

MHST160002262012

**Order Below Exh. 5 in R.C.S. No.
119/2012.****(Sharmila Mahesh Kadam Vs. Anandrao
Bajirao Sawant and ors.)**

This is an application filed by plaintiff under Order 39 Rule 1 of the Code of Civil Procedure 1908. Through this application plaintiff seeking temporary injunction against defendants to restrain them from creating third party interest in the suit property or alienating the suit property.

Case of plaintiff in short is as under:

2. Plaintiff submitted that the suit is for partition and separate possession of suit property. Similarly for perpetual injunction and declaration. The property described in para १अ, १ब, १क, १ड, १इ, १ई, १उ, १ऊ of the plaint are suit property.
3. According to plaintiff, she is daughter of defendant nos.1 and 2. Defendant nos.13 to 15 are sisters and brother of her. Defendant no.9 is the wife of her deceased brother namely Mohan. Defendant nos.10 to 12 are children of Mohan. Defendant nos.1 and 3 to 8 are brothers and sisters. The suit properties are recorded in the name of defendant nos.1 and 3 to 7. There is no partition take place between plaintiff and defendant.
4. Plaintiff submitted that she requested to defendants for her separate share. But they avoided it. Defendant nos.1 to 15 and 26 to 28 are trying to alienate suit property with third purchaser vide their entry of names in record of right. Defendant nos.1 and 7 started to make lay out and dispose of the plots in suit property.

Defendant no.7 executed development agreement with defendant no.1 regarding suit property described in para 93 of plaintiff. Defendant no.7 making the construction. Defendant nos.1 to 7 did not take any consent of plaintiff for same. She further prayed that defendants trying to alienate the suit property or change the nature of the suit property to avoid her share in the same. Therefore irreparable loss caused to her. According to plaintiff, she has prima-facie case, balance of convenience is in her favour. Hence, plaintiff prayed for temporary injunction.

Case of defendant nos.7, 26 to 28 in short is as under:

5. Defendant nos.7, 26 to 28 file their say at exh.47 and 167. They contended that plaintiff and defendant resided separately. Their property are different. Plaintiff and defendant nos.26 to 28 are not joint family. Father of defendant nos.1 and 7 made partition of suit property between them in his lifetime. Said partition has taken place in the year 1974. Since then plaintiff and defendants resided separately. Plaintiff has suppressed this fact.

6. According to defendant nos.7, 26 to 28 defendant no.14 in present suit has filed SCS No.257/2010. In that suit present plaintiff was defendant no.5. She appeared in that suit and filed an application for transposition. Said application is granted and defendant no.14 became plaintiff no.2 in that suit.

7. It is the contention of defendant nos.7, 26 to 28 that, suit properties described in para 93 of plaintiff are not joint family properties. These properties are self acquired properties of defendants. Similarly plaintiff did not get any relief vide

amendment in Hindu Succession Act 2005. Hence application deserves to be rejected.

8. Following points arise for my determination and my findings on each of them with reasons are as follows:

<u>Sr. No.</u>	<u>Points of Determination</u>	<u>Findings</u>
1.	Whether plaintiff has prima facie case in his favour ?	No.
2.	Whether balance of convenience lies in favour of plaintiff?	No.
3.	Whether plaintiff will suffer irreparable loss, if injunction is refused?	No.
4.	What Order ?	Application is rejected.

REASONS

Plaintiff relied upon following documents;

9. Lay out plan of C.S.No.25/1 at exh.3/1, consolidated sanction plan of C.S.No.25/1 out of plot no.1,2 and 24 at exh.3/2, consolidated sanction plan of C.S.No.25/1 out of plot no.3 and 4 at exh.3/3, consolidated sanction plan of R.S.No.24-B/1, C/6, C/7, of lodge building at exh.3/4, partition deed of defendant no.1,3 to 7 at exh.3/5, development agreement between defendant nos.1 and 7 at exh.3/6, announcement letter regarding S.No.25/1 at exh.3/7, Photo of suit property i.e. lodge at exh.3/8, photo of suit property

