

**Order Below Exh. 5**

Plaintiffs have moved the present application for temporary injunction by taking recourse to Order 39 Rule 1 of the Code of Civil Procedure, 1908 for temporary injunction restraining the defendants from alienating the suit property till disposal of the suit.

02. **Case of the plaintiff in short is as under :-**

Following lands situated at mauje Wing, taluka Karad, district Satara.

<b>Sr.No.</b>	<b>Gat No.</b>	<b>Area H. R.</b>
1.	123	0-87 P.K. 0-01
2.	1437	0-35
3.	1561	0-19
4.	26	0-03 P.K.0-03
5.	33	0-21
6.	34	0-12
7.	44	0-09
8.	45	0-10
9.	950	0-07
10.	1014	0-09 P.K. 0-01
11.	1439	0-01 P.K. 0-03

12.	958	0-10
13.	990	0-18 P.K.0-02
14.	865	8-80 P.K.1-68
15.	1230	1-89 P.K.0-13
16.	1505	0-23 P.K. 0-07

and following house properties situated at Wing, taluka Karad, district Satara.

1B) House property at mauje Wing, taluka Karad, district Satara, which is more particularly described in plaint para no.1 having Grampanchayat Property No.1759 and in Gat No.1561.

1C) House property at mauje Wing, taluka Karad, district Satara, which is more particularly described in plaint para no.1 having Grampanchayat Property No.2343 in Gala No.1.

1D) House property at mauje Wing, taluka Karad, district Satara, which is more particularly described in plaint para no.1 having Grampanchayat Property No.2343/8 and in Gat No.123 first floor Gala No.9.

1E)(३) House property at mauje Wing, taluka Karad, district Satara, which is more particularly described in plaint para no.1 having Grampanchayat Property No.2343/9 and in Gat No.123 first floor Gala No.10.

1E)(४) House property at mauje Wing, taluka Karad, district Satara, which is more particularly described in plaint para no.1 having Grampanchayat Property No.2343/10 and in Gat No.123 first floor Gala No.11.

1F) House property at mauje Wing, taluka Karad, district Satara, which is more particularly described in plaint para no.1 having Grampanchayat Property No.2343/11 and in Gat No.123 first floor Gala No.12.

above land and house properties are hereinafter referred to as “suit properties” for the sake of brevity.

03. According to the plaintiffs, suit properties are ancestral and joint family properties of plaintiffs and defendants, as it is originally owned by their grand-father Baburao Dyanu Khabale. After the death of their grand-father Baburao Dyanu Khabale, said property has been devolved upon his sons and daughter named as Kusum, Ramesh and Rahul (i.e. defendants) and even their names have been recorded to the revenue record vide M.E.No.9664.

04. According to plaintiffs, plaintiffs no.1 and 2 are daughter and son of defendant no.1 whereas plaintiff no.3 is his wife. Defendant no.1 is addicted to bad vices like consuming liquor etc. and due to his addiction, he is obtaining money from other persons and without any legal necessity selling the suit properties in which plaintiffs are having undivided share. Due to such apprehension, plaintiffs have demanded their share to the defendant no.1 on 25/11/2021 to which he has totally denied and so, cause of action arose to file the suit for partition and separate possession alongwith the present application for temporary injunction.

05. Following points arise for my determination, on which I have recorded my findings thereon with reasons to follow.

<b>Sr.No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether plaintiffs have proved prima facie case in their favour?	... In the affirmative.

2. Whether balance of convenience lies in favour of the plaintiffs ? ... In the affirmative.
3. Whether plaintiffs will suffer irreparable loss, if injunction as sought is not granted ? ... In the affirmative.
4. What order ? ... As per final order.

**REASONS**

06. Heard Learned Advocate for plaintiff Shri.N.S.More. Perused the record.

**AS TO POINT NO.1 :-**

07. Pleading of plaintiffs is to the effect that, suit properties are ancestral and joint family properties of plaintiffs and defendants, as it is originally owned by their ancestor Baburao Dyanu Khabale. After the death of Baburao Dyanu Khabale, suit properties have been devolved upon the plaintiffs and defendants according to their respective share. According to plaintiffs, even mutation is sanctioned bearing M.E.No.9664 and names of defendants no.1 to 3 have been recorded to the revenue record being Class-I heirs of the Baburao Dyanu Khabale. Being elder brother, the defendant no.1 is managing the suit properties. Further contention of the plaintiffs is to the effect that, defendant no.1 is addicted to liquor and due to his addiction, he is selling the suit properties without any necessity in which they are having undivided share and when plaintiffs have demanded their undivided share in the suit properties to which defendants have flatly denied.

08. Here, it appears from the record that, suit properties was originally owned by Baburao Dyanu Khabale who is having two sons and one daughter i.e. defendant no.1 to 3 and plaintiff

no.1 and 2 are daughter and son of defendant no.1. Whereas, plaintiff no.3 is his wife. It is settled principle of law that, during the life time of husband, wife has no right to claim the partition but, if partition took place, she is entitled to equal share alongwith son and daughter. Here, plaintiff no.1 and 2 are being son and daughter of Ramesh is having equal share being co-parcener, because it is not in dispute that, suit property is devolved from the common ancestor Baburao Dyanu Khabale. So, prima facie it appears that, suit properties are ancestral and joint family properties of plaintiff and defendants and so, obviously plaintiff no.1 and 2 are having undivided share in it. Further, contention of the plaintiffs is to the effect that, defendant no.1, due to his addiction is alienating the suit properties without any necessity and so, to the extent of alienation, in my opinion, plaintiffs have established prima facie case in their favour. Consequently, I answer point no.1 in the affirmative.

**AS TO POINT NO.2 TO 4 :-**

09. When plaintiffs have established prima facie case in their favour, then balance of convenience also lies in favour of plaintiffs. As far as causing of irreparable loss is concerned, when it is specifically contended that, defendant no.1 is addicted to liquor and being elder brother in the management of the suit property and if suit properties alienated, it will cause irreparable loss to the plaintiff who are having their undivided share in the suit properties. So, if injunction to the extent of alienation is granted, it will cause no loss to the defendants also because property is yet to be divided by metes and bounds. Hence, I answer point no.2 and 3 in the affirmative and in response to point no.4 pass the following order.

**ORDER**

- 1) Application is allowed.
- 2) Defendants are hereby restrained from alienating the suit properties till disposal of the suit.
- 3) Costs in cause.

Karad.  
Date :- 21/04/2022.

(Y.H.S. Deshmukh)  
Jt. Civil Judge Senior Division,  
Karad.