

MHSN060005172024

**REGULAR CIVIL SUIT NO.76/2024***[Daryappa Balumane Vs. Ashishkumar Kolhapure & Ors.]*(Passed on 10th April, 2026)**ORDER BELOW EXH.05**

Perused application and say. Heard learned Advocate for plaintiffs and defendant No.1. Defendant No.2 failed to appear. Thus, matter is proceeded ex-parte against her.

02. Considering application, say and arguments advanced by both parties, following points arise for my determination with my findings thereon for the reasons ensued thereon :-

Sr.No.	Points	Findings
1.	Whether plaintiffs proves the <i>prima-facie</i> case ?	Yes
2.	Whether balance of convenience tilts in favour of plaintiffs ?	Yes
3.	Whether plaintiffs will suffer irreparable loss if injunction is granted ?	Yes
4.	What order ?	As per final order.

REASONS**As to Point No.1 :-**

03. Before the discussion on merit, it is necessary to mention the Judgment of the Hon'ble Supreme Court in the case of the *Dalpat Kumar And Another Vs. Prahlad Singh And Others, Reported In (1992)1SCC 719* wherein it was held that :-

“The 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 fact before the court, there is probability of his 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 injury. In other words, irreparable injury or damage would ensue before the legal right would 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. Therefore, the burden is on the plaintiff to evidence aliunde by affidavit or otherwise that there is “a prima-facie case” in his favour which needs adjudication at the trial. The existence of the prima-facie right and infringement of the enjoyment of his property or the grant of temporary injunction. Prima-facie case is not to be confused with prima-facie title which has to be established, on evidence at the trial. Only prima-facie case is a substantial question raised bonafide, which needs investigation and a decision on merits. Satisfaction that there is a prima-facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third

condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused by the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status-quo, an injunction would be issued. Thus, the court has to exercise its sound judicial discretion in granting or refusing the relief of ad-interim injunction pending the suit.”

04. In the light of aforesaid legal proposition, facts of the present case needs to be considered. The term *prima facie* case means a case which involves a fair and substantial question to be tried. If there is no apparent defect in the plaintiff’s case leading to its failure at this stage, it is in the ambit of the expression *prima-facie* case. A *prima-facie* case does not mean a case proved in its entirety but a case which can be said to be established if the evidence which is led in support of the same were believed. A triable issue is the crux of the expression *prima-facie* case.

05. The present application is against defendant No.1 and 2 only. It is the contention of plaintiff that, the suit property is his joint family property. The defendant No.2 has transferred her undivided interest in the property. There was no partition by metes and bounds. The defendant No.2 has transferred the property to

the defendant No.1 by way of sale deed. She has filed one separate suit for partition bearing RCS No.116/2011 which is also pending for evidence. Later on, the Advocate for the plaintiff submitted that suit has been dismissed in default. The copy of the said order is also placed on record. In that suit also, this plaintiff has denied the right of defendant No.2. However, it is crystal clear that, suit property is not partitioned by metes and bounds. The defendant No.1 has threatened the plaintiff. He has no right to enter in the suit property.

06. The defendant No.1 denied all the allegations and it is also submitted that, there is no document which shows obstruction at the hands the defendants. The suit property is in possession of defendant No.1. He is the *bonafide purchaser for value without notice*. It is also submitted that one co-owner cannot claim injunction against another co-owner. The notice has been issued after execution of sale-deed. In the present case, Section 44 of the Transfer of the Property Act is applicable. The purchaser cannot be restrained.

07. The learned Advocate for plaintiff submitted that, the relationship is not denied by the defendant No.1. The plaintiff and defendant No.2 to 4 are tenants in common. Therefore, if undivided interest is sold out then defendant No.1 has to file another suit for general partition for possession. Today, the learned Advocate for plaintiff filed one document which shows the suit for partition filed by defendant No.2 has been dismissed in default. It is submitted that, if defendant No.1 is not restrained from causing

obstruction and interference, then the plaintiff would suffer irreparable loss. On the basis of Sale-Deed, defendant No.1 may sale the property or may create third party interest over the the suit property. It would create multiplicity in the proceeding. Hence, prayed for injunction.

08. The Learned Advocate for defendant No.1 submitted that, there is no proof of obstruction at the hands of defendant. The defendant is the joint owner of the suit property. The defendant can purchase undivided share of the suit property. The notice has been sent after execution of sale deed. Purchaser cannot be dispossessed out of suit property. One co-owner cannot claim injunction against true owner. Hence prayed for rejection of application.

09. Heard both sides. The entire case of plaintiff is on the basis of preferential right of the suit property. Therefore, it is proper to reproduce Section 22 of the Hindu Succession Act, 1956.