i.e. tin-shade at exh.3/9, registered relinquishment deed by defendant no.8 in favour of defendant nos.1 and 3 to 7 at exh.3/10, Valuation certificate of S.No.138/1/1 at exh.3/11, Valuation certificate of S.No.2336 at exh.3/12, Valuation certificate of S.No.2401C/4 at exh.3/13, Valuation certificate of S.No.2392A at exh.3/14, Valuation certificate of S.No.2335 at exh.3/15, Valuation certificate of Grampanchayat milkat No.105/A at exh.3/16, Valuation certificate of Grampanchayat milkat No.865 at exh.3/17, Valuation certificate of S.No.25/1B at exh.3/18, Letter given by plaintiff to defendant nos.7, 26 and 28 at exh.3/19, receipts of acknowledgment letter at exh.3/20, Marriage certificate of plaintiff at exh.9, 7X12th extract of R.S.No.24B/1 at exh.10, 7X12th extract of R.S.No.24C/6 at exh.11, 7X12th extract of R.S.No.24C/7 at exh.12, 7X12th extract of R.S.No.138 1/1 at exh.13, 7X12th extract of R.S.No.115/3 at exh.14, 7X12th extract of R.S.No.25/1B at exh.15, extract of gat No.265 at exh.16, extract of C.S.No.2336 at exh.17, extract of C.S.No.2401C/4 at exh.18, extract of C.S.No.2392A at exh.19, extract of C.S.No.2335 at exh.20, Extract of Grampanchayat Milkat no.105A of lodge at exh.21, extracts of grampanchayat milkat no.865 of shade at exh.22, extract of gat no.121/1 at exh.23, extract of gat no.121/3 at exh.24, extract of gat no.120/2 at exh.25, extract of gat no.124/4 at exh.26, extract of gat no.117 at exh.27, Photograph of suit property of gat no.265 at exh.160A/1, photographs of gat no.165 at exh.152/1,

Defendants relied upon following document;

10. Notice dated 27.03.2015 in daily newspaper Sakal given by defendant nos.7,26,27 at exh.17/1, ffidavit of priest regarding

marriage date at exh.58/1, letter given by defendant to grampanchayat Deur regarding cancellation of marriage certificate at exh.58/2, certified copy of exh.31 in SCS No.257/2010 at exh.90/1, application to Gravikas officer Deur at exh.90/2 , documents of ID card and marriage certificate of plaintiff at exh.90/3, certified copy of Exh.1 in R.C.S.No.106/2012 at exh.94/1, Partition list at exh.94/2, A copy of agreement of well at exh.156/1, extract of 8033 of gat no.265 of village kadegaon at exh.156/2, exh.5 in SCS 257/2010 filed by plaintiff and defendant nos.12,13 and 14 against defendant no.7 at exh.163/1, order below exh. 1 in RCS 106/2010 at exh.163/2, Will deed made by defendant no.1 at exh.163/3, medical certificate of defendant no.1 at exh.163/4, 7X12th extract and mutation extracts of property of defendant nos.7,11,12,9 and 10 at exh.163/5, Application given by defendant no.7 to forest officer at exh.163/6, Farmer ID of defendant no.7 at exh.163/7, receipts of land revenue paid at exh.163/8, copy of N.C. No.171/2025 filed by defendant Sanjay Sawant dated 24.02.2025 at exh.166/1, evidence in RCS No.257/2010 regarding plaintiff at exh.169/1, marriage certificate of plaintiff at exh.169/2, certificate by priest at exh.169/3, application given by defendant to Deur grampanchayat regarding cancellation of marriage certificate at exh.169/4, complaint before police given by defendant against defendant no.12 at exh.169/5, Partition list at exh.169/7.

Point Nos.1 to 3 :

11. Point nos.1 to 3 are interlinked with each other, hence they are discussed together.

12. Ld. Advocate of plaintiff in his argument submitted that according to plaintiff, suit properties are ancestral properties. Defendant nos.1 to 15 and 26 to 28 are trying to alienate suit property with third purchaser vide their entry of names in record of right. Defendant nos.1 and 7 started to make lay out and dispose of the plots in suit property. Defendant no.7 executed development agreement with defendant no.1 regarding suit property described in para 937 of plaint. Defendant no.7 making the construction. Defendant nos.1 to 7 did not take any consent of plaintiff for same.

