

**Order passed below Exh. 5 in Regular Civil Suit No. 18/2018**

Plaintiffs have filed application at Exh. 5 for temporary injunction thereby restraining the defendants from selling the suit property to third person and/or creating third party right in the suit property.

2. Plaintiffs in the application at Exh. 5 contended that the subject matter of the suit is agricultural land situated in village Akale, Taluka – Mahad, District – Raigad bearing survey No. 57/1 having admeasuring area 0-46-1, Survey No. 56/1 having admeasuring area 0-07-7, Survey No. 56/2 having admeasuring area 0-07-6, Survey No. 55/1A/1 having admeasuring area 1-11-5, Survey No. 55/1A/2 having admeasuring area 1-11-0 (hereinafter referred to as suit property for the sake of brevity). The suit property was purchased by the father Shri. Shivram Sonawane of the plaintiffs in the name of elder son Vidyadhar Sonawane vide sale deed dated 14/06/1990. The consideration amount for the purchase of the suit property was paid by Shivram Sonawane from joint family income and son Vidyadhar being elder & major in the joint family. The suit property was purchased in the name of elder son Vidyadhar Sonawane and his name was entered in the 7/12 extract of the suit property. However, elder son Vidyadhar Sonawane vide application dated 06/12/1999 applied revenue authorities to include the name of his two brothers i.e. Plaintiff no. 1 & 4 in the 7/12 extract of the suit property & name of other two brothers i.e. Rajaram & Rajesh was entered in the suit property vide mutation entry No. 1529.

3. Defendant No. 1 Nanda Vidyadhar Sonawane is second wife of Vidyadhar Sonawane and first wife of Vidyadhar Sonawane is died therefore, defendant No. 1 has no right or interest in the suit property being second wife of Vidyadhar Sonawane. Vidyadhar Sonawane died on 17/05/2013 and thereafter despite the fact of the second wife, defendant No. 1 got her name entered in the suit property vide mutation entry No. 1645. However, suit property is cultivated by the plaintiffs and plaintiffs are in possession of the suit property. On 25/03/2018, defendant No. 1 by taking disadvantage of entering her name in the 7/12 extract of the suit property threatened the plaintiffs to transfer the suit property to third person. Therefore, the plaintiffs have filed present suit for declaration that they are joint owners in the suit property. Defendant No. 1 is likely to sell the suit property to third person and thereby is likely to create third party right in the suit property. The suit property was purchased by the father of the plaintiffs out of joint family income, hence plaintiffs are joint owner in the suit property. The plaintiffs have prima facie case that they are joint owner in the suit property. Hence defendant No. 1 be restrained by an order of temporary injunction from creating third party right in the suit property.

4. The defendants resisted the temporary injunction application by filing their say & written statement at Exh. 23 and denied all the contention, averments made in the plaint and in application Exh. 5 and took specific plea that the suit property was purchased by Vidyadhar Sonawane from original owner Smt. Bayja Gaikwad vide sale deed dated 14/06/1990. Therefore, the suit

property is self acquired property of Vidyadhar Sonawane and since then only Vidyadhar Sonawane was cultivating the suit property. Names of the defendants are entered in the 7/12 extract of the suit property vide R.T.S. appeal no. 23/2016. The suit property is self acquired property of the deceased Vidyadhar Sonawane. Therefore, the plaintiffs have no right or share in the suit property and defendant No. 1 being wife of deceased Vidyadhar Sonawane is sole owner of the suit property. Defendant No. 1 being sole owner of the suit property, prima facie case lies in favour of defendant No. 1. Defendant No. 1 is cultivating the suit property since the death of Vidyadhar Sonawane. Therefore, balance of convenience also lies in favour of defendant No. 1 and if defendant No. 1 is restrained from selling the suit property, more hardship is likely to be caused to defendant No. 1. Therefore, sought dismissal of Exh. 5.

5. On rival pleading of the parties, following points arose for determination of the temporary injunction application.

<b><u>No.</u></b>	<b><u>Points</u></b>	<b><u>Answers</u></b>
1	Does the plaintiffs prove that the prima facie case lies in his favour ?	In the affirmative
2	Does the plaintiffs prove that balance of convenience lies in their favour ?	In the affirmative
3	Does the plaintiff proves that more irreparable loss is likely to be caused if temporary injunction is sought ?	In the affirmative
4	What order ?	As per Final Order

**Reasons**

6. Plaintiffs to support their contention relied upon documentary evidence in the form of 7/12 extract of the suit property, xerox copy of sale deed dated 14/06/1990, xerox copy of order passed in R.T.S. Appeal No. 23/2016 dated 29/01/2018, xerox copy of mutation entry No. 1645 & 1529, xerox copy of application dated 29/10/2000 through talathi of village Kambale by the Tahsildar Mahad for including name of the brothers of Vidyadhar Sonawane, xerox copy of application dated 06/12/1999 addressed to Tahsildar by Vidyadhar Sonawane for entering name of the brothers of Vidyadhar Sonawane to the suit property, photographs of the suit property showing cultivation of the suit property by the plaintiffs, affidavit of witness Shri. Rajkumar Aade (Exh. 27).

