

**R.C.S.No.131/2023**  
**Navnath Vs. Ravi**  
**CNR No.MHSO170005942023**

**ORDER BELOW EXH – 05**  
**(Passed on 08<sup>th</sup> December, 2023)**

This is an application under **Order XXXIX Rule 01 & 02 of Code of Civil Procedure, 1908**, for the grant of temporary injunction. Suit is for partition, separate possession and for permanent injunction. Subject matter of the suit are 0H 69 R and 2 R lands including Potkharab in Gat No.197/2 and Gat No. 93/4 respectively situated at village Kurdu Tal. Madha, Dist. Solapur. Boundaries of these properties are more particularly specified in Para No.01 of the plaint and they are not reiterated for maintaining brevity. (*property supra is herein after referred as “suit property”*).

**PLAINTIFF’S CASE IN BRIEF IS AS UNDER ;**

2. Defendant Ravi is nephew of plaintiff. Suit property is the ancestor and joint hindu family property of plaintiff and defendant. The land bearing Gat No.197/2 mentioned in the para 1 A of the plaint is ancestral property of plaintiff and defendant. The land bearing Gat No.93/4 mentioned in the para 1 B is joint family property of the plaintiff and defendant. The plaintiff and father of defendant Raju jointly purchased the land bearing Gat No. 93/4 from the income source of ancestral property. However due to family settlement the said land property is purchased in the name of father of defendant Raju by registered sale deed bearing No.244/2006.

3. Since then the plaintiff and father of defendant Raju have joint possession over the suit property. After the death of father of defendant Raju, the name of defendant is entered into the 7 x 12 extract of land bearing Gat No.93/4. By taking the undue advantage of revenue entries in the name of defendant, he tried to sell the suit property. The plaintiff has the  $\frac{1}{2}$  share in the suit property. When plaintiff asked defendant for partition, he denied and threatened to sell the suit property. Hence the cause of action arose and present suit is filed. In present application plaintiff seeks the order of restraining defendant from alienating suit property till disposal of suit.

**DEFENDANT'S CASE IN BRIEF IS AS UNDER ;**

4. Defendant Ravi filed say and opposed the application stating that the land bearing Gat No.197/2 is the ancestral property of the plaintiff and defendant. After the marriage of plaintiff, he went to Pune along with his family. Since then he is residing at Pune. Father of defendant Raju started working as driver and has purchased the land bearing Gat No. 93/4 situated at Pimpri. Thus the said property is self acquired property of father of defendant Raju. Since then Raju was in possession of the said property. After death of father of defendant Raju, the defendant was residing with his maternal uncle. However plaintiff fraudulently entered his name in the ration card as guardian of the defendant. Hence the plaintiff has no concern over the said property. Hence he prayed to reject the application

5. Heard Shri. M.A. Parbat learned advocate for plaintiff and Shri. S.S. Jagtap learned for defendant. Perused the documents filed on record. After having an anxious thought on the material put forth, following points arise

for my determination. Findings there-on are recorded for the reasons discussed herein under ;

<b>POINTS</b>	<b>FINDINGS</b>
1. Whether there is a prima-facie case in favour of plaintiff ?	Affirmative
2. Whether balance of convenience tilts in favour of plaintiff ?	Affirmative
3. Whether irreparable loss will be caused to plaintiff, if relief sought is not granted ?	Affirmative
4. What order ?	Application is allowed.

### **REASONS**

#### **As To Point No. 1 :-**

6. Perused application and documents filed on record. The document 7/12 extract of land bearing Gat No.197/2 shows the joint possession of the plaintiff and defendant. It is pertinent to note that the land bearing Gat No.197/2 mentioned in the para no 1A is ancestral property is admitted by both the parties. The ration card prima facie shows the name of plaintiff and defendants as family member. Also the 7/12 extract of of land bearing Gat No. 93/4 prima facie shows that name of plaintiff is entered at the revenue entry as gurdian of the defendant. The Mutation entry 4413 shows that name of plaintiff is deleted after the defendant attains the age of majority. These documents prima facie supports the contention of the plaintiff that defendant was residing along with the plaintiff after the death of his father.

7. It is seen that as per the contention of the plaintiff the land bearing Gat No. 93/4 is joint Hindu Family property as it is purchased jointly by

plaintiff and father of defendant through the income of ancestral property. However as per the contention of the defendant said land is self acquired property of father of defendant. Thus the main is dispute regarding the nature of land bearing Gat No. 93/4 mentioned in the para no 1 b. The nature of the suit property will be adjudicated upon the evidence adduced by both the parties during the trial. At this stage, it is prima facie seen that plaintiff is claiming said his right over the suit properties alongwith defendants as co-sharer. They have raised substantial question in respect of the right pertaining to the said properties in the present suit. The said right is yet to be decided. In such a situation, it is necessary to protect the original status of the suit properties, otherwise unnecessary complication will arise in the suit. One of the object of the temporary injunction is also to protect the suit properties from being alienated, damaged or disposed of till decision of the rights of the rival parties.

8. The defendant is however contending that injunction can not be granted against co-owner or co-sharer . However, In the present case, the suit is filed by one co-owner against the other co-owners for partition of joint family properties. The temporary injunction is being asked so as to only protect the original status of the properties.

9. In view of the above, the prima-facie case appears to be in favour of the plaintiff since he has raised substantial question in respect of the aforesaid properties and his right yet to be finalized. In such a situation, if the defendant is not restrained from alienating the suit properties inconvenience will be caused to the plaintiff and he would suffer loss. Hence, point No. 1 to 3 are answered in affirmative.

**AS TO POINT NO.4 :-**

10. In view of the finding of aforesaid points, the plaintiff is entitled to the relief of temporary injunction. Hence, I pass following order

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**Order**

**i)** Application for temporary injunction is granted.

**ii)** Defendant is hereby temporarily restrained from alienating, by way of selling, creating charge or encumbrance, mortgage, gift, will or otherwise, the suit property described in para No.01 supra, till the decision of present suit.

**iii)** Parties to bear their own costs of present application.

Date : 08/12/2023

( V. C. Kshirsagar )  
3<sup>rd</sup> Jt. C. J. J. D., Madha.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer : N. B. Kamurti  
Court Name : Smt. V.C. Kshirsagar  
3<sup>rd</sup> Jt.CJJD & JMFC, Madha  
Date of Order/Judgment : 08/12/2023  
Order/judgment signed by : 08/12/2023  
presiding officer on  
Order/judgment uploaded on : 11/12/2023