13. He further argued that defendants trying to alienate the suit property or change the nature of the suit property to avoid her share in the same.

14. Ld. Advocate of defendant nos.7, 26 to 28 file written argument at exh.164. He argued that plaintiff and defendant nos.12 to 14 had filed SCS No.257/2010 against defendant no.7. In that suit application for temporary injunction was rejected. Said suit is dismissed on 16.03.2016. Defendant no.1 had executed Will deed dated 18.10.2011 in favour of defendant nos.9 to 12. Defendant no.1 is died on 05.11.2020. Names of defendant nos.9 to 12 are recorded on 30.03.2021 to suit property vide said Will. Therefore plaintiff has no concerned to suit property.

15. He further argued that defendant no.7 has given an application to forest officer for removing trees and bushes from property having block no.265. Defendant no.7 has removed trees and bushes vide oral permission of forest officer. Defendant no.7 has drawn online farmer ID. In said ID his name is recorded as

single owner. He has deposited assessment for agriculture as Rs.48/- on 12.03.2025.

16. It is argued by defendant nos.7, 26 to 28 that plaintiff has received marriage certificate on 28.02.2011. A marriage is solemnized at Wai, hence there is no reason to register it in Dehur village panchayat. There are 4 witnesses and one priest for said marriage. These 4 witnesses are from one family. They and priest are resident of Dehur, Tal-Koregaon Dist-Satara. Plaintiff has taken marriage certificate to grab ancestral property. She fraudulently taken signature of priest on marriage certificate.

17. He further argued that after getting knowledge about said fraud, priest has executed affidavit dated 03.08.2011 before Tahsildar Koregaon. He mentioned in it about his absence in the marriage which was solemnized on 11.06.1995. Considering all plaintiff has no right over the suit property. Therefore application be rejected with cost.

18. Learned advocate of defendant nos.7, 26 to 28 relied on the following authorities:-

1. Hanuman Prasad Gupta Vs. Jagya Dhan Gupta and anr. AIR 2004 MP-244

I have gone through this authority. In this case the suit is related to specific performance of contract. Present suit is for partition and declaration. Hence, with due respect the facts of this case are not applicable to present case.

2. Prabhoo Vs. Doodh Nath and ors. AIR 1978 Allahabad-178

I have gone through this authority. In this case the suit is for mandatory injunction. Present suit is for partition and declaration.

Hence, with due respect the facts of this case are not applicable to present case.

3. Jairam Ramchandra Sirsat and ors. Vs. Baburao Manguesh Karekar and ors. AIR 1973 Goa, Daman and Diu (V 60 C 1)

I have gone through this authority. In this case the suit is for declaration that meeting and resolution passed are null and void. Present suit is for partition and declaration. Hence, with due respect the facts of this case are not applicable to present case.

4. Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd. And anr. AIR 1997 SC 2477(1)

I have gone through this authority. In this case bank is restrained from making payment on ground of fraud. Hence, with due respect the facts of this case are not applicable to present case.

5. Nagam Siva Reddy Vs. B. Nazamuddin Saheb AIR 1966 Andhra Pradesh 373 (Vol.53,C-113)

I have gone through this authority. In this case the suit is for permanent injunction. Present suit is for partition and declaration. Hence, with due respect the facts of this case are not applicable to present case.

6. Roop Chand Vs. Indradevi and ors. AIR 1997 MP-200

I have gone through this authority. In this case the suit is for partition. The Trial Court assumed separate living of co-sharers. In present case yet trial to be begin. Hence, with due respect the facts of this case are not applicable to present case.

7. T. Ramalingeswara Rao (dea) Thr. Lrs. Vs. N. Madhava Rao (SC), C.A.No.003408-003408/2019.

I have gone through this authority. In this case the suit is for seeking perpetual injunction. Present suit is for partition and declaration. Hence, with due respect the facts of this case are not applicable to present case.

19. Perused record of the case. Plaintiff has filed application for status-quo on 06.03.2025. He contended that defendant illegally cutting the tree and digging the well over suit property.

