



Order below Exh.5 in SPL.C.S. No.504/2023

The present application has been filed by the plaintiffs for temporarily restraining defendant Nos.1 to 3 from causing obstruction to the joint possession of the plaintiffs in the suit property and not to create third party interest in the suit property till final disposal of the suit under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure.

2. Perused the application and say of other side. Heard learned advocate of both the sides.

3. After going through the record, following points arise for my consideration and I record my findings thereon for the reasons mentioned there under :-

<u>Sr. No.</u>	<u>Points for consideration</u>	<u>Findings</u>
1)	Whether the plaintiffs have a <i>prima-facie</i> case ?	No.
2)	Whether the <i>balance of convenience</i> lies in favour of the plaintiffs ?	No.
3)	Whether <i>irreparable loss</i> would be caused to the plaintiffs, if application is rejected ?	No.
4)	What order ?	The application is rejected.

REASONS

4. It is the contention of the plaintiffs that they have filed

the present suit for partition, declaration and injunction. Defendant No.1 is father of the plaintiffs and defendant No.2 is a step mother. Defendant No.3 is a step brother of the plaintiffs. The property bearing Survey No.164/2 and 159/3 were given to the share of father of defendant No.1 i.e. Maruti Shivram More as per registered partition deed dated 20.06.1986. Thereafter, the property bearing Survey No.159/3 was exchanged with property bearing Survey No.209/6. The suit properties are ancestral properties of defendant No.1. The plaintiffs are having birth right in the suit properties. Mother of the plaintiffs died in the year 1988. Thereafter, defendant No.1 married with defendant No.2. The partition by metes and bound is not effected between the plaintiffs and the defendants.

5. Defendant No.1 sold the suit property bearing Survey No.164/2 admeasuring 0 H 64.33 R to defendant Nos.4 and 5 by executing a sale-deed dated 02.09.2021. The consent of the plaintiffs has not been obtained by the defendants for executing the said sale-deed. The said sale-deed is not binding on the share of the plaintiffs. The plaintiffs are having 1/2 share in the suit property. The plaintiffs sought partition of the suit properties. However, the defendants refused to make partition.

6. Defendant Nos.1 to 3 are trying to avoid the share of the plaintiffs in the suit properties. There is possibility that defendant Nos.1 to 3 will transfer the suit properties to third party by taking undue advantage of the name of defendant No.1 in the revenue record. There is no partition between the plaintiffs and the defendants. Therefore, defendant Nos.4 and 5 do not have any right to cultivate the suit property bearing Survey No.164/2. The plaintiffs

are having a prima facie case. The principles of balance of convenience and irreparable loss are in favour of the plaintiffs. Therefore, they prayed that the application be allowed.

7. Defendant Nos.2 to 5 filed their say vide Exh.30 and denied all the adverse allegations made against them in the application. It is the contention of the defendants that the plaintiffs did not mention the four boundaries of the suit properties and therefore, the property cannot be identified. The suit is not properly valued. The plaintiffs and the defendants are having immovable properties at Mumbai and Pune. However, those properties were not made suit properties in the present suit. Those properties were purchased from joint nucleus. Therefore, the suit is barred by the principle of non-joinder of necessary properties. Defendant No.1 had Cancer. The earning of defendant No.1 from the service was not sufficient to take treatment of Cancer disease. Further, defendant No.1 was retired from the service. Therefore, defendant No.1 sold the suit property bearing Survey No.164/2 for legal necessity i.e. to take treatment of Cancer disease. Defendant Nos.4 and 5 are the bonafied purchasers of the suit property. The possession of the suit property is given to defendant Nos.4 and 5 on 03.09.2021. The plaintiffs do not have a prima facie case. Further, the principles of balance of convenience and irreparable loss are in favour of the defendants. Therefore, they prayed that the application be rejected.

As To Point Nos.1 to 3 :-

8. It is the case of the plaintiffs that the suit properties are ancestral properties of the plaintiffs and defendant Nos.1 to 3. The partition by metes and bound has not been effected between them.

Therefore, defendant No.1 has no right to sell the suit properties to defendant Nos.4 and 5. The plaintiffs sought relief of temporary injunction for restraining defendant Nos.1 to 3 from causing obstruction to the joint possession of the plaintiffs and the defendants over the suit properties. However, it is settled position of law that one coparcener cannot seek injunction against another coparcener. Possession of one is possession of all. Each coparcener has right over every inch of the property. Therefore, I hold that temporary injunction cannot be granted against defendant Nos.1 to 3 from causing obstruction to the peaceful possession of the plaintiffs over the suit properties.

9. The Ld. advocate for the defendants placed his reliance on the following authorities :-

- 1] **Kehar Singh (D) Thr. Lrs. & Ors. Vs. Nachittar Kaur & Ors., reported in AIR 2018 SC 3907;**
- 2] **Hardeo Rai Vs. Sakuntala Devi And Others, reported in AIR 2008 SC 2489;**
- 3] **Padmawati And Ors. Vs. Kulwant Rai And Ors., reported in AIR 2008 (NOC) 1805 (P & H.);**
- 4] **Prakash S. Akotkar And Others Vs. Mansoorkha Gulabkha And Others, reported in AIR 1996 Bombay 36.**
- 5] **Sushil Kumar & Anr. Vs. Ram Prakash & Ors., reported in AIR 1988 SC 576;**
- 6] **Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde, reported in 2008(2) Mh.L.J. 819.**

10. Upon meticulous reading of the above citations, it appears that the facts in those authorities are altogether different than the case in hand. Therefore, with respect to the authorities cited supra, I am of opinion that those are not applicable to the case in hand.

11. The plaintiffs further contended that there is possibility that defendant No.1 is going to sell the suit properties by taking undue advantage of his name in the revenue record. However, defendant No.1 is dead and therefore, no question of taking undue advantage arises. Further, the plaintiffs had submitted that the application vide Exh.5 may be heard alongwith the final hearing of the suit. Therefore, the application was kept on record to decide it alongwith the suit. Later on, they have pressed the present application without setting aside the said order. It prima facie shows that the application vide Exh.5 cannot be considered at this stage. Therefore, I am of opinion that the plaintiffs have failed to prove that they have a prima facie case. The principles of balance of convenience and irreparable loss becomes redundant as the plaintiffs failed to prove a prima facie case. Hence, I answer point Nos.1 to 3 in the negative.

As To Point No.4 :-

12. Therefore, I am of opinion that the present application is liable to be rejected. The suit is at preliminary stage. Therefore, I am not inclined to impose the costs. Hence, in answer to point No.4, I pass the following order :-

ORDER

- (1) The application (Exh.5) is hereby rejected.
- (2) No order as to costs.

Date:- 02.09.2025
Wai.

(A. A. Pacharne)
Jt. Civil Judge Senior Division,
Wai.