

**ORDER BELOW EXH – 5 IN RCS NO. 58/2022**

The plaintiff has filed the present application by invoking the provision under Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908 seeking the relief of temporary injunction against the defendant no. 1 to 3 as to not create any third party interest in the suit property

**Brief Facts of the Plaintiff's Case is as under :-****02. Description of Suit Property :-**

District and Sub – District Sangli, Tal - Kavathe Mahankal, at Dudhebhavi village an agricultural properties having its description as follows :-

Sr. No.	Gat No.	Area H. R	Valuation	Share therein
1.	861	00.89 + 0.09	02.12	0.27.81
2.	847	06.75 + .30	03.03	0.64
3.	867	0.31	00.73	0.09.68
4.	859	0.04	0.08	0.03 in common

The above – mentioned agricultural lands along with easementary rights connected thereto ( *as well described in para no. 1 of the application* ) are the subject matter of the suit as well as the present application. ( *hereinafter called as 'suit properties' for the sake of brevity* )

**03.** The plaintiff has come with the case that the suit properties are the ancestral properties of plaintiff and defendants. The defendant no. 1 is the father of plaintiff and defendant no. 2 is the brother. The partition has not

been taken place by metes and bounds till today. The suit properties are the Joint Hindu Family properties. The predecessor of defendant no.1 had partitioned the suit properties between their sons. On 28/04/2009, the defendant no. 1 had sold the property no. 1 B consisting the area of 0 H. 41 R out of Gat No. 847 and area of 0.09 R out of Gat No.867 in favour of defendant no. 3. The defendant no. 1 and 3, by taking undue advantage of their names upon the 7/12 extract of suit properties, are in attempt to alienate the suit properties. Therefore, the plaintiff had, in the month of March 2022 demanded his share in the suit properties to the defendant no.1. However, the defendant no.1 has refused to part the share of plaintiff. The plaintiff is seeking the declaration of sale deeds i.e dated – 28/04/2009 executed in favour of defendant no. 3 by defendant no.1 ( Gat No. 847 and 867 ) and dated – 27/09/2011 executed in favour of defendant no. 2 by defendant no. 3 ( Gat No. 847 ) as null and void and not binding upon the share of plaintiff. Sufficient time is required for final hearing and disposal of the suit. Meanwhile if any kind of alienation is created by the defendant/s with respect to suit properties, then the plaintiff will suffer from irreparable loss which can not be compensated in terms of money. Therefore, application may be allowed and defendant no.1 to 3 be restrained from creating any third party interest in the suit properties till final disposal of the suit.

**04.** The defendant no. 1 appeared in the suit and contested the application by filing reply vide Exh – 28. It is the contention of the defendant no. 1 that after the demise of first wife named as Surwanta, he performed second marriage with the Shalan. Out of second marriage, a son named as Suresh had begotten to him. The plaintiff has intentionally not impleaded his name in the suit. The plaintiff is the Karta of joint family. The plaintiff, with intention, executed the sale deed in favour of defendant no. 3 through

the defendant no.1. Afterwards with collusion with defendant no.2, got executed such sale deed in favour of defendant no.2 by defendant no. 3. The plaintiff had received the consideration of above said sale deeds. The sale deed had been executed in favour of defendant no.3 as per the instructions of plaintiff and defendant no.2. The defendant no. 2 had got executed the sale deed in his favour by defendant no.3 behind the back of defendant no.1. The defendant no. 1 is an illiterate person. In this background, the plaintiff can not seek the declaration as sale deeds are null and void and hence not binding upon his share. The suit of the plaintiff is hit by the principle of non – joinder of necessary parties. Further it is not within limitation. Therefore, considering all the above facts, present application may be rejected.

**05.** In spite of opportunities, the defendant no. 2 has failed to file his written statement and say. Hence, suit is proceeded without written statement and say of defendant no. 2.

**06.** The defendant no. 3 has filed his reply vide Exh – 3 and objected to the application. It is the contention of the defendant no. 3 that he got executed the sale deeds as per the entries upon the 7/12 extracts of suit properties. The defendant no. 2 has executed the sale deed on 28/04/2009 in his favour by receiving the consideration of Rs – 75,000/- from him and defendant no. 2 had consented to such sale deed. Therefore, the defendant no. 1 and 2 have no objection to such sale deed. The defendant no. 3 is enjoying the suit property/ties as per sale deed/s. The defendant no. 3 has executed the sale deed in favour of defendant no. 2 by a registered deed bearing no.1341/ 2011. Since 2009, the plaintiff has no objection to such sale deed. The defendant no. 3 is enjoying the suit property since the execution of sale deed and the name of the defendant is also entered upon the 7/12 extract of suit property. Such sale deed is lawful and valid. The

mutation entry to that effect is also allowed. The suit of the plaintiff is barred by the limitation. Therefore, considering all the above aspects, present application may be rejected.

**07.** On the basis of the facts alleged, document filed on record and submissions made by parties, following points arise for my determination to which I recorded my findings along with reasons thereto which are as under -

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Does plaintiff proves that <i>prima facie</i> case is in his favor ?	YES
2.	Does plaintiff proves that balance of convenience lies in his favor ?	YES
3	To whom irreparable loss will cause ?	To The Plaintiff If Relief of Temporary Injunction is Refused.
4	What Order ?	Application is allowed.

