

MHSN080007132022



**Order below Exh.5 in RCS 106/2022
Tamijabi Vs Jamir & Ors.**

The interim injunction 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 The application is to proceed without say of defendants 1.

4 Heard.

5 The suit is for partition by the Muslim parties. It is averred that the plaintiff is the daughter of deceased Maula and Mahabubi. Plaintiff is sister of Chhabubi defendant 2 and Ramijabi defendant 3. Jamir defendant 1 is the son of the Chhabubi defendant 2. The nature of the suit property is ancestral vide ME 184. The plaintiff and defendants 2 and 3 have equal share. Taking disadvantage of the name of Chhabubi on the VF 7 & 12 she has transferred the land to Jamir defendant 1. Hence, the present application. Hence, the present application.

6 The plaintiff has filed the following documents viz.,

Sr.No	Particulars of the documents
1	Sale-deed
2	VF No.7 and 12
3	Death certificate of Mahabubi
4	ME 1981, 1938

7 The defendants have not relied upon any documents.

8 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	Yes

	case in her favor?	
2	Does the plaintiff proves balance of convenience tilts in her favor?	Yes
3	Does the plaintiff proves she would suffer irreparable loss, if interim injunction is refused?	Yes
4	What order?	As per the final order.

Reasons

Points 1 to 3

9 All the points for determination are inter-linked. To avoid repetition and for the sake of brevity they are taken up for hearing and discussion together.

10 It is settled law that prima-facie case, does not mean prima-facie title or the case proved to the hilt. The prima-facie proving of the above points for determination are sine qua non for allowing the application. The application has to be exercised Ex debito justitiae. Therefore, the pleadings and the material have to be prima-facie, judicially scanned.

11 On prima facie perusal of the ME 184, it appears that after the death of Maula, the name of the plaintiff and others came to be recorded as the Lrs to the suit property more particularly mentioned therein. On prima facie perused of V.F 7 and 12 below Exh.9, the name of the plaintiff appears to have been recorded in the other rights column. This is prima facie suggestive of the relation of the plaintiff and deceased Maula. Mahabubi is the mother of the plaintiff, who has transferred part of suit property to defendant 1 who is son of Chhabubi defendant 2 for valuable consideration. Prima facie, the right of the plaintiff and others to seek partition is in question. The interim injunction application is directed against defendant 1 for limited relief from creating third party right, title and interest. Prima-facie, the nature of the suit property and the sale-deed, the apprehension of the plaintiff appears to be prima-facie justified.

12 For the above reasons, the plaintiff proves prima-facie case in her favor. The balance of convenience tilts in favor of the plaintiff. Therefore, the plaintiff may suffer irreparable 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.

Accordingly, the points for determination are answered. Costs follows the event. Hence, the following

Order

The application is allowed.

2 The defendants 1 himself, their agents, servants, agents, attorney or anybody acting or claiming through them are hereby temporarily restrained by way of interim injunction from creating third party right, title, or interest in the suit property more particularly mentioned in para 1 of the plaint, in any manner what so ever, till next date of the suit.

3 The plaintiff to serve an intimation of the instant order on defendants 1 by R.P.A.D and to file on the record service affidavit.

Jath
Date:-31/10/2025

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