

**ORDER BELOW EXH. 41 IN R.C.S.NO. 440/2012.**

The plaintiffs have filed present application under Order 39 Rule 1 and 2 of Code of Civil Procedure seeking temporary injunction against the defendant No. 1 for restraining him from alienating the suit property.

2. The property situated in village Kurduwadi, Tq. Madha, Dist. Solapur bearing Gat No. 182/1/A (old number 350), 182. However property to the extent of 0.39 R from northern side of suit Gat No. 182/1A is the subject matter of the present application. (Hereinafter called as '**subject property**').

3. Having regard to the nature of the application, following points arose for my determination and I have recorded my findings against the points along with the reasons thereon.

Points	Findings
1. Whether the plaintiff has prima facie case ?	Negative.
2. Whether the balance of convenience lies by the side of the plaintiff ?	Negative.
3. Whether the plaintiff would suffer irreparable loss if the injunction is rejected ?	Negative.
4. What order ?	As per final order.

**REASONS**

4. In order to substantiate their claim, the plaintiffs have relied on 7/12 extracts, mutation entries and the copies of sale deeds. On the contrary, the defendant has filed 7/12 extracts, mutation entries.

5. I heard both the learned Advocates. Perused the documents on record. The plaintiff has filed the present suit claiming partition, declaration and perpetual injunction. Inter alia, by present application, claimed temporary injunction against the defendant No. 1.

6. It is the case of plaintiffs that suit property is ancestral one of themselves and defendant No. 1. The defendant No. 1 is plaintiff No. 1's father. He earlier had sold out the suit Gat No. 182/1A without any legal necessity. Now the suit Gat No. 182/1A remained only to the extent of 0.39 R. The plaintiffs have apprehended that the defendant No. 1 would sell out the entire suit Gat and would create complications in the proceeding. It would lead to multiplicity of parties and consequently proceeding. On the contrary the defendant No. 1 has strongly objected the application. The sum and substance of defendant's say is that he is the Karta of the family and he can not be restrained from selling out the suit property for legal necessities. Hence prayed to reject the application

7. The Ld. Advocate for the defendant relied upon the judgment of Honble Apex Court reported in AIR 1988 in Sunil Kumar V/s Ramprakash wherein the Hon'ble Apex Court held that, a suit for permanent injunction by a co-parcener against the father, a Karta for restraining him from alienating the property belonging to the Joint Hindu Family for legal necessity would not be maintainable since the co-parcener has got the remedy of challenging the sale. If there is no such need or the benefit the purchaser takes the risk and right & interest of co-parcener will remain unimpaired in the alienated property.

8. Admittedly the suit property is ancestral one and defendant No. 1 is the Karta of the family. Hence in view of judgment cited by Ld. Advocate

for defendant No. 1, I hold the plaintiff having no prima facie case and balance of convenience. The plaintiff has ample remedy of challenging the alienation if any. Legally speaking unless the alienation in fact is completed there would be no cause of action for any co-parcener to maintain the suit because the right is only to challenge the alienation made and there is no right recognized in law to maintain a suit to prevent the proposed sale. Thus found no legal injury to plaintiff. Accordingly I answer the point No. 1 to 3 in negative and pass the following order.

**ORDER**

1. The application stands rejected.
2. Cost in main cause.

Dt/- 26/06/2019.

(A.R.Sayyed)  
Civil Judge J.D., Madha.

**CERTIFICATE**

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

Name of Stenographer :- Shaikh A.K.B. ( L.G.)

Court :- J.M.F.C., Madha.

Judgment/Order signed by the :- 26.06.2019.  
Presiding Officer on

Judgment/Order uploaded on :- 26.06.2019.