7. On the other hand, defendants relied upon the documentary evidence in the form of xerox copy of order passed in R.T.S. Appeal No. 97/2018 by the Additional Collector, Raigad – Alibag, xerox copies of 7/12 extract of the suit property.

8. Learned advocate Mr. Mangesh Mohire for the plaintiffs submitted that the suit property was purchased by Shivram Sonawane in the name of his elder son Vidyadhar Sonawane vide sale deed dated 14/06/1990 and consideration for the purchase of the suit property was paid by Shivram Sonawane out of joint family income of the Joint Hindu Family. The son Vidyadhar Sonawane being elder son, the suit property was

purchased in the name of Vidyadhar Sonawane. Though, name of Vidyadhar Sonawane was recorded in the 7/12 extract of the suit property, Vidyadhar Sonawane during his life time vide application dated 06/12/1999 applied revenue authorities for recording name of his brothers in the 7/12 extract of the suit property & therefore, name of the plaintiffs were duly recorded in the suit property as co-owners vide mutation entry No. 1529. The suit property was purchased from the joint family income therefore, Vidyadhar Sonawane himself recorded the names of the plaintiffs in the 7/12 extract of the suit property therefore, suit property is joint family property.

9. Learned advocate Mr. Mangesh Mohire vehemently argued that, had the suit property been purchased by the deceased Vidyadhar Sonawane from his separate income, he would not have entered name of his two brothers in the 7/12 extract of the suit property. The act of the deceased Vidyadhar Sonawane recording name of the two brothers in the 7/12 extract of the suit property shows that the suit property was purchased from the joint family income therefore, plaintiffs are joint owners in the suit property. The plaintiffs have raised arguable points at the hearing of the suit therefore, plaintiffs have established prima facie case that they are co-owners in the suit property. If defendants are not restrained from creating third party right in the suit property during the pendency of the suit, irreparable loss is likely to be caused to the plaintiffs as plaintiffs will be deprived of their share in the suit property. Hence, sought to allow application (Exh. 5) thereby restraining the defendants from creating third party right in the

suit property during the pendency of the suit.

10. Per contra, learned advocate Shri. Sushil Kamble for the defendant no. 1 to 3 submitted that bare perusal of sale deed dated 14/06/1990 shows that the suit property was purchased solely by Vidyadhar Sonawane from Smt. Bayja Gaikwad and consideration thereof was paid by Vidyadhar Sonawane from his separate income of service as a police officer. The sale deed dated 14/06/1990 nowhere shows that sale consideration was paid out of joint family income. Learned advocate further argued that mutation entry No. 1529 is set aside by Sub-Divisional Officer vide judgment & order dated 29/01/2018 and appeal filed against the judgment & order dated 29/01/2018 by the plaintiffs is dismissed by the Additional Collector, Raigad – Alibag, therefore, name of the defendants are duly recorded in the suit property as a owner. The defendants being owner of the suit property, prima facie case lies in their favour and if injunction as sought is granted in favour of the plaintiffs, more irreparable loss is likely to be caused to the defendants. Hence, sought to dismiss the application (Exh. 5).

**As to point No. 1:-**

11. On considering the rival submissions & perusal of record, it is observed that, it is the contention of the plaintiffs that though the suit property was purchased in the name of Vidyadhar Sonawane, consideration thereof was paid from the joint family income of the father Shivram Sonawane. On the other hand, it is the specific defence of the defendants that the suit property was

purchased by Vidyadhar Sonawane out of his separate income from payment of service of police officer. On perusal of sale deed dated 14/06/1990 at Exh. 4/2 shows that the suit property was purchased by Vidyadhar Sonawane for an amount of Rs. 40,000/- from Smt. Bayja Gaikwad, however, mutation entry No. 1529 dated 14/12/2000 at Exh. 4/4 shows that name of the two brothers of the Vidyadhar Sonawane is recorded in 7/12 extract of the suit property on the basis of order passed by the Tahsildar Mahad on 19/10/2000.

