

ORDER BELOW EXH.5
(CNR MHSN110005982017)

1. Present suit is for partition, separate possession and injunction in respect of field bearing Gat no. 587 (the suit field) and a house property bearing property No. 2501 (the suit house), both situated at Mouje Dighanchi, more particularly described in para 1 (a) and (b) of Complaint (hereinafter collectively referred as "the suit properties") and this application is moved for temporarily restraining defendant Ankush from selling or alienating or disposing off the suit property or creating any kind of charge of third person on it, till disposal of the suit.

2. In the application, the plaintiffs have claimed that the suit field is ancestral and joint family property of both sides and it was previously belonged to their ancestor named Dashrath Lule. The parties of this suit are legal heirs of said Dashrath. It is claimed that after death of Dashrath, names of the defendant no.1 to 6 were recorded in the Record of Rights of the suit field as his legal heirs with separate "Annewari". Plaintiff have further claimed that they are sons of defendant Ankush and therefore, they have undivided rights and interest in the suit field which stands in the name of defendant Ankush. The plaintiff have further claimed that their mother, Vandana has died previously and after her death, both the plaintiffs have started residing at Mouje Lingivare, which is parental place of their mother.

3. The plaintiff have further claimed that since they were having right and interest in both the suit properties and the defendant Ankush was trying to dispose off the suit property without partition, they have demanded for partition and allotment of separate share to them. However, said demand was refused and this has constrained

plaintiff to institute this suit for partition and separate possession and to move present application for restraining defendant Ankush from the disposing or alienating the suit property or creating third party charge in it till disposal of the suit.

4. Defendant Ankush has contended the application by filling his say vide Exh.30. In the say, defendant Ankush has claimed that the suit house was purchased by him by utilizing his separate and independent fund and therefore, the plaintiffs cannot claim any right or interest in it. The defendant further claimed that after death of mother of the plaintiff, he has performed second marriage and from this marriage a son was born. The defendant has further claimed that since said son i.e. step brother of plaintiff was not included in this suit, this suit is bad for non joinder of necessary party. It is further claimed that since long the plaintiffs are residing at village Lingivire and therefore, the plaintiffs cannot claim any right in respect of the suit field. It is also denied that the plaintiffs have demanded partition of suit property from him and he has refused. Thus, by making such submission it was tried to show that there is no cause of action for the suit itself. On these grounds defendant Ankush has prayed to reject the application.

5. After considering the avernments made in the application, the say (Exh.30), the documents relied upon by parties and after hearing both of them at length, following points arises for my consideration and I record my finding to those points with reason as under,

<u>S.N.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the plaintiffs have prime-facie case in their favour ?	Yes.

- 2 Whether the balance of convenience lies in favour of plaintiffs ? **Yes.**
- 3 Who will suffer more irreparable loss, if the application is allowed or it is rejected? **To the Plaintiffs, if application is rejected.**
- 4 What order? **Application is allowed.**

REASONS

As to Point Nos. 1 to 3

6. Since point no. 1 to 3 are interrelated with each other, to avoid repetition of the facts and for convenience, they are discussed together.

7. Here, the plaintiffs are claiming that the defendant Ankush has succeeded the suit properties from his father and the plaintiffs being his sons, they have got right and interest in the suit property by their birth. Further, on perusal of say (Exh. 30), it can be seen that no specific ground has been mentioned in it while denying the claim of plaintiffs made in respect of the suit field. Defendant Ankush has just claimed that since the plaintiffs are residing at different place, the claim of plaintiffs made in respect of the suit field is false and baseless.

8. However, such submission does not seems to be reasonable. Even though, it is believe that the plaintiffs are residing at different places, this fact by its own is not sufficient to deny the rights and interest of the plaintiffs subsisting in the suit field. Here, the plaintiffs have relied upon 7x12 extract of the suit field (Exh.8) and Mutation Entry (ME) No. 681 (Exh.10). The ME No.681 (Exh.10) shows that after death of Dashrath, name of defendant Ankush along

with other legal heirs of the deceased were introduced in the revenue record of the suit field. Further, the 7x12 Extract (Exh.8) shows that defendant Ankush owns 2 Anna share of the suit Gat no.587. Further, present plaintiffs are sons of defendant Ankush. Thus, as the 2 Anna share of Gat no. 587 was succeeded by defendant Prakash from his father Dashrath, present plaintiffs have right and interest in said 2 Anna share, which at present stands in the name of defendant Ankush.

