MHST170006612024

ORDER BELOW EXH.55 IN R.C.A. NO.53/2024
(CNR No.MHST170006612024)
Sampat Ingale & Ors. Vs. Kisan Ingale & Ors.)

The present application is filed by Respondent No. 3 against Appellant Nos. 1A, 2A, 3, 4, 14, and 15 for the grant of temporary injunction. The suit property was initially described as Survey No. 484, measuring about 1 Hectar 33 R. However, during the pendency of Regular Civil Suit No. 105 of 2007, the description of the property was changed and is now recorded as follows:

Sr.No.	Survey Number	Area (Hectare R)
1	484-1	0H 25R
2	484-2	0H 28R
3	484-3	0H 20R
4	484-4	0H 20R
5	484-5	0H 20R
6	484-6	0H 20R

These properties are hereinafter referred as the “suit properties” for the sake of convenience.

2. The case of Respondent No. 3, in brief, is that the suit property is belonging to the Hindu joint family of the common ancestor, Nana, who had two sons, namely, Ramachandra and Hariba. The appellants trace their branch from Ramachandra, whereas the respondents trace their lineage from Hariba. During the lifetime of Ramachandra, his eldest son was recorded as the manager of the joint family. Upon the demise of Ramachandra, the name of his eldest son, Sahebrao, came to be recorded as the manager of the said joint family.

3. It is further the case of the respondent No.3 that Sahebrao was politically active and his brother, Respondent No. 2, was serving as a Talathi in the Revenue Department. Being well-versed with the laws and revenue records, they, taking undue advantage of their position and influence, caused their names to be entered in the record of joint family properties. Thereafter, they instituted a suit in the Court at Dahiwadi, being Regular Civil Suit No. 53 of 1983. The judgment and decree passed therein came to be challenged by way of Regular Appeal No. 149 of 1998. Said appeal, however, was compromised between the parties, and pursuant thereto, partition of the joint family property was effected as per the terms of compromise.

4. The respondent No.3 submits that Survey No. 484, which belongs to the joint family estate, was not included in the earlier litigation and compromise due to oversight. The said land, however, is in the possession of the respondents, who are entitled to ½ share therein. The appellants, despite such entitlement and possession, have been causing obstruction to the peaceful enjoyment of the property by the respondents. It is further contended that in similar circumstances, the learned Trial Court has previously granted temporary injunctions in favour of the respondents.

5. The respondent No.3 further alleges that the appellants, without notice to or consent of the respondents, the appellants have unauthorisedly divided the suit property into five parts and are trying to raise construction at convenient places thereon. Such acts, if allowed to continue, would result in irreparable loss to the respondents and would complicate the adjudication of rights in the pending proceedings.

6. It is, therefore, the case of the respondent No.3 that the balance of convenience clearly lies in his favour. The appellants, on the contrary, would not suffer any prejudice if restrained from dealing with the property during the pendency of the proceedings. In these circumstances, the respondent No.3 has prayed for an order restraining Appellant Nos. 1A, 2A, 3, 4, 14, and 15 from alienating the suit property, from dispossessing or ousting the respondents therefrom, from raising any construction thereon, and from changing the nature or character of the suit property in any manner whatsoever.

7. The appellants have filed their reply at Exh. 57 and have denied every material allegation contained in the application. At the outset, it is contended that the present application is not maintainable in law. The genealogy set out by the respondents is not in dispute, and it is admitted that Nana was the common ancestor of the parties. However, the appellants denied that the suit property is joint family property. It is their specific case that Ramachandra, who was in service, bought the property out of his own independent earnings and that the same was never bought for or on behalf of the Hindu joint family.

8. It is further contended that partition of the ancestral and other properties of the family had already been effected in the year 1966. Notwithstanding the said partition, the respondents instituted Regular Civil Suit No. 53 of 1983 for partition, which came to be dismissed. In appeal, being Regular Appeal No. 149 of 1988, the matter was compromised between the parties and partition was effected in terms of such compromise. Thereafter, all the parties have

been in separate and exclusive possession of their respective shares and properties as per the said compromise.

9. The appellants submit that despite the said compromise and settlement, the respondents have filed yet another false and vexatious proceeding, being Regular Civil Suit No. 105 of 2007, raising claims which are barred and untenable. The appellants point out that Ramachandra passed away on 30/10/1972 and Hariba expired on 10/06/1979. After their demise, the names of their respective legal heirs were duly entered in the record of rights. At that time, the respondents did not raise objection to such entries. The respondents were always fully aware that the property in question was the self-acquired property of Ramachandra, which is why the same was not included in the earlier partition suit or compromise.

