

MHST160003642021

**Order Below Exh. 5 in R.C.S. No. 64/2021.****(Shri.Shashikant Narayan Sonavane Vs.****Shri.Maruti Anna Sonavane & 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 defendant no.3 to restrain him from creating third party interest in the suit property or alienating the suit property.

**Admitted facts of the case in short as under:**

2. Defendant no.1 and predecessor of plaintiff were brothers. They had ancestral properties. Ancestral properties included landed properties, house properties and open spaces. Predecessor of plaintiff namely Narayan Anna Sonavane was died on 15.08.2020. On 05.07.1986 his wife namely Shantabai died in his lifetime. Narayan had two sons namely Shashikant and Bharat. Bharat is died. Defendant nos. 5 to 7 are legal heirs of Bharat. Defendant no.2 is son of defendant no.1. Defendant no.3 is defendant no.2's sister's husband.

**Case of plaintiff in short is as under:**

3. Suit is for declaration and perpetual injunction. The property bearing survey no. 135/1 having area 32 R, described in the para 2A and property described in para 2B of plaint situated at mouje Virmade, Tal-Wai, Dist.- Satara, of plaint, are the suit properties.

4. Plaintiff submitted that the partition took place between Narayan and defendant no. 1 in April 2009. Said partition took place before witnesses namely Vasant Sonawane and Vilas Sonawane. Said

partition took place by metes and bounds. The landed properties were divided between Narayan and defendant no.1. There was oral partition of house properties and open space. In that partition, survey no.135/1 was given to the share of Narayan. Narayan had possessed the suit property described in para 2A of plaint. After death of Narayan, suit property is possessed by plaintiff. There is no concern of anyone except plaintiff, to suit property.

5. According to plaintiff, there was partition tipan (स्मरणार्थ टिपण) of oral partition. Said partition tipan (स्मरणार्थ टिपण) is under the name of consent letter. It was written on 05.09.2009. According to that partition survey nos. 172, 151, 147, 147/1A and 135/1 were allotted to the share of Narayan. Similarly, village panchayat properties nos. Survey nos. 440,40,47,21,18 and 42 except koularu (कौलारू) house in the property no.42 were allotted to the share of Narayan. Survey nos.124, 181, 279 and 133 were allotted to the share of defendant no.1. Similarly, village panchayat properties nos. 8, 27, 48 and 42 also house in property no.42 were allotted to the share of defendant no.1. But it was inadvertently written in consent letter that survey no.134. Survey no.134 was not of Narayan or defendant no.1. Narayan and defendant no.1 had possessed properties as per said partition. Village panchayat property no.50 was kept in joint possession of plaintiff and defendants.

6. Plaintiff further contended that, partition tipan (स्मरणार्थ टिपण) was written in the year 2009. Witnesses namely Narayan, Maruti, defendant no.2 and Vasant Sonawane signed the said partition tipan (स्मरणार्थ टिपण) . Narayan and defendant no.1 had paid the tax for the properties which allotted to their shares. Defendant no.1 has sold

house properties no.27 and 6, which allotted to the share of him, to Arun Sonawane and Navnath Kumbhar. This fact discloses the partition took place between plaintiff and defendants. Plaintiff possessed suit property after death of Narayan. Plaintiff has harvesting crops like soyabean etc. The relation between Narayan and defendant no.1 was good. Hence, the entries according to partition tipan (स्मरणार्थ टिपण) could not be taken to the record of suit properties. Defendant no.2 took disadvantage of this situation. Therefore plaintiff has issued notice to defendant no.1 on 25.05.2019 through Ld.advocate U.H.Sanas. Similarly plaintiff had filed Caveat in Wai Court. But defendant no.1 did not give any reply to this.

7. According to plaintiff he got knowledge that defendant no.1 will create third party interest in the suit properties. Hence, plaintiff has given paper notice in daily newspaper Punyanagari on 01.10.2013. After said notice defendant no.1 gave assurance that he will not alienate the suit property. In order to obstruct the plaintiff, defendant no.1 to 3 in consonance with each other alienated the suit property described in para 1B on 28.01.2021. Said deed is registered. Therefore plaintiff has filed this suit for declaration that deed dated 28.01.2021 is not binding upon him. Similarly for perpetual injunction that not to alienate the suit property. According to plaintiff, he has prima-facie case, balance of convenience is in his favour. Hence, plaintiff prayed for temporary injunction.

