

ORDER BELOW EXH. 5 REG. CIVIL SUIT No. 251/2022

(CNR No. MHST07-0015672022)

Sayaji Vasant Shinde and other 1 Vs. Shivaji Hanmant Shinde and other 5.
Adv. D.Y.Maner for plaintiffs and Adv. V.B. Thorat for defendant no. 1,2,3,5 and 6.

The plaintiffs have filed an application under Order XXXIX rule 1(c) of Code of Civil Procedure to temporarily restrain defendant no. 1, 3, 5 and 6 from obstructing plaintiffs from using or taking water from common well situated in the block no. 421 at village Antavdi, Tal-Karad, Dist-Satara.

02. It is case of the plaintiffs that, suit properties were originally belonged to Maruti Shinde.

03. It is further case of the plaintiffs that, Maruti shinde was survived by three sons namely Hanmant, Vasant and Amruta.

04. It is further case of the plaintiffs that, they are sons of Vasant and their brother namely Tanaji was died. The defendant no. 4 is wife of deceased Tanaji.

05. It is further case of the plaintiffs that, Amruta had got his share partitioned and separated in the year 1972, therefore, neither Amruta nor his legal heirs are entitled for share in the suit properties.

06. It is further case of the plaintiffs that, suit properties are yet to be partitioned between the branch of Hanmant (defendants) and Vasant (plaintiffs).

07. It is further case of the plaintiffs that, house properties

had been already partitioned between Vasant and Hanmant but agricultural properties are yet to be partitioned. They have ½ share in the suit properties.

08. It is further case of the plaintiffs that, they and defendants had cultivated suit properties as per their mutual understanding.

09. It is further case of the plaintiffs that, there is a common well in the block no. 421. They and defendants have been taking water from the well as per their share i.e three and one half day in a week each.

10. It is further case of the plaintiffs that, recently defendant no. 1 started to obstruct them from taking water from the common well. Therefore, under these circumstances, they are constrained to file present application.

11. On the other hand, defendant no. 1,3,5 and 6 have filed their say below Exh. 25 stating that, contents of the application are false.

12. It is case of the defendants that, suit properties had been already partitioned in the year 1975.

13. It is further case of the defendants that, plaintiffs have not made party to the legal heirs of deceased Amruta. The legal heirs of deceased Amruta are necessary parties to the suit as suit is for partition and separate possession. In absence of necessary parties, suit

is not maintainable.

14. It is further case of the defendants that, as per partition, plaintiffs and defendants have 8 Ane share each in the common well being situated in the block no. 421. The legal heirs of the deceased Amruta has 2 Ane share in the common well. All have been taking water from the common well as per their share.

15. It is further case of the defendants that, on 08/06/2019, repair work (removing mud) of well was conducted but plaintiffs failed to pay expenditure of the repair work as per their share. Instead of paying expenditure of the work, plaintiffs brought this false suit and application without any reason, therefore, present application may be rejected.

16. Heard learned advocates of the plaintiffs and defendant no. 1, 2, 3, 5 and 6. I have gone through documents, available on record.

17. The following points arise for determination of this application and I have recorded my findings against each of the point thereon, along with reasons to follow :-

Sr. No.	Points	Findings
1.	In whose favour prima-facie case has been made out ?	Defendants
2.	In whose favour balance of convenience lies ?	Defendants

3.	Who will suffer irreparable loss if injunction is granted ?	Defendants
4.	What order ?	Application (Exh.5) is rejected.

REASONS

AS TO POINT NOS. 1 TO 3 :

18. Considering nature of the contentions, all points are required to be considered together.

19. It is settled law that while passing an interim order of injunction under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, the Court is required to consider three basis principles, namely (a) Prima facie case, (a) balance of convenience and inconvenience and (c) irreparable loss and injury. In addition to the above mentioned three basis principles, a Court, while granting injunction must also take into consideration the conduct of the parties. It is also established law that, the Court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters, the Court must make all endeavors to protect the interest of the parties.

20. With the above principles, let us consider the claim of both parties.

21. It is case of the plaintiffs that, suit properties are yet to be partitioned and they have ½ share in the suit properties. Whereas

it is case of the defendants that, suit properties had been already partitioned.

22. While considering contention of both sides, firstly I must mention here that, it is admitted fact between the parties that, nature of suit properties is ancestral properties. The controversial question between the parties is whether partition had been effected or not? Upon perusal of revenue documents particularly mutation entry no. 55, it is seen that, partition had been already effected between Amruta, Hanmant and Vasant in the year 1975. Upon perusal of 7x12 extract of suit properties, it is seen that, name of plaintiffs and defendants being recorded independently in respect of their share. The legal heirs of deceased Amruta namely Ananda Shinde has filed his affidavit on record stating that, partition had been already effected in the year 1975. Thus, all these documents reflect that, partition had been already effected between forefathers of plaintiffs and defendants i.e Vasant and Hanmant respectively.

23. Apart from this, it is required to note here that, present suit is for partition and separate possession and plaintiffs came with the case of partial partition, which is itself illegal in the eyes of law. In the plaint, plaintiffs have pleaded that, partition of house properties had been already effected and therefore, they have not added house properties in the plaint.

24. Moreover, plaintiffs have claimed that, one of the son of Maruti i.e Amruta had already got his share by partition in the year 1972. This pleading, so made by the plaintiffs is question of trial and same can not be considered without evidence at this stage.

25. Moreover, plaintiffs have not made party to the legal heirs of the deceased Amruta in the suit. The present suit is for partition and separate possession, therefore, in my opinion, legal heirs of deceased Amruta are necessary parties to the suit and in absence of necessary parties, suit is not maintainable in the eyes of law. On this count also, present application is deserve to be rejected.

26. It is required to note here that, defendants have admitted right of plaintiffs of taking water from common well being situated in the block no. 421 in their say. Thus, it is appeared that, there is no denial to the rights of plaintiffs. Thus, the contention raised by the plaintiffs regarding obstruction to get water from common well, is appeared to be question of trial and same can not be considered without evidence at this stage.

27. Plaintiffs have filed xerox copy of application of temporary injunction being filed by one of the legal heir of deceased Amruta in R.C.S no. 624/2020 for the support of their contention . Upon perusal of it, it is seen that, it is between the legal heirs of deceased Amruta regarding their partition (in the share of Amruta) and plaintiffs are not concerned with it. Thus, the pleadings being made in the application of temporary injunction, being filed in R.C.S no. 624/2020 is not helpful to the plaintiffs.

28. Thus, under these circumstance, I am inclined to hold that, plaintiffs have no prima facie case and balance of convenience in their favour at this stage as their contentions are not supported by the documents.

29. Therefore, under these circumstances, if an injunction is not granted to the plaintiffs, they will not suffer irreparable loss or injury at this stage. However, if an injunction is granted to plaintiffs, defendants will suffer irreparable loss or injury at this stage and same can not be compensated later. Therefore, interest of defendants is required to be protected at this stage. Hence, I answer all the points in favour of defendants.

AS TO POINT NO. 4 :

30. While considering the above discussion, application below Exh.5 is required to be rejected. Hence, following order.

O R D E R

1.	Application below Exh. 5 is hereby rejected.
2.	Cost in cause.

Date :- 16.07.2022

(S.M. Sarode)
Jt. Civil Judge, Junior Division, Karad