

**REGULAR CIVIL SUIT NO.28/2020**  
CNR No.MHST180000122020  
**Dadaso Sartape Vs. Maruti & ors**

**ORDER BELOW EXH.5**

The plaintiff has preferred an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for temporary injunction against defendant no.1 to 8 and 15 to 18 in respect of land Gat No.148 old survey no.70A/3 admeasuring 4 Hectare 11 R out of total area 12 Hectare 14 R situated at village Vaki Tal.Man Dist.Satara. [hereinafter referred as 'suit property'].

02. It is the contention of plaintiff that the suit property is ancestral and re-granted property of plaintiff and defendant no.9 to 12. It is his contention that the defendant no.1 to 8 have got executed sale deed dt.17/6/1981, 18/8/1988, 16/8/1988 and 15/3/2011 by playing fraud on father of plaintiff. It is his contention that the sale deeds are executed without prior permission of competent authority and the said sale deeds are void ab initio. Now, the defendant no.1 to 8 and 15 to 18 are causing obstruction to the possession of plaintiff on the basis of alleged false bogus sale deeds. The defendants are trying to create third party interest over the suit property. Accordingly, plaintiff is claiming temporary injunction against defendant no.1 to 8 and 15 to 18 from restraining them to create third party interest over suit property and restraining them to cause obstruction to their possession till disposal of suit.

03. The defendant no.1 to 8 and 15 to 18 have failed to file their say, therefore, the application is proceeded “without say” against them.

04. The defendant no.13 and 14 have filed their written statement cum say at Exh.20 and resisted the application.

05. Following points arise for my determination along with my findings thereon for the reasons stated herein below :-

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1	Does plaintiff prove that he is having prima-facie case ?	Partly yes
2	Does plaintiff prove that balance of convenience lies in his favour ?	Partly yes
3	Does plaintiff prove that he will suffer irreparable loss, if the temporary injunction is not granted in his favour ?	Partly yes
4	What order ?	As per final order

### **REASONS**

#### **AS TO POINT Nos. 1 to 3 :-**

06. Heard learned Advocate P.S. Godase for the plaintiff at length.

07. Considering the submission of learned Advocate for the plaintiff and on perusal of documents on record, it prima facie shows that the suit property is ancestral property of plaintiff and defendant no.9 to 12. On perusal of photo copy of sale deed dt.17/6/1981, it shows that the father of plaintiff and others have executed sale deed of land Gat No.148 admeasuring 4 Hectare 41 R in favour of defendant no.1 and 2. Thereafter, the defendant no.1 and 2 have executed sale deed dt.16/8/1988 in favour of the plaintiff. After that, on 18/8/1988 the plaintiff has executed sale deed in favour of defendant no.3 to 7 and after that defendant no.8 has executed sale deed

dt.15/3/2011 in favour of defendant no.3 to 7 in respect of suit property. But, on perusal of contents of above said sale deeds, it shows that they have not obtained prior permission. The plaintiff has challenged said sale deed in Review Application No.110/2016 as per Sec.258 of Maharashtra Land Revenue Code, 1966 and the review application was allowed and mutation entry no.767 stand cancelled. But, the defendant no.1 to 8 and 15 to 18 have not disputed this fact by filing their written statement. At this stage, there is nothing on record to show that there was partition between plaintiff and defendant no.9 to 12. In other words, prima facie the plaintiff is having undivided share in the suit property. It shows that plaintiff has succeeded to prove that he is having prima facie case in his favour.

08. So far as relief of creating third party interest over the suit property is concerned, the plaintiff is having prima facie case in his favour therefore, the balance of convenience lies in his favour. So far as irreparable loss is concerned, there is nothing on record to show that the defendant no.1 to 8 and 15 to 18 are going to create third party interest over the suit property. However, the possibility of creating third party interest over the suit property at the hands of these defendants cannot be ruled out. At this stage, protection provided under Section 52 of the Transfer of Property Act would not be an adequate relief to protect interest of plaintiff. If injunction is not granted then plaintiff will suffer irreparable loss as compared to defendant no.1 to 8 and 15 to 18.

09. So far as relief of restraining to cause obstruction is concerned, the plaintiff has come with the case that he is in possession of the suit property. Plaintiff has not pleaded specifically on which date defendants have caused obstruction or threat to cause obstruction to his possession over

the suit property. Therefore, at this stage, plaintiff is not entitled for the relief of restraining defendants to cause obstruction to his possession.

10. Considering above discussion, I answer point no.1 to 3 in the partly affirmative and pass following order to point no.4 :-

**ORDER**

1. The application Exh.5 is partly allowed.
2. The defendant no.1 to 8 and 15 to 18 are hereby temporarily restrained from creating third party interest over the suit properties till disposal of the suit or further order.
3. Costs in the main cause.

Vaduj  
Dt. 12<sup>th</sup> June, 2023

(Manoj C. Nepte)  
Jt. Civil Judge Senior Division, Vaduj