10. The appellants further contend that the property has since been lawfully subdivided into six parts, after following due legal procedure. The subdivision so effected was challenged by the respondents before the competent land records authorities, but their challenge was rejected and the entries in favour of the appellants were upheld. It is therefore asserted that the appellants are in valid and lawful possession of the property.

11. The appellants deny that the respondents will suffer any irreparable loss in the absence of an injunction. On the contrary, the respondents have failed to prove any prima facie case in their favour. The balance of convenience also rests with the appellants, who are in settled possession and whose rights stand recognised in law. The respondents, having suppressed material facts and not having approached the Court with clean hands, are not entitled to any equitable relief.

12. In view of the foregoing reasons, the appellants have prayed that the present application be rejected with costs.

13. Upon considering the application, the reply, the documents placed on record, and the submissions advanced by both the learned advocates, the following points arise for my determination, along with my findings thereon for the reasons to follow:

	POINTS.		**FINDINGS**
01]	Whether the respondents have proved a prima facie case?	:	In the affirmative.
02]	Whether the respondents would suffer irreparable loss if temporary injunction is refused?	:	In the affirmative.
03]	In whose favour does the balance of convenience lie?	:	In favour of respondents
04]	What order?	:	The application is allowed as per final order.

R E A S O N S

As to point No.1: -

14. The respondents have asserted that the suit property, originally Survey No. 484 measuring 1 Hectare 33 R, forms part of the ancestral joint family estate of the parties and was inadvertently left out of earlier proceedings. They claim entitlement to 1/2 share therein and complain that the appellants, without notice or consent, have subdivided the property and are trying to raise construction. Conversely, the appellants contend that the property was the self-

acquired property of Ramachandra, bought out of his independent earnings, and was therefore never part of the joint family assets. They rely upon the partition of 1966 and the compromise in Regular Appeal No. 149 of 1988, asserting that the respondents' claim is time barred.

15. On consideration of the record, it is pertinent to note that the learned trial court, after full-fledged trial, has already adjudicated the dispute and decided that Block No. 484 is ancestral property belonging to the joint family of appellants and respondents and liable to be partitioned. The findings so recorded are on merits and will hold the field unless proved to be perverse at the stage of final hearing of the present appeal. The burden, therefore, lies on the appellants to prove such perversity to succeed in dislodging the decree passed by the learned trial court.

16. Learned Advocate for the appellants has relied upon the decision in ***T.A. George and Another v. D.D.A. and Others, reported in AIR 1995 Delhi 131***, wherein it has been held that all three criteria, namely (i) existence of a prima facie case, (ii) likelihood of irreparable loss or injury, and (iii) balance of convenience, must co-exist and be satisfied by the party claiming the equitable relief of injunction. In the present case, however, on consideration of the pleadings, documents on record, and the findings recorded by the learned trial court in the suit, it is clear that the respondents have made out a prima facie case. The judgment of the trial court has already determined the property as ancestral and liable to partition, though the effect and operation of the decree is stayed. If the appellants are permitted to alter the

nature of the property in the meantime, the respondents would suffer irreparable loss, which cannot be compensated in terms of money. Furthermore, the balance of convenience also lies in favour of protecting the subject matter during pendency of the appeal. Therefore, applying the test laid down in T.A. George (supra), it is evident that all three ingredients stand satisfied in favour of the respondents, thereby justifying grant of temporary injunction.

17. The learned Advocate for the appellants has further relied upon the judgment in ***Suresh D. Singhvi v. Mohsinali H. Merchant, reported in 1981 Mh.L.J. 276***, wherein it has been observed that the grant of an injunction is a serious matter and that the Court must exercise due caution, granting such equitable relief only in cases where it is essential. It was further held that the party claiming injunction must clearly establish that it would suffer immediate and irreparable injury if such protection is not granted.

18. However, applying this test to the present case, it is evident that the respondents have demonstrated that the appellants have already initiated steps to subdivide the property and to raise construction thereon. If the appellants are not restrained at this stage, the respondents' share in the property, which has been judicially recognised by the decree of the learned trial court, would be seriously jeopardised and rendered illusory. Such an injury would be immediate and irreparable, as alteration of the nature of immovable property during pendency of litigation cannot be adequately compensated in money.

19. Thus, even on the touchstone of the ratio in Suresh D. Singhvi (supra), the respondents have succeeded in establishing that interim protection is essential and justified in order to safeguard the subject matter of the litigation until final adjudication.

