

Order below Exh.5 in RCS 58/2024
Indubai Teli and Ors Vs Sagar Pattanshetti
(CNR-MHSN08-000705-2024)

The application is under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (the C.P.C).

2 Perused the application, and the record.

3 None present for the defendant. The application to proceed without his say, and argument.

4 The suit is for a decree for perpetual injunction. It is averred that the suit properties, more particularly mentioned in para 1 of the plaint, are the ancestral one. The plaintiff 1, who is the wife of the deceased Vitthal, is the son of the deceased Shankar. Plaintiff 2 is the son of plaintiff 1 and the deceased Vitthal. There is no partition in respect of the suit properties. Defendant 1 is the purchaser of the undivided area of 90.91 Sq.Mtr out of the suit property i.e., CTS 114 claimed to be jointly owned by the vendors of the sale deed i.e., Suvarna, Vijay and others 17. There is further mention of the sale of the jointly owned area of about 36.21 Sq.Mtr out of the suit property 2 i.e., CTS 117 of which the four boundaries of the said area and the open space of 36.21 Sq.Mtr has been mentioned. The defendant is a third party. Hence, the present application.

5 The plaintiff has filed the following documents viz.,

Sr.No	Particulars of the documents
1	CTS 114
2	CTS 117
3	Map of CTS 114
4	Map of CTS 117
5	Application of Plaintiff to the TILR
6	Order of the TILR
7	Photographs (total 2)
8	Sale deed

6 The defendant has not relied upon the any documents.

7 Heard. The following points arose for my determination, to which I record my findings together with the reasons thereof:-

Sr.No	Points for determination	Findings
1	Does the plaintiff proves prima-facie case in their favor?	Yes
2	Does the plaintiff proves balance of convenience tilts in their favor?	Yes
3	Does the plaintiff proves they would suffer irreperable loss, if interim injunction is refused?	Yes
4	What order?	As per the final order.

Reasons

Points 1 to 3

8 It is sine qua non for the grant of an interim relief, which is an equitable relief that the plaintiffs, should prima-facie, prove the above points for determination.

9 It is trite law that prima-facie, does not mean prima-facie, title or the case proved to the hilt.

10 It is settled law that grant of equitable relief is a matter of judicial discretion, and the plaintiffs, should approach the Court with clean hands.

11 The pleadings and the material on the record has to be judically scanned.

12 On prima-facie, perusal of the CTS extracts of the suit properties, the same appears to be held by Shankar Devraya Teli, as the Manager of the HUF. The names of the Vitthal, Pandurang, and Narayan, who are the sons of the deceased Shankar and Sadashiv, Mahadev and Krishna who are the brothers of the deceased Shankar, and the uncles of the deceased Vitthal, Pandurang, and Narayan were effected vide ME 50 Dt.23/07/2003. Further, vide ME 50 the name of Sadashiv and Krishna were bracketed/deleted. There is no mention, of the genealogy in the plaint, and it has been taken on oral instructions and considered with the

same annexed with the sale deed at page No.32. Further, vide ME 517 there appears mention of areas held by Samadhan, Pratiksha and others. The ME 158 is in respect of the suit property 2 i.e., CTS 117. On prima-facie, perusal of the letter/objections raised by plaintiff 1 to the TILR, Jath, there is a mention of the fact that the suit properties are yet to be partitioned. From the order of the TILR dt.27/03/2024 the objections of the plaintiffs to challenge the mutation of the name of the defendant has been rejected.

6 The plaintiff has to prove prima-facie case. On prima-facie perusal of the sale deed, there appears mention of the jointly owned area in respect of the suit properties. Further, in respect of the suit property 2 i.e., CTS 117, the four boundaries of the area, under sale, and that of open space has been mentioned. There is nothing prima-facie, to suggest partition of the suit properties. How the four boundaries came to be mentioned, is not prima-facie made out from the sale deed, in favor of the third party. Further, if the CTS extracts are considered, there is a mention of respective areas, held by the vendors in the sale deed, however, no such areas appears to be held by the plaintiffs. This prima-facie, suggest that there was no partition, for there is no mention of the area possessed by the plaintiffs, vis-a-vis the CTS extracts of the suit properties and the fact remains the nature of the suit properties is prima-facie ancestral. The prima-facie, the execution of the sale deed certainly creates an apprehension, a threate to the plaintiffs' joint possession with the vendors of the sale deed etc., The interim injunction application is against a third party. For the above reasons, the plaintiff prima-facie proves case in their favor, balance of convenience tilts in their favor. Therefore, the plaintiff may suffer irreperable loss/harm/prejudice, if interim injunction is refused. The comparative mischief that would be caused to the plaintiff, would be more, if interim injunction is refused. Whether the suit is maintainable in the absence of relief of partition etc., is a triable issue. Accordingly, the points for determination are answered. Costs follows the event. Hence, the following

Order

The application is allowed.

2 The defendant, himself/ agent, servant, attorney or anybody claiming through him is hereby restrained by way of ad interim relief from distrubing the plaintiff's possession in the suit properties, till further order. Cost in the cause.

Jath
Date:02/01/2025

(Sanjay P.Bunde)
Jt.C.J.J.D, Jath