20. On perusal of record of the case prima-facie, it is seen that at exhibit 16, there are names of defendant nos.1,7 and 16 to 20. Defendants contending that partition of suit property take place by metes and bounds in the year 1974. The fact of partition is matter of evidence. The documents on record shows that names of defendants are recorded to revenue record of suit properties.

21. Plaintiff has produced photographs of suit properties, layout plan in survey no.25/1, sanction plan of plot no.1,2 and 24 out of survey no.25/1. Defendant no.13 Sanjay Sawant has produced N.C. No.171/2025 dated 24.02.2025 at exh.166/1.

22. It is also seen that; defendant no.13 has produced the notice issued by defendant nos.7 and 26 to 28 in daily newspaper Sakal dated 27.03.2015. Said notice is issued by defendant nos.7 and 26 to 28 not to alienate suit property described in RCS No.119/2012 by Shri. Sanjay Sawant and Smt.Prabhavati Sawant. A Notice issued by defendant nos.7 and 26 to 28 is in the year 2015. Accordingly 10 years passed after issuing notice. This does not mean that defendant nos.7 and 26 to 28 alienate the suit property. For mere apprehension injunction cannot be granted.

23. Similarly the injunction cannot be granted against co-sharer or co-owner. Partition took place or not is to be decided at the stage of trial. It is the question of merit whether partition of suit property took place or not. It is decided at trial after detail evidence. Similarly it is the question of merit that the suit properties are ancestral or self acquired. It is also taking into consideration that plaintiff has right vide amendment in 2005 regarding Hindu Succession Act will be decided after taking detailed evidence. Similarly it is the question of merit that plaintiff has no concern to suit property as defendant no.1 had executed Will deed dated 18.10.2011 in favour of defendant nos.9 to 12. It will be decided after detailed evidence. Hence these contentions are not acceptable.

24. The defendant nos.7,26 to 28 have filed copy of well agreement at exh.156/1. They have filed 7X12th extract and 8A extract of block no.265. It is seen that the development agreement dated 24.07.2009 is at exh.3/6. Many years passes after executing development agreement. Plaintiff has filed this suit in the year 2012. Since then plaintiff did not take efforts for temporary injunction.

25. On perusal of well agreement which is at 156/1, it is seen that defendant invested labours for construction of well. If injunction is granted then irreparable loss caused to defendant nos.7,26 to 28.

26. According to Section 52 of Transfer of Property Act, during the pendency of suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with

by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

27. According to Order XXXIX Rule 1 of Code of Civil Procedure 1908 temporary injunction may be granted, that any property in dispute in a suit is in danger of being alienated by any party to the suit then court may by order grant temporary injunction to restrain such act or preventing the alienation until disposal of the suit or until further orders.

28. It is seen that suit property is not shown in the name of plaintiff. The name of plaintiff not shown as owner in record of rights. The suit is for partition. The shares of plaintiff and defendant yet not decided. Therefore defendants are co-owners and co-sharers of suit property. Hence, the injunction cannot be granted against co-sharer.

29. Learned advocate of defendant nos.7, 26 to 28 relied on the following authorities:-

1. M. Krishna Rao and anr. Vs. M.L. Narasikha Rao and ors. AIR 2003 Andra Pradesh-498

I have gone through this authority. In this case the suit is for partition co-coparcener can not seek injunction.

2. Dundri Devi and ors. Vs. Santosh and ors. I.L.R. P&H 2022(2) Cr No.1294 of 2022.

I have gone through this authority. In this case (i) a co-owner who is not in possession of any part of the property is not entitled to

seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession. (ii) Mere making of construction or improvement of, in the common property does not amount to ouster (iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property. In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.

30. Considering the ratio cited supra and from above discussion it is seen that, plaintiff has no prima-facie case. If injunction is granted then irreparable loss caused to defendants.

31. In view of above discussion, I answer point nos.1 and 2 are in negative. Similarly if injunction is granted then defendants will suffer irreparable loss. Therefore, I answer point no.3 is in negative. Hence in answer to point no.4, I pass following order.

ORDER

The application is rejected.

Date : 03.04.2025
Place : Wai.

(S. S. Palsule)
3rd Jt. C. J. J. D, Wai.