**Case of defendant in short is as under:**

8. Defendant no.3 has filed his say at exh.21 and opposed the contention of plaintiff. He contended that the partition between Narayan and defendant no.1 was took place on 13.12.1989.

Said partition was admitted to Narayan. Therefore he gave an application to Talathi for entry of his name to the suit property. As per that application half share of suit property was given to father of plaintiff and remaining half share was given to defendant no.1. The mutation entry no.2344 was allowed on 18.01.1990 to that effect. Said entry is confirmed till today. There is no objection or complaint against said mutation entry filed by plaintiff or his predecessor. Plaintiff and defendant possessed the said properties vide partition in the year 1989.

9. According to defendant the partition did not take place in the year 2009. Plaintiff took signature of defendant on blank paper and misused it. If the partition took place and partition tipan (स्मरणार्थ टिपण) was written then it must be registered. Said partition tipan (स्मरणार्थ टिपण) was not registered. Therefore the partition did not take place according to plaintiff. The plaintiff shown consent letter as partition tipan. Therefore said consent letter is not a partition tipan (स्मरणार्थ टिपण). Suit property was not given to Narayan in oral partition. Plaintiff did not cancel or try to cancel mutation entry no.2344.

10. Defendant further contended that he did not know the paper notice in daily newspaper Punyanagari dated 01.10.2013. Plaintiff did not file the suit against defendant in the year 2013. This fact discloses that plaintiff has no concern to suit property.

11. According to defendant no.3 the sale deed executed by defendant no.1 was due to education of children, illness and economic necessity. Therefore defendant no.1 sold suit property to defendant no.3 and given possession of same. Plaintiff did not take

objection for this. Hence plaintiff has no concern to the suit property. The defendant no.3 has possessed the suit property till today. Plaintiff has no prima facie case. Balance of convenience does not lie in favour of plaintiff. If temporary injunction is allowed then there is irreparable loss cause to plaintiff. Defendant will not get any income from suit property. He become insolvent. Hence the application deserves to be rejected.

**12.** 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 ?	Yes.
2.	Whether balance of convenience lies in favour of plaintiff?	Yes.
3.	Whether plaintiff will suffer irreparable loss, if injunction is refused?	Yes.
4.	What Order ?	Application is allowed.

**13.** Plaintiff has filed following documents.

1. Mouje Virmade, Tal.Wai, Dist.Satara – 7x12 extract of Gat no.135/1- Exh.8.
2. Xerox copy of consent letter of Plaintiff and defendant – Exh.3/1.

3. Xerox copy of consent letter of Plaintiff and defendant – Exh.3/2.
  4. Xerox copy of Notice sent to defendant through advocate by Plaintiff's father Late Narayan – Exh.3/3.
  5. Xerox copy of Notice acknowledgment – Exh.3/4.
  6. Xerox copy of Caveat application – Exh.3/5.
  7. Xerox copy of acknowledgement – Exh.3/6.
  8. Dainik Punyanagari paper notice – Exh. 3/7.
  9. Notice sent to defendant no.1 through advocate – Exh. 3/8.
  10. Acknowledgment of notice – Exh. 3/9.
  11. Bhuinj Police Station F.I.R. no.654/2020 against defendant no.2 – Exh. 3/10.
  12. Bhuinj Police Station F.I.R. no.558/2019 against defendant no.2 – Exh. 3/11.
  13. Xerox copy of Complaint C.R.No.764/2019 – Exh.3/12.
  14. Xerox copy of Private complaint filed in Wai Court – Exh.3/13.
  15. Certified copy of registered Sale-deed – Exh. 3/14.
  16. Two Tax receipts - Exh.3/15.
  17. Two Tax receipts - Exh.3/16.
  18. Two Tax receipts - Exh.3/17.
  19. Three Tax receipts – Exh. 3/18.
- 14.** Defendant has filed following document -
1. Xerox copy of Mouje Virmade, Tal.Wai, Dist.Satara mutation entry no.2344 Exh.49/1.