22. Preferential right to acquire property in certain cases.—

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.— In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

10. In the present case, sale-deed has been executed by defendant No.2 to the defendant No.1 for her undivided share in the suit property. The plaintiff also prayed for cancellation of sale-deed and for declaration of preferential right over the suit property. It is admitted fact that, there is no partition of suit property. After the execution of sale deed, the defendant No.1 steps in shoes of defendant No.2. Therefore, he is the co-sharer alongwith plaintiff and other defendants.

11. The learned Advocate for plaintiff relied on the judgment of Hon'ble Supreme Court in the case of **Ramdas Vs. Sitabai & Ors. 2009(2) MAH LR 894 SC**, wherein it was held that ;

“ Undivided share of co-sharer may be subject matter of sale but possession cannot be handover to the vendee, unless property is partitioned by metes and bounds amicably and through mutual settlement or by decree of Court.”

12. The learned Advocate for plaintiff also relied on the judgment of Hon'ble Supreme Court in the case of **Gajara Vishnu Gosavi Vs. Prakash Nanasaheb Kamble & Ors. 2009(6) ALL MR 983**, wherein it was held that ;

“A purchaser of co-parcener's undivided interest in the joint family's property is not entitled to possession of what he had purchased. He has a right only to sue for the partition of property and ask for allotment of his share in the suit property.

13. In view of the above ratio, the defendant No.1 is not entitled for possession of suit property. The documents filed by the defendant No.1 shows that, he is the regular tax payer of the suit property, receipt of purchase of agricultural produce, and copy of judgment showing mutation entry is confirmed by the Sub-Divisional Officer, Miraj. As he is the purchaser of the suit property, he cannot be considered as a possessor of the suit property. Merely purchase receipt of agricultural produce is not the proof of possession of the suit property.

14. The learned Advocate for the defendant No.1 relied on the judgment of the Hon'ble Bombay High Court Bench At Nagpur in the case of **Prakash S. Akotkar and other Vs Mansoorkha Gulabkha and others, AIR 1996 BOMBAY 36** wherein it was held that,

“The co-owner in possession of property for and on behalf of other co-owners cannot claim injunction against other co-owners restraining them from interfering with his possession and enjoyment of suit property so as to exclude them from exercising their right as co-owners.”

15. The suit property is joint family property. In this case, the purchaser/defendant No.1 is co-sharer of the suit property. If by virtue of sale deed he puts into possession then he cannot be restrained from enjoying the property. However, for that matter the possession of vendor is needs to be ascertained. Her possession over the suit property is not ascertained till today by way of partition by metes and bounds. In such situation, it cannot be infer that defendant No.1 is in possession of the property. Further, perusal of the sale deed shows four boundaries of the entire Gat number. Thus, it cannot be held that, he is in possession of specific area of gat number. Therefore, the purchaser of an undivided share cannot supposed to be in possession of the suit property. The facts of the relied judgment on behalf of defendant is entirely different. Hence with all respect, the relied judgment is not applicable in the present set of facts.

16. Now, the suit for the partition is also dismissed in default. Thus, by virtue of sale deed, it is the apprehension that defendant No.1 may sold the suit property and it would create multiplicity in the proceedings. The plaintiff has claimed the cancellation of sale deed of defendant No.1. At this juncture, considering the nature of the suit, it is proper to restrain the defendant No.1 from creating third party interest and alienation of

the suit property. *Prima-facie*, it appears that, plaintiff is in possession and defendant No.1 has no right to obstruct him. Thus, I answer point No.1 in the affirmative.

As to Point No.2 & 3 :-

17. Having answer to Point No.1 in the affirmative, if the injunction is not granted, then plaintiff will suffer irreparable loss which cannot be compensated in terms of money. Further, it would also be inconvenient to plaintiff to recover the loss and also to cancel further transaction of the suit property. Thus, the balance of convenience and irreparable loss also tilts in favour of plaintiff. Hence, I answer Point No.2 and 3 in the affirmative.

As to Point No.4 :-

18. Having answers to Point No.1 to 3 in the affirmative, I proceed to pass the following order :-

ORDER

- 01] The application is allowed.
- 02] The defendant No.1 and 2, their agents, servants are restrained from causing obstruction and interference in the peaceful possession of the plaintiff over the suit property and also restrained from alienating or creating any third party interest in favour of any person till the disposal of the suit.
- 03] Cost in main cause.

[Dictated and pronounced in open Court.]

Place : Miraj.
Date : 10/04/2026.

(Pravin U. Kulkarni)
Jt. Civil Judge Jr. Dn., Miraj.