

MHSN110005102020



**ORDER BELOW EXHIBIT 5**  
**IN R.C.S. NO. 83/2020**  
**( Sushila Pisal Vs. Jagannath Zanje)**

1] The plaintiff has filed present application under Order 39 Rule 1 and 2 of Code of Civil Procedure Code to restrain defendant no. 1 to 3 from alienating the suit property or creating any third party interest over the suit property.

2] It is the contention of the plaintiff that, plaintiff is real sister of defendant no. 1 and 2. Father of plaintiff Ramchandra died on 06/11/1981. Mother of plaintiff Parvatibai died long back in the year 1991. Except plaintiff and defendant no. 1 and 2, there are no other legal heirs to Ramchandra Babaji Zanje i.e. father of plaintiff.

3] The suit properties are mentioned in application para 1 are ancestral properties of Ramchandra. After demise of Ramchandra, suit properties were inherited in the name of defendant no. 1 and 2 and name of plaintiff and her mother Parvatibai was recorded in other rights column as per mutation entry no. 125. Thereafter, plaintiff and defendant no. 1 and 2 are cultivating the suit property in common. There is no partition effected between plaintiff and defendant about the suit properties.

4] Having these facts, defendant no. 1 has sold 8 Ane share out of Gat no. 603 to defendant no. 3 on 23/06/2020. The sale deed is without consideration and hallow. Plaintiff is having her 1/3 share in the suit property. Defendant no. 1 has illegally sold suit property to defendant no. 3. When the fact of sale came to the knowledge of plaintiff, he has filed an appeal before concerned revenue authority. Defendant no.1 denied the share of plaintiff's over the suit property and threatened to sale out all the suit properties, so as to, avoid the share of plaintiff. Accordingly, cause of action arose to file present application. Hence, present application is filed.

5] Suit proceed ex-parte against defendant no. 2 and 3. Defendant no. 1 has filed written statement and say below exhibit 27. Defendant no. 1 has resisted all the contentions raised in the plaint. It is the contention of the defendant that, plaintiff never cultivated the suit property. Plaintiff has no right to file suit for partition. Defendant no. 1 is old age person and suffering from diabetes and high blood pressure and he has made expenditure on his hospitalization. In the year 2018-19, there was loan of Rs. 5,00,000/- on defendant no. 1 and so as to repay the loan amount, defendant no. 1 has sold suit property to defendant no. 3 on 23/06/2020 for 3,50,000/-. Since that date, defendant no. 3 is in possession of Gat no. 603. There was no option left with the defendant to sale the suit property and

repay the loan. Defendant no. 1 is having ½ share in the suit property. The suit property is sold for legal necessities. The plaintiff has filed false application. Hence, prayed to reject the application.

6] Heard both the Advocates. Considering the rival contentions of both the parties, following points arise for my determination. I have recorded my findings thereon with reasons to follow :-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
(i)	Whether the plaintiff proves prima facie case in his favour ?	In the Affirmative.
(ii)	Whether the balance of convenience lies in favor of plaintiff?	In the Affirmative.
(iii)	Whether the plaintiff will suffer irreparable loss if the injunction is not granted?	In the Affirmative.
(iv)	What order ?	As per final order...

### REASONS

#### As to point no. I to iii :-

7] I have gone through the pleadings and documentary evidence filed on record. It is pertinent to note here that, on

perusal of 7/12 extract of suit properties, it is standing in the name of defendant no.1 and 2 and name of plaintiff is entered in the other rights column. On perusal of mutation entry no. 125, it can be seen that, after demise of Ramchandra, names of defendant nos. 1 and 2 in the other rights column, wife of Ramchandra Parvati and plaintiff's name are entered in the Revenue Record to all the suit properties. It is pertinent to note here that, from the pleadings of the defendant no. 1, it can be seen that, he has nowhere denied the status of the suit properties i.e. ancestral properties of Ramchandra in his pleadings. On the other hand, defendant has come with the case that, he was having legal necessities to sale the suit property Gat no. 603. Prima facie, this pleading and documents shows that, suit properties are ancestral properties of Ramchandra i.e. father of plaintiff. Plaintiff being daughter of Ramchandra is having undivided share in the suit properties by birth.

8] There is no evidence brought on record by the defendant that, there was partition effected between plaintiff and defendants at any point of time. The presumption of joint family is in favour of plaintiff and defendant has failed to rebut the same. Considering the defence of defendant no. 1, he has also indirectly admitted that, suit properties are ancestral properties of Ramchandra. Whether there was a need to sale the suit property for legal necessity is part of trial which cannot be

considered at this stage.

9] Considering the principle of Hindu Law, every coparcener is having equal possession over the suit properties unless partition is effected and separate share is allotted to the coparcener. It is also settled principle of law that, without making partition if a coparcener sale out the suit property the purchaser is not entitled for the possession. Considering the said principle, prima facie, the plaintiff is having equal possession over the suit property along with defendant n. 1 and 2. Hence, prima facie, plaintiff is having 1/3 undivided share since from her birth in the suit property.

10] I have gone through the sale deed filed on record which prima facie shows that, defendant has sold the suit property on 23/06/2020. The present suit is filed on 07/07/2020. The cause of action arose to file the suit after sale of suit property in the name of defendant no. 3. Hence, considering the conduct of defendant no. 1 as well as the pleadings of defendant no. 1, possibilities cannot be ruled out that, defendant no. 1 to 3 will sale the suit property and create third party interest in the suit properties. As per principle of law, plaintiff is having common possession, unless partition is effected between the parties and in this circumstances, in case, defendants sale out the suit property, it will certainly create complications and multiplicity in the litigation. The rights of

plaintiff is necessary to be protected as per provisions of section Order 39 Rule 1 of Civil Procedure Code.

11] In case application is not allowed, plaintiff will suffer from irreparable loss. No prejudice will be cause to the defendants in case, application is allowed. Considering all these facts, documents, legal principles and material on record, plaintiff has prima facie made out case and balance of convenience lies in his favour and irreparable loss would be caused to the plaintiff in case application is not allowed. Hence, I answer point no. 1 to 3 in affirmative and for point no. 4, I proceed to pass following order.

### ORDER

- 1) Application Exhibit 5 is allowed.
- 2) Defendant no 1 to 3 are hereby temporarily restrain from transferring the suit properties and create any third party interest by way of sale, mortgage, lease, charge, gift etc. till the disposal of the suit.
- 3) Plaintiffs to bear cost of application.

Date:- 03/04/2025  
Atpadi

(R.B. Kulkarni)  
Jt. Civil Judge Junior Division  
Atpadi, Dist- Sangli

Sd/-  
R.B.Kulkarni  
Jt. Civil Judge Jr. Division,  
Atpadi

<b><u>CERTIFICATE</u></b>		
I affirm that the contents of this PD.F. file Order/Judgment is same word for the word as per original Order/Judgment.		
Name of Steno	:-	Shri. A.R. Jadhav, Steno (Grade-3)
Court Name	:-	R.B. Kulkarni Jt. CJJD & JMFC, Atpadi, Dist- Sangli
Date of Order/Judgment	:-	03/04/2025
Signed by PO on	:-	04/04/2025
PDF uploaded on	:-	04/04/2025

Sd/-  
R.B.Kulkarni  
Jt. Civil Judge Jr. Division,  
Atpadi