

**Order below Exh.161 in RCS No. 272/2019**

1. Defendant No.2 has filed this application for restraining the plaintiff, and defendant Nos.1, 3 to 5 from causing any disturbance while taking sugarcane to the sugarfactory from his filed at Gat Nos. 307, 324/ 1/क, situated in village Shevte, Gat No. 274/1/ब/1, 302, 305 situated in village Khedbhose, and Gat Nos. 1272/1 ब/3, 1280/3, 1277 situated in village Bhose.

2. As per defendant No.2, in the written statement filed by defendant Nos.1 to 10, it is pleaded that partition took place in the year 1985 between the plaintiff and the defendants. So also, in the compromise having taken place between defendant No.1 to 4 in RCC No.423/2022 and 407/2022, it has been agreed that the plaintiff and defendants will remain in possession of their respective lands. And they will cultivate their lands and will not cause any disturbance to the possession of others land while cultivation. However, on 20.11.2024, son of plaintiff Balaji had burnt the sugarcane crop standing in the field of defendant No.2. Also, when defendant No.2 had informed Vitthal Sugar Factory for taking sugarcane from his field to the sugarfactory on 23.11.2024, and when workers from the sugarfactory have come to the field of

defendant No.2 for taking the crops, son of plaintiff and the other defendants by threatening the workers had forcefully prevented them from taking sugarcane from the field. Hence, this application praying that plaintiff, his son and defendant Nos.1 to 4 be restrained from causing any disturbance while taking sugarcane to the sugarfactory from field of defendant No.2.

3. Plaintiff filed say at Exh.164 to this application. It is submitted by him that there had been no partition between him and the defendants. Also, all the parties are co-sharers in the suit properties and the properties as mentioned by defendant No.2 in this application. Thus, co-shares cannot claim injunction against the other co-sharers. By denying that plaintiff or his son has caused any obstruction while taking sugarcane from the field of defendant No.2 to the sugarfactory, the application is prayed to be rejected.

4. Defendant Nos.1, 3 , 4 to 11 filed their say at Exh.170. It is submitted by them that defendant No.2 has no locus to file the present application. He has not filed any counter claim in this suit. Thus, his claim is liable to be rejected. It is also their submission that a co-sharer cannot seek relief against another co-sharer. Thus,

denying all the contentions mentioned in the application, the application is prayed to be rejected.

5. Following points arise for determination against which are my findings for the reasons stated below.

Sr. No.	POINTS	FINDINGS
1	Whether defendant No.2 has prima facie case in his favour ?	No.
2.	Whether balance of convenience lies in his favour ?	No.
3.	Whether the defendant No.2 will suffer irreparable loss in case of rejection of the application ?	No.
4.	What order ?	As per final order.

### **REASONS**

#### **Point Nos.1 to 3**

6. As materials pertaining to all the points is common, all the points are taken together for discussion together.

7. Defendant No.2 has claimed a relief against plaintiff and defendant Nos.1 to 4 in this application. It is a matter of record that defendant No.2 has not filed a counter claim against the

plaintiff. So also, for claiming relief against defendant Nos.1 to 4 there is no suit filed by defendant No.2 against them. In view of this count alone, the present application is not tenable. To claim relief against plaintiff there ought to be a counter claim filed against him.

8. As per Order 39 Rule 1(1) of the Code of Civil Procedure, injunction can be sought by any party to the suit against another if the property in dispute is in danger of being wasted, damaged, alienated, or wrongfully sold in execution. However, such not being the case of defendant No.2, the present application cannot be entertained for this reason also.

9. Further, this is a suit for partition. Shares are yet to be finalized. Thus, it appears that as on date, all the parties have shares in the suit property. This being so, all parties including defendant No.2 being co-sharer cannot claim relief against other co-sharer is the settled position of law.

10. Apart from that at this juncture, there appears to be no material to believe that defendant No.2 is in possession of the properties as claimed by him. So also, there is no material from

which it could be believed that defendant No.2 has taken sugarcane crops from the field. Hence, the reliefs as claimed by defendant No.2 cannot be allowed in this application.

11. Thus, there appears to be no priam facie case in defendant No.2's favour. Balance of convenance does not lie in his favour. He would not suffer irreparable loss in case of rejection of the application. Hence, I answer point Nos.1 to 3 in negative.

**As to point No.4**

12. In view of the above reasons, I hold that the application is liable to be rejected. Hence, the order.

A- The applications stands rejected.

**Date : 23.12.2024.**

**Swayam S. Chopda.  
Jt. C.J.J.D., Pandharpur.**