### REASONS

#### UNDISPUTED FACTS :-

**08.** The relation between the parties, the nature of suit properties, the execution of sale deeds dated – 28/04/2009 and 27/09/2011 etc. these are undisputed facts between the parties.

09. In support of contentions, the plaintiff has relied on the documents filed vide list of documents at Exh – 3 and 40.

10. The defendant no. 1 and 3 did not produced any documents on record in support of their contentions.

11. The application is supported with affidavit.

12. Heard the Ld. Advocates for both parties at length. They argued as per their respective submissions.

**POINT NO. 1 TO 3 :-**

13. As the point no. 1 to 3 are inter connected to each other and the subject matter of these points is also same. Therefore, to avoid the repetition of discussion, these points are taken together for discussion. While deciding the present application, the given facts has to be seen within the domain of Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908 with reference to the *prima facie* case, balance of convenience and irreparable loss.

14. The question involved in the present application is whether the plaintiff *prima facie* proves that he has right and interest in suit properties and whether there is any apprehension as to suit properties being alienated or created third party interest by defendant no. 1 to 3 ?

15. After perusal of Gat No. 7/12 extract of 861, 847, 859, the name of the defendant no. 1 appears to be entered upon it by mutation entries no. 844, 3393 and 462 respectively. Further the name of the defendant no. 3 appears to be entered upon the 7/12 extract of Gat No. 867 by mutation entry no. 2348. The mutation entry No. 462 vide Exh – 8 reveals that the predecessor of defendant no.1 got partitioned the suit properties between his sons during his life time.

16. Before granting the equitable relief to the plaintiff, the plaintiff has to prove

the *prima facie* case in his favour i.e facts at its first instance. In support of contention, the plaintiff has relied on the documents produced vide Exh – 03. After perusal of 7/12 extract of suit properties and mutation entry no. 462, it *prima facie* appears that the suit properties are the ancestral properties of plaintiff and defendant no. 1 and 2. The defendant no. 1 is the father of plaintiff. The defendant no. 1 has not denied the relation with the plaintiff nor his share or interest in the suit properties. Therefore, it can be *prima facie* infer that the plaintiff being the son of defendant no. 1 has right, share and interest in the properties belonging to the defendant no. 1. The documents produced by the plaintiff on record are enough to *prima facie* infer that the plaintiff has right, interest and share in the suit properties. Therefore, any alienation of any kind will definitely affect the right and interest of the plaintiff in the suit properties. Considering all the above aspects, it can be *prima facie* said that the plaintiff has proved that suit properties being the ancestral properties, he has right and interest in it. In this context, it can be further *prima facie* said that he has proved that *prima facie* case is in his favour for seeking the relief of temporary injunction. In result, I answer point no. 1 in affirmative.

17. The point as to balance of convenience and irreparable loss can be decided *viz a viz*. The plaintiff has filed the present suit for partition, possession, declaration and for perpetual injunction. The plaintiff is seeking the sale deeds dated – 28/04/2009 and 27/09/2011 to be null and void. The defendant no. 1 and 3 have raised the objection that the relief of the plaintiff is time barred. Therefore, such relief is not tenable. The question of limitation being the mixed question of law and facts needs the hearing by giving an opportunities to the parties to lead their evidence. Therefore, whether the relief of declaration is within limitation or not ? can be decided after final hearing and not at this juncture.

18. While seeking the relief of temporary injunction, the plaintiff has contended that the defendants are in attempt to create the third party interest with respect to suit properties. The documents produced by the plaintiff vide Exh – 40 at sr. no. 9 reveals that the plaintiff is seeking the information as to any kind of alienation with respect to suit properties by defendants. It is evident of the fact that the defendants are in attempt to create the third party interest in the suit properties. As as discussed above, the plaintiff has *prima facie* proved that he has right and interest in the suit properties. Admittedly, earlier two sale deeds had been executed in favour of the defendant no. 3 and 1 in favour of defendant no. 2. Therefore, before deciding the respective shares of the parties in the suit properties, the present status of it needs to be protected. It is also necessary to avoid multiplicity in the proceedings and complications in the suit. In such circumstances, granting of temporary injunction in favour of plaintiff will be just and proper. No hardship or inconvenience will be caused to the defendant no.1 to 3 because their rights in the suit properties will not be affected. As against this, if such relief is refused, plaintiff will suffer from irreparable loss and further scope for multiplicity of proceedings will rise. Considering all the above aspects, I hold that the plaintiff has proved that balance of convenience lies in his favour and further he will suffer from irreparable loss if relief of temporary injunction will refuse to him. Hence, I answer point no. 2 and 3 in affirmative.

**POINT NO. 4 :-**

19. As per the discussion as to point no. 1 to 3, I pass the following order.

**O R D E R**

1. Application is hereby allowed.
2. The defendant no. 1 to 3 are hereby temporarily restrained from creating any third party interest in suit properties ( as well

mentioned in the para no. 1 of the application ) in any manner till further order.

3. Costs shall follow the event.

**Date :- 08/12/2023**

**Priyanka J. Ligade**

**Place – Kavathe Mahankal**

**Jt. Civil Judge Junior Division**