20. The learned Advocate for the appellants has further relied upon the judgment of the Hon'ble Supreme Court in ***Mandali Ranganna and Others v. T. Ramachandra and Others, reported in AIR 2008 Supreme Court 2291***, wherein it has been held that:

> *"21. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz. existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.*
>
> *22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not, however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on*

the part of the courts is imperative. Contentions raised by the parties must be determined objectively."

21. Applying the above principles to the case in hand, it is evident that the respondents have not remained silent or acquiesced in the dealings of the appellants with the property. On the contrary, they had earlier filed proceedings for partition, and in the present litigation also they have promptly asserted their rights in respect of Block No. 484, which the learned trial court, after adjudication on merits, has declared to be ancestral property liable to partition. The fact that the appellants have proceeded to subdivide and attempt to alter the nature of the property, despite pendency of litigation, itself justifies the grant of protective orders. Therefore, the conduct of the respondents cannot be said to disentitled them from equitable relief. On the other hand, to maintain balance and safeguard the subject matter, it is necessary that the current status of the property be preserved until the final decision of this appeal.

22. At this interlocutory stage, it would not be proper to hold that the property prima facie is the self-acquired property of Ramachandra. Nor can the appellants be said to have discharged the heavy burden that lies upon them to rebut the presumption in favour of the findings already recorded by the learned Trial Court. Thus, the respondents have shown a prima facie case in their favour, sufficient to justify interim protection. Accordingly, Point No. 1 is answered in the affirmative.

As to Point No. 2 –

23. The respondents have pointed out that the appellants, during the pendency of proceedings, have subdivided the suit property into parts and are attempting to alter its physical nature by raising construction. Such actions, if allowed to continue, would frustrate the decree already passed by the trial court and would complicate the adjudication in this appeal. The resultant injury would be of a nature that cannot be compensated by damages or restitution, as the identity and utility of the property would stand irreversibly altered.

24. It is further material to note that though this Court has stayed the decree of the learned trial court on the appellants' application, such stay does not amount to setting aside the decree, but only suspends its operation pending appeal. To preserve the subject matter intact and to avoid irreparable harm to the respondents, the property must be maintained in the same condition during pendency. Thus, Point No. 2 is answered in the affirmative.

As to Point No. 3 –

25. The appellants contend that they are in lawful possession, that the subdivision has been effected in accordance with law, and that the respondents' claim is barred. However, in view of the determination by the learned trial court that Block No. 484 is ancestral property, the balance tilts in favour of protecting the respondents' asserted rights. The effect and operation of that decree has been stayed. Still, the very fact of stay indicates that the suit property must be maintained in status quo until the appellate Court finally adjudicates the correctness of the findings.

26. If the appellants are permitted to alienate or alter the property during pendency, the respondents' rights under the decree may be rendered illusory. Conversely, if an injunction is granted, the appellants will not suffer irreparable prejudice, as their possession is not disturbed, but only regulated. Thus, in order to maintain equilibrium and to ensure that the subject matter is preserved, the balance of convenience is clearly in favour of the respondents. Accordingly, Point No. 3 is answered in favour of the respondents.

27. In view of the above discussion and findings, it becomes necessary to direct that the present condition of the suit property be maintained by the appellants until the final disposal of this appeal and the appellants must be restrained from ousting the respondents from the suit property.

ORDER

1. Application at Exh.55 is allowed.

2. The appellant Nos.1A, 2A, 3, 4, 14 and 15 or their servants, agents or anyone on their behalf are directed not to oust respondent No.3 from Survey No.484(old) and Survey Nos.484/1, 484/2, 484/3, 484/4, 484/5, 484/6 (new) till final disposal of this appeal.

3. The appellant Nos.1A, 2A, 3, 4, 14 and 15 or their servants, agents or anyone on their behalf are directed not to alienate the from Survey No.484(old) and Survey Nos.484/1, 484/2, 484/3, 484/4, 484/5, 484/6 (new) by any

means and not to construct thereon or change the nature thereof till final disposal of this appeal.

4. Cost of this application will follow in main cause.

VIDYADHAR BHARGAVRAM KAKATKAR

Digitally signed by VIDYADHAR BHARGAVRAM KAKATKAR
Date: 2025.10.06 11:39:51 +0530

Vaduj
Date:24.09.2025

(Vidyadhar B. Kakatkar)
District Judge-1 Vaduj

C E R T I F I C A T E

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

(S.A. Pawar)
Stenographer