

ORDER BELOW EXH.5

This order shall dispose of an application filed by the plaintiff under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity and convenience) for temporary injunction for restraining the defendants to not alienate the property in any manner and not to create charge on the property, more particularly described in para No.1 of the plaint.

2. Description of the properties:

An area admeasuring 2H 60R in gat no.422 situated at Village Gormale, Taluka Barshi, District Solapur. (hereinafter called and referred to as "suit property"). Its boundaries are as follows:

On or towards East – Land of Suryabhan Varale

On or towards South – Land of Rambhau Varale

On or towards West – *Shiv*

On or towards North – Land of Bagade and *Shiv*

Case of the plaintiff:

3. The suit is filed for partition and as a consequential relief, for perpetual injunction. Plaintiff and defendant no.4 are sisters. Defendant no.1 to 3 are their nephew's. The parents of plaintiff and defendants are deceased. There is joint Hindu family of plaintiff and defendants in regard to the suit property. The suit property as per the 7/12th extract and revenue records, was belonging to the parents of plaintiff and defendants. After the death of father of plaintiff and defendants, the suit property was necessary to be recorded in the name of heirs. However, defendants No.1 to 3 in collusion with each other, got recorded their names on the 7/12th extract of the suit property and the name of defendant no.4 as well as plaintiff was recorded in the other rights column of the 7/12th extract.

4. The plaintiff further submits that, defendants No.1 to 3 are in service at Miraj and plaintiff resides at villages and looks after the suit property. Plaintiff is in possession of the suit property. On behalf of plaintiff, her son namely Mahaling cultivate the suit property. Defendants no.1 to 3 are in a preparation to alienate the suit property by selling it. Plaintiff had applied to Tehsildar on 21/4/2015 for reminding about her right in the suit property hence, defendants did not took any

further action. The suit property is still undivided Hindu joint family property. Plaintiff has 1/3rd share in it. When plaintiff claimed the partition of the suit property from the defendants on 21/1/2019, defendants told plaintiff that, she has no relation with the suit property and that they have going to sell the suit property. If the suit property is sold, plaintiff will suffer irreparable loss and it will lead to multiplicity of litigations. Hence, plaintiff has prayed to allow the application.

5. Defendants failed to file their say on application at Exh.5 despite sufficient opportunities. Hence, the application proceeded without say of the defendants vide order passed below Exh.5 dated 18/12/2021.

6. Heard learned advocate for the plaintiff. Perused the record and proceeding of the case. The points for determination along with findings and reasons thereon are as under:

Sr. No	Points	Findings
1.	Whether the plaintiff has a prima facie case?	Yes
2.	Whether the balance of convenience lies in favor of plaintiff?	Yes
3.	Whether plaintiff will suffer irreparable loss if injunction is refused?	Yes
4.	What order?	As per final order.

REASONS

7. Plaintiff has relied upon the 7/12th extract of Gat no.422 at Exh.4/2, power of attorney at Exh.8/1, copy of receipts of *adat* shop, fertilizer receipt, receipt of soyabean *adat* shop, jowar receipt, soyabean receipts, photographs of Gat no.422, Xerox of mutation entry no.338, copy of complaint filed before Tehsildar, copy of old 7/12 extract and current 7/12th extract of gat no.422 vide list of documents at Exh.19.

As to point no.1:

8. The suit is filed for partition and for perpetual injunction as a consequential relief. Plaintiff has stated in her application that; defendant no. 4 is her sister and defendants no.1 to 3 are her nephews and they have a joint family in relation to suit

property. According to plaintiff, defendants no.1 to 3 have deliberately named the plaintiff and her sister defendant no.4 in the other rights column of 7/12 extract. Plaintiff has filed present application against defendants in order to restrain them from alienating the suit property and not to create charge over the suit property.

9. In order to grant temporary injunction, regard shall always be had to the principle of probability of success and a bona fide case. Probability of success will depend upon the material on record and a bona fide case will depend upon principles of equity. In order to grant temporary injunction, there must be existence of some legal right in favor of plaintiff. In order to decide a prima-facie case, the material placed before the Court need to be taken into consideration. The copy of 7/12th extract of Gat no.422 at village Gormale primarily appears to mention the name of plaintiff in the other rights column. It primarily indicates at this stage that, the contention of plaintiff as to her right in suit property are in consonance with the 7/12th extract. Moreover, the copy of mutation extract of mutation entry no.338 primarily indicates that, the names of plaintiff and her siblings including the name of defendant no.4 are mentioned as heirs to the deceased Vishwanath Kondiba Palkhe. It is well settled that; a person does not lose his right in the joint family property if he has no possession. The copy of mutation extract and the copy of 7/12th extract primarily indicate of plaintiff's right in the suit property. It therefore, suggests that, plaintiff has an existence of a legal right in her favour. It prima-facie appears that, the shares of the parties in suit properties are not yet decided. On the other hand, defendants have failed to file say on the present application and thereby failed to contest the present application. The documentary material adduced by plaintiff is not challenged by defendant. However, it does not mean that, plaintiff has no responsibility to prove her prima-facie case. The onus is upon the plaintiff to prove her prima-facie. The documents discussed aforesaid primarily indicate of existence of legal right in favour of plaintiff. The other documents i.e. adat shop receipts, crop receipts as well as the photographs cannot be sufficient at this stage to show possession of plaintiff in suit property for proving her prima-facie case. Even if the name of plaintiff appears to be mentioned in other rights column, it indicates that, the plaintiff does have a right in the suit property. Hence, considering the documents on record, it prima-facie appears at this stage that, the legal right does

exist in favour of plaintiff and that the prima-facie case lies with the plaintiff. Hence, considering the above discussion, I am of the view that, the plaintiff has proved the prima-facie case in her favour. Accordingly, I answer point no.1 in affirmative.

As to point No.2:

10. In order to decide, who has the balance of convenience, the Court has to decide who will suffer great hardship or mischief in case injunction is not granted. The balance of convenience lies in favor of plaintiff as the plaintiff has prima-facie proved the existence of a legal right in her favor. The alienation of suit property would cause hardship to the plaintiff considering that she has prima-facie proved her right in the suit property. On the other hand, no such hardship would be caused to the defendants. Accordingly, I answer point no.2 in affirmative.

As to point No.3:

11. As far irreparable loss is concerned, it appears that, the shares of parties are yet to be decided. The suit property appears to be ancestral from the record. The relations between parties remain unchallenged. At this stage, the interest of plaintiff need to be protected because, alienation of the suit property would lead to causing irreparable loss to the plaintiff. Accordingly, I answer point no.3 in affirmative.

12. In view of abovementioned reasons, plaintiff has established her prima-facie case. The balance of convenience is in favour of plaintiff and alienation of suit property would cause irreparable loss to the plaintiff. Hence, in answer to point no.4, the following order is passed.

ORDER

1. The application at Exh.5 is allowed.
2. Defendants no.1 to 4 shall not alienate the suit property in any manner which would affect the undivided share of the plaintiff and shall not create charge on the suit property till final disposal of suit.

(Pronounced in open Court)

Place: Barshi
Date: 28/01/2021

(N. S. Sabnis)
4th Jt.Civil Judge, Junior Division,
Barshi.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	Y. V. Sital
(b)	Court	:	Shri. N.S.Sabnis 4 th Jt. Civil Judge, J.D.& J.M.F.C.Barshi
(c)	Judgment /Order signed by P.O. on	:	28/01/2022.
(d)	Judgment /Order uploaded on	:	29/01/2022.