

**ORDER PASSED BELOW EXHS. 05 IN REG. CIVIL SUIT NO.
143 OF 2019.**

According to the plaintiff the properties described in the plaint para no. 1 and in the application para no. 1 are the ancestral and joint family properties of himself and defendants. Defendant no. 1 and 2 are his parents and the defendant no. 3 to 5 are siblings. The plaintiff and defendants constitutes the joint family. The properties in the B.No. 712/2, 716/1/B described under the caption of A and B are received by defendant no. 1 in the family partition. There was no material income from the properties to satisfy the needs of the family, so the plaintiff and the defendant no. 4 and 5 left to Mumbai for earning livelihood.

02. It is further contended that, the plaintiff used to earn his livelihood by driving Auto-Rickshaw and was sending money for the parents and other family members. Thereafter, in the year 2002 the adjoining landed property described under the caption C was put to sale by its respective owners. The plaintiff and his family decided to purchase the property. Accordingly, the plaintiff himself and defendant no. 3 after negotiation purchased the property for consideration. The amount of consideration was paid from the joint family income and income of the plaintiff. The defendant no. 3 was residing at village so it is agreed the property be registered in the name of defendant no. 3. As such the property was purchased for the benefit of joint family. **(The property described under the caption A to C**

hereinafter to be referred as the suit property.) The plaintiff and the defendant no. 3 to 5 are enjoying the suit property.

03. According to the further contention of the plaintiff, so as to defeat the rights of the plaintiff in the suit property the defendants on 23/07/2019 have executed gift-deed of the suit properties amongst themselves. The plaintiff have 1/6th share in the suit property. The defendant no. 3 to 6 refused to allocate the share of the plaintiff. The execution of the gift-deed and the refusal of the defendants to allocate the share is the ground to institute the suit. He further contends if the defendants succeeded to deal with the properties his share would be in danger. With these material propositions the plaintiff prayed for restraining the defendants from alienating the suit property.

04. On the other hand, the defendant no. 1, 3 to 6 by reply strongly resisted the application. The defendants denied the claim of plaintiff. The defendants admitted that, the properties described under the caption of A and B are the ancestral and joint family property. The property described under the caption of C is self acquired property of the defendant no. 3. The defendants contend that, the defendant no. 3 was cultivating the property of one Dattarya Gidde on the crop share basis and earned an amount of Rs. 2,00,000/-. As per his further contention in the year 2000 he was in the occupation of giving the bullock on rent and earned Rs. 50,000/- which was lying

with the bank. On the basis of the aforesaid amount the defendant no. 3 purchased the suit property and it is his self acquired property. The plaintiff and the other defendants have no concern with the same.

05. Defendants further contend that, the properties under the caption A and B were agreed to be partitioned amongst the members of the family, so the plaintiff and others agreed to get transfer of the property by way of gift-deed. Accordingly, the defendant no. 1 executed the gift-deed of the properties in the name of other defendants. At the relevant time, the plaintiff turned down the request for the gift-deed and he insisted for the share in the house property situated at Mumbai standing in the name of defendant no. 2. The suit is instituted to harass the defendants and to claim share in the house property at Mumbai. With these material denial the defendants prayed for the rejection of the application.

06. Perused the application, Say and documents. Heard Ld. Advocates for the plaintiff and the defendants. Following points arise for determination, findings recorded thereon along with reasons given as under :

Sr. No	Points	Findings
1	Whether the plaintiff have made out a prima-facie case ?	YES.
2	Whether the balance of convenience lies in	YES.

	favour of the plaintiff ?	
3	Whether the plaintiff will suffer irreparable loss, if injunction is refused ?	YES.
4	What order ?	As per final order.

R E A S O N S

07. **As to Point Nos. 1 to 4 :-**

The plaintiff and defendants in support of their respective stances relied upon the documents in the form of Revenue record.

08. Admittedly, the property under the caption of A and B are the ancestral and joint family property. The dispute amongst the parties swirls around the property under the caption C. The plaintiff claims the character of the property to be the ancestral and joint family property and the defendants claim it is the self acquired property. On perusal of the revenue record it appears that, the property under the caption C is recorded in the name of defendant no. 3. Whether the property is purchased from the joint family nucleus or by the single member of family is question to be determined during the trail by giving the opportunity to both sides. Mere words and the counter words of the parties are not sufficient to determine the character of the property.

09. So far as the present case is concerned, the record shows that, certain properties are gifted by the Karta of the

family i.e. the defendant no. 1. The plaintiff appears to have not got any portion of the property. Defendants submitted plaintiff refused for the registration of the gift-deed which was agreed by him. No doubt it is the trite law that, the Karta has the wide powers in respect of the ancestral property but if the dispute arose amongst the family members certainly, the execution of the deed of any kind by the Karta is not legal. In the case in hand, unless all the co-parceners agrees the allocation of the share to some of the members of family is not legal and proper.

10. The defendant no. 3 claims the independent right in the property under the caption C. No prima-facie evidence is forthcoming to fortify his contention. In such circumstances, I am of the view that the plaintiff have the prima-facie case which needs trial.

11. It is submitted by the Ld. Advocate for the defendants that, Sec. 52 of the Transfer of Property Act sufficiently takes care of the apprehension of the plaintiff, so there is no need to pass injunction order against the defendants. At the case in hand, the injunction sought by the plaintiff is to protect his share. Certainly, if the defendants succeeded in alienating the properties that would be the result of multiplicity of the proceedings. If the parties are restrained, from alienating the properties no prejudice will cause to the defendants. Conversely, if the plaintiff is refused the injunction it would cause an irreparable loss to his rights.

12. On the conspectus of above discussion, I am of the view that, the balance of convenience lies in the favour of the plaintiff. So, the findings as the point no. 1 to 3 are recorded in the affirmative. The plaintiff deserves the equitable relief of injunction. To answer the point No. 4 I am inclined to pass the following order to meet the ends of justice.

O R D E R

- 1) Application is allowed.
- 2) The defendant no. 1 and 2 to 6 are restrained from alienating the suit property till the final decision of the suit.
- 3) Costs in main cause.

Dt. 25-02-2022.

Sd/-
(G. B. Nandagavale)
Jt.Civil Judge Jr. Division,
Mohol