

**ORDER BELOW EXH. 05 IN R.C.S. NO.45/2018**  
**CNR No.MHST160005082018**  
**(PASSED ON 05/07/2019)**

This is an application filed by plaintiffs for temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure (In short 'C.P.C') for restraining the defendant from alienating the suit property or creating third party interest therein.

**02) The case of plaintiffs in short is as under:-**

The land Gat No.1125 situated at Surur, Tal.Wai Dist-Satara and land Gat No.348 situated at Mohodekarwadi, Tal. Wai Dist-Satara is the subject matter of present suit. (Hereinafter these properties shall be referred as 'suit property' for the sake of convenience and brevity)

**03)** The plaintiffs have submitted that the suit properties were originally owned and possessed by Vaghu Mahar. He had one son namely Jayram who is the grandfather of plaintiff No.1. Jayram had two sons namely Dadu and Babu. Dadu died in the year 2001 while his wife died in the year 1994. Babu is also died. Dadu has 3 sons namely Krishna (Plaintiff No.1), Vishnu (died) and Suresh (died). Plaintiff No.1 is son of Dadu and plaintiff No.2 is the son of deceased Vishnu. The plaintiffs submitted that father of plaintiff No. 1 namely Dadu and his uncle Babu had  $\frac{1}{2}$  share each in the suit property. The name of Dadu was entered in the revenue record of suit property as a joint family manager in the year 1945. The plaintiffs further submitted that they have undivided share in the suit property. However, the father of plaintiff No.1 has sold suit property to the defendant in the year 1982 behind the back of plaintiff. He also submitted that the defendant was serving in the 'Mantralaya' and therefore, she had undue influence upon

father of plaintiff No.1. She got executed the sale deeds by playing fraud. The plaintiffs came to know about the said alienation in the month of June 2015. Therefore, now the plaintiffs have filed the present suit for declaration that the sale deeds executed by the father of plaintiff No.1 in favour of defendant are not binding upon the plaintiffs. The plaintiffs have also prayed for recovery of possession and injunction to restrain the defendant from alienating the suit property. By filing this application, the plaintiffs have prayed for temporary injunction to restrain the defendant from alienating the suit property or creating third party interest therein.

04) The suit summons is duly served to the defendant. She appeared and filed her written statement at Exh. 24.

**05) The case of defendant in short is as under-**

The defendant submitted that she was well acquainted with the father of plaintiff No.1. He was in need of money and therefore, he offered to sell suit property to the defendant. Thereafter, said Dadu obtained the permission from the Sub-Divisional Officer for alienation of the suit property because those properties were of Mahar Vatan. After getting the permission, the said Dadu executed sale deed Nos.869/1982 and 970/1982 in favour of defendant. Thereafter, the mutation Entry No.1458 and 1459 are sanctioned in favour of defendant. Since the date of sale deeds, the defendant is in possession of the suit property. Therefore, all the legal formalities have been followed by the defendant at the time of purchasing the suit property. The defendant further submitted that the deceased Dadu or Babu did not challenge the sale deeds during their lifetime. The plaintiffs were well acquainted with the

alienation of the suit property. Therefore, the suit is time barred. She submitted that plaintiffs have filed present suit with intent to harass her. Hence, she prayed for rejection of the application.

**06)** Considering the rival pleadings and on hearing both the sides, following points arise for my determination. I have recorded my findings thereon with reasons as under :-

	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1)	Whether the plaintiffs prima facie show that they have rights or interest in the suit property?	<b>“In the Negative”.</b>
2)	Whether plaintiffs would suffer irreparable loss if their prayer for temporary injunction is refused?	<b>“In the Negative”.</b>
3)	Whether the balance of convenience lies in favour the plaintiffs?	<b>“In the Negative”.</b>
4)	What order?	<b>“Application is Rejected”.</b>

### **REASONS**

#### **AS TO POINT NOS. 1 TO 4 :-**

**07)** In support of his contentions, the plaintiffs have produced on record the following documents.

<b><i>Sr. No.</i></b>	<b><i>Description</i></b>	<b><i>Exh.</i></b>
1.	7/12 Extract of Gat No.1125	Exh.13
2.	7/12 Extract of Gat No. 348	Exh.14
3.	Mutation Entry No.1459	Exh.36/1
4.	Copy of judgment in RTS Appeal No. 36/2017.	Below Exh.8
5.	Mutation Entry No. 4537	Below Exh.8

<b><u>Exh.05</u></b>	<b>4</b>	<b><u>RCS No.45/2018</u></b>
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6.	Mutation Entry No. 1458	Below Exh.8.
7.	The application filed by Babu filed in the office of Sub-Divisional Officer dated 13/07/1977.	Below Exh. 27.

