the question of plaintiffs contributing to the income of joint family properties for purchase of suit properties, does not arise.

17. The suit properties are purchased by defendant no.1 therefore suit properties are self acquired properties of defendant no.1. It is a settled law that, the law does not give any right to the children to acquire father's self acquired properties during his lifetime, unless they prove their contribution towards the acquisition of the properties. In "*Vineeta Sharma (supra)*" case, the Hon'ble Apex Court has settled the law that, now both the daughter and son have equal right in the self acquired properties and also in ancestral properties irrespective of their marital stage. But Hindu children can claim share in self acquired properties of their father only after the death of father.

18. The plaintiffs have not produced any documents to prima facie show that, the properties are joint family properties. On the contra, defendants through documents have succeeded to prove that suit properties are self acquired properties of defendant no.1. Further the documents relied and produced by plaintiff substantiate defendant's contention that suit properties were purchased by defendant no.1 and suit properties are self acquired properties of defendant no.1. As the suit properties are self acquired properties of defendant no.1 and as defendant no.1 is alive, hence, plaintiffs have miserably failed to prove prima facie that, they have share in the suit properties. Consequently, plaintiffs also failed to prove balance of convenience in their favour and that irreparable loss will be caused to them. Therefore, I am of the opinion that, plaintiffs are not entitled to obtain the restraining order against the defendants. The above case laws are of no help to the plaintiffs. Consequently application of plaintiffs is liable to be dismissed. Accordingly, I answer

point no.1 to 3 in the negative and in answer to point no.4, I pass the following order.

:: ORDER ::

1. Application Exh.5 is hereby rejected.
2. Status quo order granted is hereby vacated.

Panvel,
Date : 02-09-2023.

(Nayomi P. Pawar)
Civil Judge, Senior Division Panvel.