

MHST060000942023

R.C.S. NO. 31/2023



POPAT N. CHAVAN AND ANR

Vs.

SOPAN G. CHAVAN AND ORS

ORDER BELOW EXH. 05

This is application for temporary injunction restraining defendant No. 1 to 5 from not to construct over the suit properties.

02. The plaintiffs' case is that the suit properties mentioned as under are ancestral and joint family properties of the plaintiffs and defendants :-

Sr. No.	Gat No.	Area (H-R)	Aakar (R-P)
1	177/1	4.63.00	10.85
2	189/1	3.04.00	7.50
3	189/2	4.15.00	13.00

03. The parties are jointly & collectively possessing & enjoying suit properties. However, in the meantime, the relationship of the parties becomes bad. Therefore, due to quarrel, the plaintiffs have demanded partition in the suit properties. However, the defendants have denied the same. Defendant No. 3 has started construction of house in the suit property on prime location. If, he succeeded to complete the construction, the plaintiff will suffer irreparable loss and complications in the suit property will be increase. Thus, plaintiff is having prima-facie case, balance of inconvenience and irreparable loss in his favour. So he prayed for interim injunction against defendant No. 1 to 5.

04. Defendant No. 1 to 7 are contested the suit vide reply Exh. 19 and denied the averments in the plaint. The defendants contended that as per sale-deed dated 14.03.1997 out of Gat No. 177/1 area to the extent of 78R was purchased by defendant No. 1. Therefore, defendant No. 1 is possessing said portion along-with share in the ancestral property. Said portion of 78R was purchased out of undivided share of paternal uncle of plaintiff namely Sahebrao. Gat No. 177/1, 189/1 and 189/2 are ancestral properties of the parties. However, in the year 1965 there was oral partition and accordingly, in the respective share the parties are having their respective houses and one temple is also situated on the same. In the year 2008, defendant No. 3 was received benefit of Gharkul Yojana and is having House No. 919. Thus, with detail reply, the defendants prayed to reject the application.

05. Heard both the side. They argued in consonance of their respective applications and say. Now, it is necessary to verify whether *prima-facie* case, balance of convenience and irreparable loss are made out in favour of the plaintiffs.

06. The plaintiffs have relied on 7/12 extracts vide Exh. 04, 06 and 07. On perusal of the documents and photographs on record, it is clear that *prima-facie* there is no evidence about oral partition between the parties. It means the properties in question are joint and ancestral property *prima-facie*. In such circumstances, injunction against co-owner can not be granted as sought in the application.

07. If, the defendants successfully construct any construction, then, that will be subject to result of suit. Such construction will also be included in the joint family properties. While determining shares, if any, the properties will be partitioned as per metes and bound.

Therefore, there is no irreparable loss to the plaintiffs as argued by them. Prima-facie the properties may be joint family and ancestral properties but there is no evidence which can suggest that the defendants are constructing totally new structure on the same. Even, as per above discussion said construction will be subject to decision of the suit. Therefore, to make any development on the common property will be at the risk of defendants. However, there is absence of element of irreparable loss of the plaintiffs. Thus, the plaintiffs are not entitled for injunction relief as prayed.

08. It is clarified that the defendants have produced sale-deed dated 14.03.1997. It shows prima-facie that undivided share of Sahebrao was purchased by defendant No. 1. Prima-facie this circumstance is supportive to the defendants rather than plaintiffs. Therefore, prima-facie no case available to the plaintiff except case of ancestral property. However, elements of prima-facie case, balance of convenience and irreparable loss are missing in the case as discussed above. Moreover, it can not be ignored that if the construction of defendant No. 3 is stopped then he will be having no place of residence. Therefore, the defendants will suffer irreparable loss rather than plaintiffs. Some other defendants are also having their respective residences in said portion. Therefore, prima-facie possession of defendants is proved. Thus, the plaintiffs are not entitled for relief of injunction. Hence, application Exh. 05 liable to be rejected. Thus, application Exh. 05 rejected.

Date:- 05.08.2023

Place:- Dahiwadi.

(G.D. Patil)
Civil Judge Jr. Division,
Dahiwadi.

:- Affirmation certificate :-

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

Name of the Stenographer :- A. N. Ombase, Steno Grade-3,
Name of the Court :- Civil Judge (J.D.) & J.M.F.C.,
Dahiwadi, Tal. Man, Dist.
Satara.
Date of judgment/order :- 05/08/2023.
Judgment/order signed by the
Presiding Officer on :- 05/08/2023.
Date of judgment/order uploaded on :- 05/08/2023.