08) The defendant has produced on record the following documents-

<i>Sr.No.</i>	<i>Description</i>	<i>Exh.</i>
1.	The copy of sale deed No.969/1982 dated 14.06.1982	Below Exh.30
2.	The copy of sale deed No.970/1982 dated 14.06.1982	Below Exh.30
3.	Copy of permission granted by Sub-Divisional Officer, Mahabaleshwar, Division-Wai dated 08.04.1976.	Below Exh.30
4.	Copy of permission granted by Sub-Divisional Officer, Mahabaleshwar, Division-Wai dated 03.06.1976.	Below Exh.30
5.	Challan dated 27/03/1974.	Below Exh.30
6.	Challan dated 21/01/1976.	Below Exh.30
7.	7/12 extract of Gat No. 1125	Below Exh.30
8.	7/12 extract of Gat No. 348	Below Exh.30

09) I heard the learned advocate for plaintiffs Shri.R.R. Sangaliker and learned advocate Smt. M.S.Sawant for the defendant. The learned advocate for the plaintiffs has also submitted the written notes of argument at Exh.28. The sum and substance of oral as well as written argument of the plaintiffs is that the suit properties were originally owned by Jayram. Jayram had 2 sons namely Dadu (father of plaintiff No.1 ) and Babu (died). After the demise of Dadu, the plaintiffs have become the owners of the suit property. They have submitted that Dadu and Babu each have ½ share in the suit property, but deceased

Dadu had alienated the whole suit property in favour of defendant. The deceased Dadu has no right or authority to sell the share of his sons or brother. Therefore, the sale deeds executed by Dadu in favour of defendant are null and void and those are not binding upon the plaintiffs. It is also argued that mutation Entries taken on the basis of sale deeds are also illegal. They have also argued that the defendant has fraudulently obtained the sale deeds and therefore, both the sale deeds are not binding upon the plaintiffs. They submitted that they have become the owners of the suit property by succession. Hence, if the defendant alienates suit property, then it will create multiplicity of the proceeding. Hence, it is urged that the defendant must be restrained from alienating suit property or creating third party interest therein.

**10)** The learned advocate for the defendant has also submitted the written notes of argument at Exh.31. The sum and substance of the argument of the defendant is that the deceased Dadu was the 'Karta' of his family and he had alienated the suit property to the defendant for legal necessity and after obtaining necessary permission from the concerned authority. It is also argued that neither Dadu nor Babu challenged the sale deeds during their lifetime. The plaintiffs were having knowledge of sale deeds and therefore, now, they cannot challenge those alienations. Hence, it is argued that the suit is barred by limitation. It is argued that the defendant has become lawful owner and possessor of the suit property on the basis of sale deeds. Therefore, if she is restrained from alienating the suit property then there will be unnecessary restraint upon rights of defendant. Hence, defendant prayed for rejection of the application.

11) In this suit, it is not disputed by the defendant that the suit property was originally owned by Jayram. It is admitted fact that Jayram died on 20/07/1945. It is also admitted that the original Survey numbers have been renamed as Gat Nos.1125 and 348. Moreover, Jayram had two sons namely Dadu and Babu is also admitted fact.

12) The defendant has pleaded that Dadu has alienated the suit property for legal necessity. After the death of Babu, Dadu would have become joint family manager of the family of plaintiffs. This fact reflects from mutation entry No. 1459 dated 14/08/1946. It is settled position of Law that the 'Karta' has power to alienate joint family property for the purpose of legal necessity or welfare of the family or benefit of estate. The alleged alienation took place in the year 1982. The plaintiff No.1 was major in the year 1982. Moreover, the application for getting the permission to alienate the suit property was filed in the Office of Sub-Divisional Officer. The said application was processed and permission has been granted to deceased Dadu to alienate suit property. At the time of granting such permission, the title of the concerned person must have been verified. Therefore, it prima facie appears that the Sub-Divisional Officer had verified the title of deceased Dadu and granted permission to alienate the suit property. The receipts dated 21.01.1976 and 27.03.1974 shows that deceased Dadu has paid the necessary amount in the Treasury as per Order of granting permission to alienate suit property. Therefore, it appears that in the year 1976, the process for alienation was started and the actual sale deeds were executed in the year 1982. The plaintiff No.1 being the son of Dadu must be prima facie said to have knowledge of such events. Therefore, the contention of the plaintiffs that they did not have knowledge of alienation cannot be prima

facie accepted.

**13)** As said earlier, deceased Dadu appears to be 'Karta' of the family. He has power of alienation. He has also applied for getting permission to alienate the suit property. All these events does not show that there was any fraud played upon deceased Dadu. It is pertinent to note that neither deceased Dadu nor deceased Babu challenged the alienation during their lifetime. Moreover, the copy of sale deed dated 14.06.1982 prima facie shows that property was sold for legal necessity. Moreover, the plaintiffs would have protection under section 52 of the Transfer of Property Act, 1882. In this situation, I come to the conclusion that plaintiffs have no prima facie interest or right in the suit property. Therefore, the question of balance of convenience and irreparable loss will not arise. Hence, I answer point Nos.1 to 3 in the negative and in answer to point No. 4, I proceed to pass the following order-

**ORDER**

1. The application (Exh.05) is rejected.
2. The costs shall be cost in main cause.

**Date : 05/07/2019**  
**Place-Wai**

**( D. R. Mali.)**  
**2<sup>nd</sup> Jt. Civil Judge, Junior Division,**  
**Wai.**