

MHSN080014392025



**Order below e interim injunction application in RCS 210/2025**

**Sonabai Vs Sumabai & 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, e-say of defendants 1 to 3, and the record.

3 Heard both the sides at length.

4 Brief facts of the plaintiff's case:- The suit is for partition and other consequential reliefs. It is avered and argued that the nature of the suit properties more particularly mentioned in para 1 in the plaint is ancestral that of the deceased Megha. The deceased Megha (who passed away on 20/02/1967) is the deceased husband of the deceased Bayama (who passed away on 24/12/2024). Fulabai is the deceased daughter of the deceased Megha and the deceased Bayama. Sonabai is the plaintiff and Sumabai is the defendant 1 who are sisters. The deceased Fulabai is represented by defendants 3.1 to 3.3. The deceased Bayama received the property from the deceased Megha. The deceased Bayama while executing a Will in respect of the suit properties was of 94 years. The deceased Bayama passed away at 98 years. Defendants 1 and 2 taking disadvantage of the old age of the deceased Bayama got executed a Will in favor of defendant 2 on or about 12/12/2020. Defendant 2 carried out the mutation bearing ME 6104 which has been certified on or about 28/01/2025. The Will has been challenged vis-a-vis the right to partition. The defendant 2 is about to create a third party right, title and interest in the suit property and therefore, it would be prayed that the ad interim relief may be made absolute.

5 Brief contentions of the defendants:- The defendants contested the claim inter alia interim injunction application by filing WS cum say. It has been denied and disputed that the nature of the suit property is ancestral as alleged by the plaintiff or otherwise. The relation inter se the parties has been admitted. It has been contended that the deceased Bayama received the suit property from her husband and therefore, she became the absolute

owner and is entitled to execute a Will. The Will is a registered one. Defendant 2 possesses the suit property as the absolute owner thereof. The Will cannot be impeached for the reason that a medical certificate of the deceased has been annexed and it is not a law that a person of 94 years cannot bequeath and cannot always said to be not in a fit state of physical or mental health to execute the Will. Further, it has been contended that the partition opened on the death of the deceased Megha on 20/02/1967. The defendants failed to claim partition. For the suit property being absolute one of the deceased Bayama the defendant 2 became the absolute owner and possessor of the suit property. The plaintiff has lost the appeal challenging the mutation entry in favor of the defendant 2. The suit properties are impartible and there is a bar under the provisions of the Maharashtra Consolidation and Prevention of Fragments Act. Therefore, the application being misconceived is opposed.

6 The plaintiff has filed the following documents viz.,

| Sr.No | Particulars of the documents          |
|-------|---------------------------------------|
| 1     | VF 8A                                 |
| 2     | VF 7 and 12 (Nine)                    |
| 3     | ME 205, 6104                          |
| 4     | Will                                  |
| 5     | Death certificate of Megha and Bayama |

7 The defendants have relied upon the following documents.

| Sr.No | Particulars of the documents |
|-------|------------------------------|
| 1     | Order in RTS appeal          |

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 case in her favor?                              | Yes      |
| 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 | Yes      |

|   |             |                         |
|---|-------------|-------------------------|
|   | refused?    |                         |
| 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 While the plaintiff claims partition being the daughter of the deceased Megha and the deceased Bayama, the defendants based their claim on the theory of the suit property being absolutely owned by deceased Bayama.

12 As a matter of fact and record, the relation interse the parties is an admitted fact. On perusal of para 24B of the written statement cum say of the defendants, a prima facie fact is clear that the suit properties were held in joint by the deceased Megha, his nephew and others. On prima-facie perusal of the ME 205, which has been reported on 03/04/1982 mentions the suit properties and the Anewari to the extent of 4 Anna each in the said properties. The date of death of deceased Megha is 20/02/1967. Prima facie, the deceased Bayama inherited the suit properties after the death of the deceased Megha and that is why the ME 205 mentions of the name of Bayama and others for the reason that those properties were prima-facie ancestral.

13 The claim of the defendants is based on Section 14 of the Hindu Succession Act, 1956 (the Act). The claim of the plaintiff is based on Section 15(2)(b) of the Act.

14 Prima facie, the suit properties are inherited by the deceased Bayama from her husband is devolve under Section 15 (2)(b) of the Act in the absence of any son or daughter of the deceased including the children any pre-deceased son or daughter and not upon the other heirs referred to in sub section (1) in the order specified therein, but upon the heirs of the husband. In short, prima facie, Section 15(2) of the Act is an exception to

Section 15(1) and Section 14 of the Act. When the property is inherited from the deceased husband, whether it is her absolute property under Section 14 or Section 15(2)(b) of the Act in the peculiar case is a triable issue. Prima facie, the right to partition is involved. The mutation entry neither creates nor extinguish any right, title and interest. The failure attempt to impeach the mutation entry has a little bearing on the interim injunction application for the reason that the Will is under judicial scrutiny.

15 For the above reasons, the plaintiff prove prima-facie case in her favor. The balance of convenience tilt in her favor. Therefore, no irreparable loss/harm/prejudice would ensue to the defendants, if interim injunction is allowed. 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 defendant 2, his agent, servant, attorney or anybody claiming through him is hereby temporarily restrained by way interim injunction order from creating a third party right, title, and interest in the suit properties more particularly mentioned in para 1 of the plaint in any manner whatsoever till final disposal of the suit.

3 The ad interim relief granted by this Court is hereby made absolute.

4 Costs in the cause.

Jath

Date:- 04/07/2026

( Sanjay P. Bunde)

Jt C.J.J.D, Jath