

ORDER BELOW EXH. 21
IN REG. CIVIL SUIT NO. 60/2018

1. This is an application made under Order-39, Rule-1 of the Code of Civil Procedure, 1908 [In short '**the CPC**'] seeking temporary injunction against the non-applicant/plaintiff restraining him from creating any right, title or interest by transferring or alienating the suit property or any portion thereof, till the disposal of the present suit.

2. It is submitted that since applicants/defendants No.1 to 5 have filed their written-statement along with the counter claim for partition and separate possession of half share of the applicants/defendants in the suit property with this application and since the matter is subjudice before this court, it is prayed that non-applicant/plaintiff may be restrained from transferring the suit properties.

3. The non-applicant/plaintiff submitted his reply to his application below Exh.23 saying that the averment in the counter claim is the subject matter of evidence and therefore it cannot be decided at pre-mature stage.

4. Read the application and say. Heard learned counsel for plaintiff. Despite the presence of applicant/defendants and their counsel no argument was advance from their side. Specific direction to argue was given on previous date. Since, this application was pending

since long, it is taken for order considering this application as their oral argument.

5. Perused documents produced on record. The following points are necessary to be considered. They are answered with reasons as below:

	<u>POINTS</u>		<u>FINDINGS</u>
1]	Whether the plaintiff has prima-facie case ?	:	No
2]	Whether the balance of convenience lies in favour of plaintiff ?	:	No
3]	Whether the plaintiff would suffer irreparable injury, if the injunction prayed is not granted?	:	No
4]	What order ?	:	As per final order.

=REASONS=

POINT NOS. 1 TO 3 :

6. All three points are inter linked. Hence, they are taken for discussion together.

The averment made in the original suit relating to the relations between the parties and how the suit properties came in possession of the mothers of both applicants/defendants and non-applicant/plaintiff. In support of this application, no document is filed on record. However, non-applicant/Plaintiff has produced certain documents below Exh.4 with this suit. Out of those documents,

documents No.8 & 12, which are 8-A extracts with respect to property No.40, 84 & 135; documents No.9, 10 & 11, which are 7/12 extracts of property No.40, 84, 135; and copy of Adhikar Abhilekh Panji, shows mutation of names of non-applicant/plaintiff and his brother Ramdas on the basis of the Will.

7. The names of both the parties are appearing on the copies of 7/12 extracts and gaon-namuna-8 with respect to properties No.40, 84 and 135. Their names are appearing jointly in these documents. The document on i.e. Adhikar Abhilekh Panji listed at document No.31, prima-facie shows the mutation on the basis of will dated 03/06/1930. However, the document appears to be a xerox copy on which the contents are not legible to understand the exact meaning behind it.

8. On the basis of documents, what prima-facie appears at this stage is that both non-applicant/plaintiff and applicants/defendants have their name in the records of government relating to the suit properties. The copy of government records with respect to the suit properties prima-facie shows that both the parties jointly own the suit properties. When, the government record prima-facie shows this then, as per the settled principle of law, injunction cannot be granted against the co-owner. Shares are not appearing to have been divided between plaintiff and defendants. When the shares are undivided, the other person cannot be restricted to enjoy the whole property. Things would have been different if it would have been appeared on record that both

parties have their separate shares over the suit properties.

9. Even otherwise the suit is subjudice before this Court, where the suit properties are the subject matter of disputes. Therefore, section 52 of the Transfer of Property Act would automatically come into play and make invalid any transfer with respect to the present suit properties.

10. For all the discussion made above at this stage, this court is not convinced as to the averment made in counter claim regarding fraud. On the basis of the government record, it appears prima-facie that both are in possession of the suit properties. On the basis of this applicants/defendants do not have a prima-facie case at this stage unless they proves which they assert. Therefore, in view of the prayer made, this court has come to the conclusion that when there is no prima-facie case then balance of convenience and irreparable loss do not arise. Accordingly, points No.1 to 3 are answered in negative and in answer to point no.4 the following order is passed.

- ORDER -

The application is rejected.

Cost in main cause.

Sd/-

Seloo.

Date : 14/08/2019

[Enna Vijay Dhande]

Joint Civil Judge,
Junior Division, Seloo.