### **REASONS**

#### **Point Nos.1 to 3 :**

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

16. Ld. Advocate of plaintiff in his argument submitted that according to plaintiff, he has possessed whole suit property. But according to defendant, plaintiff and defendant have  $\frac{1}{2}$  shares in the suit property. According to plaintiff, the partition of suit properties took place in the year 2009. According to defendant, partition took place in the year 1989. Hence, there is dispute when partition of suit properties took place.

17. He further submitted that there is no evidence regarding partition in the year 1989. Mutation entry no.2344 is admitted by the plaintiff. But from that entry it cannot be decide the right, title and interest of plaintiff and defendants in the suit properties. Said mutation entry cannot decide whether partition took place or not. At Exh.49/1, there is mutation entry no.2344. The plaintiff and defendant have half shares in the suit property according to that entry. But there is no document regarding partition in the year 1989.

18. Ld. advocate of plaintiff has argued that in the sale-deed which is at Exh.3/14, it was not mentioned that partition took place. There is no evidence to show that half share towards east-west given to plaintiff, defendants. The suit property is given to plaintiff. Plaintiff has given paper notice in daily newspaper. In this situation defendant no.3 has purchased suit property. Hence how he bonafide purchaser of suit property.

19. Ld. Advocate of plaintiff further argued that, plaintiff has filed tax and fee receipts of suit properties nos. 440, 21, 40, 42 and 50. Said receipts are at Exh.3/15, 3/16, 3/17, 3/18 and 3/19. Hence, plaintiff has prima-facie case.

20. Ld. Advocate of plaintiff has relied upon following authorities -

***1. Dalpat kumar V/s Pralhad Singh, 1993 (SC) 276***

I have gone through the authority. Hon'ble Apex Court observing prima facie case.

***2. Madhu V/s Laxman 2008 (5) Mh.L.J. 680.***

I have gone through the authority. Hon'ble Court observed mutation entry is correct or not. But at this stage this authority will not be applicable. It will be decided at proper stage.

21. Per contra Ld. advocate of defendant has argued that it is taking into consideration that whether plaintiff is in possession of suit property or not. Suit property is not owned by sole plaintiff. The mutation entry no.2344 took place in the year 1989. Said entry did not cancel. It must be cancelled. The name of defendant entered to half share of suit property. There is bar of estoppel.

22. Ld. advocate of defendant further argued that the document regarding partition in the year 2009 is illegal. There is no evidence regarding partition of village panchayat properties. Said document is not registered. Similarly, defendant no.3 is bonafide purchaser. He has purchased the suit property after making enquiry. If injunction is allowed then irreparable loss caused to defendant no.3.

**23.** On perusal of record of the case prima-facie, it is seen that at exhibit 8, there are names of plaintiff and defendant no 1. Plaintiff and defendant admitted that partition took place. But there is dispute when partition took place. The fact of partition is matter of evidence. The documents on record shows that there is no name of defendant no.3 at Exh.8.

**24.** It is also seen that; plaintiff has produced on record document regarding alienation of suit properties. On perusal of record of the case, plaintiff has filed paper notice dated 29.09.2021. Said notice is at Exh.3/7. Partition took place or not will 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.

**25.** Plaintiff contended that defendant no.3 is not bonafide purchaser. Whether defendant no.3 is bonafide purchaser or not, will be decided at trial.

**26.** 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.

**27.** From above discussion it is seen that, despite paper notice issued by plaintiff, defendant no.3 has purchased the suit property. Similarly, defendant no.3 is not co-sharer or co-owner of suit property. Hence, it would proper to allow this application to restrain alienation of the suit property.

28. Considering above discussion, I answer point no.1 and 2 is in affirmative. Similarly, I answer point no.3 is in affirmative. In answer to point no.4, I pass following order.

**ORDER**

1. The application is allowed.
2. Defendant no.3 or any person on his behalf is temporarily restrained from alienation of the suit property till conclusion of the suit.
3. Cost in cause.

Date : 01.10.2024

Place : Wai.

(S. S. Palsule)  
3<sup>rd</sup> Jt. C. J. J. D. Wai.