9. Further, the plaintiffs have relied upon Form No. 8 (Exh.9) of suit house bearing property no. 2530. The Form No. 8 (Exh.9) shows name of "Ankush Lule" and "Vandana Lule" as owners. Further, the Plaint and application (Exh.5) shows that name of deceased mother of the plaintiffs was "Vandana Ankush Lule". However, in the say (Exh. 30), defendant Ankush has also claimed that name of his second wife is also Vandana. Now, considering above facts, it is impossible for the Court to find out whether the name "Vandana Lule", which is appearing in the Form No.8 (Exh. 9) is mother of the plaintiffs or she is second wife of defendant Ankush. Further, defendant Ankush has claimed that the house property is his self acquired property. However, he has not filed any documentary proof on record which could prima facie show that defendant Ankush has really purchased the suit house by utilizing his separate and independent fund and it is his self acquired property. In such circumstances, we have to believe that the name "Vandana Lule" appearing in the Form No. 8 (Exh. 9) is mother of the plaintiffs and her name was continued in the Gram Panchayat record of the suit house even after her death. Now, as the plaintiffs are sons of said Vandana Lule, it will be needless here to mention that the plaintiffs being sons of Vandana, they have right and interest in the suit house.

10. In above paras, I have held that there is sufficient material

in the record which prima facie shows that the plaintiff have undivided rights and interest in the suit field as well as the suit house. Considering above facts, it appears that plaintiffs have undivided rights and interest in the suit field and the suit house. This much of observation is sufficient to held that the plaintiffs have prima facie case and balance of convenience lies in their favour. With this, I record my findings to the point no. 1 and 2 in "**Affirmative**".

11. Further, the 7x12 extract (Exh.8) and the Form No.8 (Exh. 9) shows name of defendant Ankush only as owner and possessor. In 7x12 extract (Exh.8) separate "Aanewari" in the name of defendant Ankush is also appearing. Further, defendant Ankush is claiming that the name "Vandana Lule" appearing in the Form No.8 (Exh.9) of suit house is name of his second wife i.e. step mother of present plaintiff. Further, in the application (Exh.5), it is claimed that defendant Ankush is trying to dispose off the suit field and suit house. The stand taken by defendant Ankush in his say (Exh.30) also given strength to the allegation made by the plaintiffs against defendant Ankush. Now, if defendant Ankush succeeds in disposing off the suit properties, it will definitely cause heavy irreparable loss to the plaintiffs as they possesses undivided rights and interest in the suit field as well as the suit house. It is necessary to protect the interest of these plaintiffs till disposal of suit on merit. On the contrary, if this application is rejected, it will not cause any loss to defendant Ankush. Hence, I record my finding to the point no. 3 accordingly.

As to point no. 4-

12. Above, I have recorded my findings to all three points in favour of plaintiffs and against defendant Ankush. Further, record

shows that the plaintiffs has included entire suit Gat no. 587 admeasuring 03.75 HR as suit field. Further, by the application (Exh.5), relief is claimed against defendant Ankush only. Therefore, it becomes necessary for the Court to allow the application to the extent of 2 Anna Share which defendant Ankush possess in the suit Gat no. 587 of Mouje Dighanchi. Hence, considering above observation and in answer to point no. 4, I am passing following order-

ORDER

1. The application (Exh. 5) is hereby allowed.
2. Defendant Ankush is hereby temporarily restrained from selling or alienating or disposing off or creating third party interest in the suit field to the extent of his "Aanewari" and suit house till disposal of the suit.
3. Cost in cause.

(Pronounced in open court.)

Place :- Atpadi.

Date :-03.03.2020

(J. R. Ghadge)
Civil Judge Jr. Dn. Atpadi.
Dist. Sangli.

Certificate

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	- H.P.Haridas
Court	- Civil Judge Jr. Div. Atpadi.
Date	- 03.03.2020
Order signed by the	
Presiding Officer on	- 04.03.2020
Order uploaded on	-04.03.2020