

MHRG100008042017



ORDER BELOW EXH. 5

The plaintiff has moved this application for seeking temporary injunction against the defendant no's 01 to 04 for restraining them from alienation of the suit properties till final disposal of the suit under Rule 1 of Order XXXIX of Code of Civil Procedure, 1908.

2) In response to service of suit summons, Defendant No. 1 to 4 appeared before the Court and combated the suit claim by filing written statement at Exh.15.

3) Heard the learned Advocate Shri Mangesh Mohire for plaintiff and Ld. Advocate Shri Amitkumar Chandorkar for defendant no's 01 to 04.

5) Considering pros and cons of the plaint, the following points arise for my determination and I have recorded my findings thereon with reasons as follows.

	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiff is having prima facie case ?	In the affirmative.
2	Whether the balance of convenience is tilting in favour of the plaintiff ?	In the affirmative.
3	Whether irreparable loss would be caused to the plaintiff, if the temporary injunction is not granted ?	In the affirmative.
4	What order? This application is allowed.	

6) Perused plaint, temporary injunction application and affidavit filed in support of it and say filed by the defendant. Also, perused documents available on the record.

:- REASONS :-

AS TO POINTS NO. 1 TO 4 :-

7) At the very outset, I would like to reproduce admitted or otherwise proved facts between the rival parties as under.

A) Deceased Babaji Vithhal Jalgaonkar is the common ancestors of the plaintiff and the defendants.

8) I have gone through the rival pleadings of the parties. On reading of the plaint and documents available on the record, it seen that the suit properties are ancestral properties of the plaintiff and the defendants. The revenue record also reflects that the suit properties are ancestral properties of the plaintiff and the defendants. Therefore, the plaintiff and the defendants are having co-parcenary right, title and interest in the suit properties. The plaintiff is being co-parcener of the suit properties.

9) The entire defence of the defendants are built upon that already the suit properties were partitioned between the plaintiff and defendant no 01. The house number 257 and 257A mentioned by the plaintiff are the self-acquired properties of the defendant no 01. Plaintiff has no concern with the suit properties. After considering the facts and circumstances of the case and by the contentions of the parties it appears that, suit properties are the ancestral properties. On the contrary it is contended by the defendant no 01 that, suit properties at serial no 01 and 02 is the self-acquired properties of him. But defendant has not produce any documentary evidence on record that, the suit properties mentioned at serial no 01 and 02 are the self-acquired properties. Whether suit properties at serial no 01 and 02 are self-acquired properties or properties at serial no 03 to 06

were already partitioned that can be decided by leading cogent evidence during the trial by both the parties.

10) In view of aforesaid discussion, the plaintiff is co-parcener of joint family of the plaintiff and the defendants. As it is well settled law that, all co-parceners have equal right and coordinate interest in the property though, their share may be either fixed or indeterminable. Every co-parcener has right to enjoyment and possession equal to that of the other co-parceners and co-parceners. Each co-parcener has interest in every infinite small portion of the subject matter and each co-parcener has right irrespective of quantity of his interest, to be in possession of every part and parcel of the property jointly with others. In this view, it is safely to hold that the plaintiff is having lawful right to protect his share from alienation by way of temporary injunction.

16) By taking undue advantage of names of the defendants recorded in the record of rights of the suit properties, there is possibility that the defendants will alienate the suit properties for defrauding shares of the plaintiff therein. Therefore, protecting share of the plaintiff in the suit properties and to avoid multiplicity of proceeding, it is necessary to grant temporary injunction in favor of

the plaintiff, otherwise irreparable loss would be caused to the plaintiff. Therefore, I think that this is a fit case to grant temporary injunction against the defendants. The plaintiff has succeeded to prove prima facie case in his favour as well as balance of convenience is tilting in favour of the plaintiff. Accordingly, Point No. 1 to 3 are answered in the affirmative. In the result, I proceed to pass following order.

:- ORDER :-

- 1) This application is hereby allowed.
- 2) The defendants, their family members, agent, servants, or any other person on their behalf are hereby temporarily restrained from alienating the suit properties by way of sale, mortgage, will, gift or any other mode, till final disposal of the present suit.

Sd/-

Date :- 21.11.2023

(Harshada S. Admane)
2nd Jt. Civil Judge (J. D.),
Mahad.