12. On perusal of application at Exh. 4/5 dated 06/12/1999 addressed by the Vidyadhar Sonawane to the Tahsildar Mahad for recording name of his two brothers in 7/12 extract of the suit property, shows that the suit property was purchased by the father in the name of Vidyadhar Sonawane as Vidyadhar Sonawane was elder son in the family and Vidyadhar Sonawane had two brothers Rajesh Sonawane & Rajaram Sonawane therefore, he applied Tahsildar for recording names of his two brothers Rajesh Sonawane & Rajaram Sonawane in the 7/12 extract of the suit property, and Tahsildar on the basis of application of the Vidyadhar Sonawane ordered to record name of the Rajesh Sonawane & Rajaram Sonawane in the 7/12 extract of the suit property and consequent thereto mutation entry No. 1529 came to be effected. Hence, prima facie, it appears that the suit property was purchased by the father of the Vidyadhar Sonawane in the name of Vidyadhar Sonawane as the Vidyadhar Sonawane was elder son in the family therefore, suit property appears to be purchased by the father of Vidyadhar Sonawane out of joint family

income.

13. Further, it is noted that the witness Rajkumar Aade who is one of the witnesses on the sale deed dated 14/06/1990 filed affidavit at Exh. 27 & stated that he is witness to the sale deed No. 458/1990 and he knows the parties thereto. He further stated that Shivram Sonawane has purchased suit property from the joint family income in the name of elder son Vidyadhar Sonawane as Vidyadhar Sonawane was educated, major & serving in police department. Therefore, prima facie, it appears that the suit property was purchased by Shivram Sonawane out of joint family income in the name of Vidyadhar Sonawane.

14. 7/12 extract of the suit property relied upon by the plaintiffs shows that name of the plaintiffs Rajesh Sonawane & Rajaram Sonawane is recorded in the suit property. However, 7/12 extract of the suit property relied upon by the defendant at Exh. 31 shows that name of the Rajesh Sonawane & Rajaram Sonawane came to be deleted vide mutation entry No. 1742 in view of setting aside mutation entry No. 1529. However, plaintiff No. 1 Rajaram Sonawane & plaintiff No. 4 Rajesh Sonawane being coparcener in the Joint Hindu Family of Shivram Sonawane has equal share in the suit property with their elder brother Vidyadhar Sonawane.

15. The documents produced by the plaintiffs more particularly application dated 06/12/1999 of the Vidyadhar Sonawane to include name of his two brothers in the suit property

and affidavit of witness Shri. Rajkumar Aade prima facie shows that the suit property was purchased by the Shivram Sonawane out of joint family income in the name of his elder son Vidyadhar Sonawane. The defendants have not produced evidence on record prima facie to show that Vidyadhar Sonawane had purchased the suit property out of his separate income and suit property is self acquired property of Vidyadhar Sonawane. Hence, in view of the aforesaid discussion, I find that the plaintiffs have raised arguable point at the hearing of the suit that they are joint owners and co-sharers in the suit property. Therefore, I find that plaintiffs have established prima facie case in their favour. Hence, I record affirmative finding to point No. 1.

**As to point No. 2 :-**

16. Prima facie plaintiffs established that the suit property was purchased by their father in the name of elder son Vidyadhar Sonawane therefore, they are joint owners in the suit property. Therefore, I find that balance of convenience tilts in favour of the plaintiffs. Hence, I record affirmative finding to point No. 2.

**As to point No. 3 :-**

17. The plaintiffs submitted that, if injunction as sought is not granted, irreparable loss is likely to be caused as defendants are likely to sell the suit property and create third party right in the suit property and injunction as sought is granted no such irreparable loss is likely to be caused to the defendants. It is to be noted that the plaintiffs have established prima facie case that they are joint owners in the suit property and if injunction as sought is

not granted, possibility of defeating their rights and share in the suit property by the defendants cannot be ruled out by the act of transfer of suit property to the third person. Therefore, I find that more irreparable loss is likely to be caused to the plaintiffs if temporary injunction as sought is not granted. Hence, I record affirmative finding to point No. 3.

**As to point No. 4 :-**

18. In view of establishing prima facie case by the plaintiffs and in order to avoid multiplicity of judicial proceeding, temporary injunction as sought by the plaintiffs is liable to be allowed. However it is made clear that, observation made herein above regarding prima facie case are prima facie on the basis of xerox copies of document and are subject to hearing on merits. Hence, following order.

**ORDER**

1. The application (Exh. 5) is allowed.
2. The defendant No. 1 to 4, their agent, servant, executors, assignors, attorneys, representatives or any person claiming through them are restrained from transferring the suit property and/or creating third party rights in the suit property in any manner during the pendency of the suit.
3. Costs of the present application in the main cause of the suit.

Mahad  
09/01/2020

(V. R. Doifode)  
Joint Civil Judge, J.D., Mahad