

**CNR NO. MHSI070001972022****Order passed below Exh. No.5
(IA No. 1/2022) in R.C.S. No.43/2022**

This is an application filed by the plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure (hereinafter in short referred 'C.P.C.').

2. The case of plaintiff, in brief, is that the landed property at sr. no.1 to 18 more particularly shown in schedule-A in para no.1 of the plaint and house property shown in sr. no.1 to 3 more particularly shown in schedule-B in para 1 of the plaint are the subject matter of the present suit (landed property at sr.no.1 to 17 and house property at sr.no.1 to 3 hereinafter referred as 'suit property'). The plaintiff has contended that the landed property and house property are an ancestral properties of plaintiff and defendants no.1 to 4. The plaintiff and defendants no.1 to 4 are siblings. The defendant no.5 is a son of defendant no.1 and defendant no.6 is a wife of defendant no.2. The plaintiff has further contended that the suit properties are an ancestral properties of plaintiff and defendants no.1 to 4 and no partition had taken place between them. They are having joint occupancy over the suit properties. The plaintiff has further contended that the defendants no.1, 2 and 5 are obstructing the plaintiff's occupancy over the suit properties. Therefore, on 26/10/2021 the plaintiff asked the defendants no.1 and 2 for partition. However,

defendants no.1 and 2 refused for partition and threatened that they would sale the suit property. Therefore, the plaintiff is having apprehension that the defendants no.1 and 2 would sale the suit property and will create third party interest in the suit property. Therefore, the plaintiff prayed that to issue temporary injunction against defendants no.1 and 2 and restrained them to transfer the suit property and creating third party interest in the suit property. The plaintiff has further contended that the plaintiff is having prima facie case. The balance of convenience lies in favour of plaintiff. On refusal of injunction, the plaintiff will suffer irreparable loss. Therefore, prayed to allow the application.

3. In response to suit summons and notice issued to the defendants, the defendants no.1 and 2 have appeared and resisted the application by filing say at **Exh.45**. The defendants have denied all the adverse contentions raised by the plaintiff. The defendants have contended that except the landed property shown on sr. no.18 in para no.1 of the plaint, name of the plaintiff and defendants no.1 to 4 are recorded in revenue records. Therefore, the defendants cannot transferred the suit property without the consent of other co-owners. It is further contended that the plaintiff has not produced any documentary evidence to show that the defendants are trying to alienate the suit property. The defendants cannot transferred the suit property without the consent of plaintiff. The plaintiff is not having any prima facie case. The balance of convenience does not lie in favour of plaintiff. On refusal of injunction, no loss will be caused to the plaintiff. On the other hand, if the injunction is granted in favour

of plaintiff, it will restrict the defendants legal right. Therefore, prayed to reject the application.

4. Heard learned advocate Shri.H.T.Chavan for the plaintiff and learned advocate Shri.S.S.Geersagar for defendants no.1 and 2. The following points are arisen for my determination to decide the present application. Accordingly, I have recorded my finding as follows.

Sr. No.	Points	Findings
1.	Whether the plaintiff is having prima facie case ?	No
2.	Whether the balance of convenience lies in favour of plaintiff ?	No
3.	Whether the plaintiff will suffer irreparable loss by refusing injunction ?	No
4.	Whether the plaintiff is entitled for temporary injunction ?	No

Points no. 1 to 4

5. The points no.1 to 4 are interconnected with each other. Therefore, points no.1 to 4 are discussed commonly. The learned advocate for the plaintiff has submitted that the plaintiff and defendants no.1 to 4 are siblings. The suit property are yet to be partitioned by metes and bounds. It is further contended that when the plaintiff had obtained 7/12 extract of landed property

shown at sr. no.18, the plaintiff came to know that the defendants no.1 and 2 misusing her Power of Attorney sale the said property. The said Power of Attorney was obtained under the pretext that the Power of Attorney is required for the proceedings initiated before the Tahasildar, Malvan. The plaintiff is residing at Mumbai, therefore she is having apprehension that the defendants will sale the suit property to the third party. Therefore, it is necessary to issue temporary injunction against the defendants no.1 and 2. The plaintiff is having prima facie case. The balance of convenience lies in favour of plaintiff. If the injunction is refused, it will cause irreparable loss to the plaintiff. On the contrary, no loss will be caused to the defendants by granting injunction. Therefore, prayed to allow the application.

6. The learned advocate for the defendants no.1 and 2 submitted that it is not in dispute that the defendants no.1 and 2 are real brothers of plaintiff. The plaintiff and defendant no.3 Vinayak had given registered Power of Attorney in favour of defendant no.2. On the basis of said Power of Attorney sale deed was executed in favour of defendant no.7. It is further submitted that the suit property are not partitioned. The properties are yet to be joint family properties. The defendants are co-owners of the suit property. Therefore, no injunction can be asked against them. The plaintiff is not having any prima facie case. The balance of convenience does not lie in favour of plaintiff. If the injunction is granted in favour of plaintiff, it will cause irreparable loss to the defendants and it will restrict the defendants to exercise their legal right. Therefore, prayed to reject the application.

7. In light of arguments advanced by the both the parties, I have examined pleadings and documents placed on record. Both the parties have not disputed their relationship. Both the parties have also not disputed that the suit property are an ancestral properties and partitioned yet to be taken place between the parties. Form the admitted fact, one thing is cleared that the plaintiff and defendants no.1 to 4 are co-owners of the suit property. The fact that common property has not been divided by metes and bounds and allotted in severality to the co-sharer does not stand in the way of the interest of one co-sharer being conveyed to a stranger or another co-sharer. As per Section 44 of Transfer of Property Act, one or more co-owners of immovable property have right to transfer their share and interest in the immovable property. Being an co-owner of the suit property the defendants no.1 and 2 are having undivided interest in the suit property. If the injunction is issued in favour of defendants no.1 and 2, the defendants no.1 and 2 cannot transferred their undivided interest or share as per Section 44 of the Transfer of Property Act.

8. Moreover, on perusal of 7/12 extract of the suit properties it appears that, the plaintiff and defendants no.1 to 4 names are recorded to the suit property. The defendants no.1 and 2 cannot transferred whole suit property to the third party without the consent or authorization of the plaintiff. Therefore, the plaintiff's apprehension that, the defendant no.1 and 2 will dispose off the suit property are not appeared to be real one. Therefore, on refusal of injunction, no loss will be caused to the

plaintiff. On the other hand, if the injunction is issued against the defendants no.1 and 2, they will be prevented from exercising their legal right. Ultimately, it will cause irreparable loss to the defendants no.1 and 2. The plaintiff is not having any prima facie case. The balance of convenience does not lie in favour of plaintiff. On refusal of injunction, plaintiff will not suffer irreparable loss. Therefore, plaintiff is not entitled for temporary injunction. With the aforesaid discussion, I answered points no.1 to 3 in negative and in answer to point no.4 pass following order.

ORDER

1. The application at Exh.5 stands rejected.
2. Both the parties shall bear their own Costs.

(Pronounced and dictated in open Court.)

Place : Malvan

Date : 29/11/2022

Mahesh R. Devkate

Jt. Civil Judge Junior Division, Malvan