

ORDER BELOW EXHIBIT -5

1. The Plaintiff has made this application for grant of temporary injunction restraining defendants from alienating the suit property during pendency of suit.

2. The plaintiff has come with the case that the deceased Narayan Vyavahare was the owner of the agricultural field bearing S. N. 49 (As per Bandobast) S. N. 242 (as per accumulation) admeasuring 3.90 HR mauza Rahati, Taluka Karanja (Gh.) Distt. Wardha and the House bearing No. 50 admeasuring 184.01 sq. m. Situated at ward no. 2, Mauza Rahati, taluka Karanja (Gh.), Distt. Wardha. Plaintiff and defendants are legal heirs of the deceased Narayan. Plaintiffs sisters Rajni and Pushpa have relinquished their share in the suit property. The suit property is the self-acquired property of the deceased Narayan and the plaintiff has 1/3 share in the suit property. The plaintiff has apprehension that defendants may alienate or transfer the suit property. He is having prima facie case, the balance of convenience is in his favour. He will suffer irreparable loss, if the injunction is not granted in his favour. He prayed that defendant be restrained from alienating the suit property till disposal of the case.

3. Defendant no. 1 to 9 have filed their written statement at Exh. 33. They contended that the plaintiff is not the real brother of the deceased Ramkrishna. Laxmibai was the first wife of the deceased Narayan and Sakhubai was his second wife. The plaintiff is the son begotten from Laxmibai. The defendant no. 7 to 9 are heirs

of brother of the plaintiff namely Tanaji. Ramkrushna is the son begotten from Sakhubai. The defendant no. 1 to 6 are heirs of deceased Ramkrushna. The suit property is the joint family property of the parties and yet not partitioned between parties. Pushpa and Rajni have not relinquished their right in the suit property. Therefore Rajani and heirs of Pushpa are necessary parties to the suit. The plaintiff has not brought other joint family properties in common hot-potch. The suit is not within limitation. He prayed that the suit and the application of the plaintiff be dismissed.

4. From the rival submission, the following points arises for my determination, the points along with my findings thereon are as under:

<u>S.No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiff has made out a prima facie case in his favor?	...Yes
2)	In whose favor the balance of convenience lies?	...Yes
3)	Whether the plaintiff will prove that, he will suffer irreparable losses if the order of injunction is not granted?	...Yes
4)	What Order?	Application is allowed

REASONS

As to Point No. 1 to 3 :

5. Thd Leaned Adv. Yedalwar for the plaintiff submitted that as per contention in the application. He submitted that there is

chances of alienation of suit land by defendants. He relied on :

6. Per contra learned Adv. Dharskar submitted that no case that the defendants are trying to alienate the suit property. Moreover, in case of transfer of the suit property, section 52 of the Transfer of Property would be applicable. The prima facie case, irreparable loss and balance of convenience are not in favour of the defendants. No case is made out to grant temporary injunction in favor of the plaintiff. He prayed that the application be rejected.

7. I have considered argument advanced by the Learned Adv. Yedalwar and Learned Adv. Dharskar. I have gone through the rulings cited by the plaintiff. I have also gone through the pleadings of both parties and documents filed by them.

8. In ***Prakash Gobindram Ahuja vs. Ganesh Pandharinath Dhonde 2016 (6) Bom. C. R. 262***, it is held that, "In normally, if all three ingredients i.e., prima facie case; of irreparable loss and balance of convenience are satisfied, applicability of section 52 of T.P. Act cannot take away power of Court to grant temporary injunction. Provisions of section 52 cannot act as a further hurdle in plaintiffs seeking relief of injunction. While exercising discretionary powers, Court can always come to a conclusion, in particular facts of given case, that in view of provisions of section 52, equitable relief of temporary injunction need not be granted. However, calling upon plaintiff in each and every case to further satisfy Court in addition to aforesaid three ingredients, to show that provisions of section 52 of T.P. Act do not offer adequate protection is to read something, in Legislation or settled law, which is not there. Everything must

depend on facts and circumstances of each case and no general rule can be laid down.

9. In *Maharwal Khewaji Trust Vs. Baldev Dass* 2005 *AIR(SC) 104*, it is held that, "Unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings."

10. In *Lasmanrao Mahadeo Nikose Vs. Narayan Mahadeo Nikose & ors.* 2015 (1) *All.M.R. 278*, it is held that, "settled position of law is that partition is not barred under Order 23, Rule 1 as cause of action for it is recurring one."

11. The present application of the plaintiff is supported by his affidavit. In support of his contention he relied on documents filed alongwith Exh. 4. The plaintiff has filed 7/12 extract and 8A extract of the suit property. It bears name of the plaintiff, deceased Ramkrishna and defendant no. 7 to 9. Moreover, the defendants have not denied that the suit property is the joint family property and yet to be partitioned. Therefore the prima facie case is in favour of the plaintiffs.

12. Definitally, in case if the suit property is transferred, loss would be cause to them. Per contra, it is not the case of the defendant that they would suffer loss, if the temporary injunction is granted in plaintiff's favour. In such circumstances, balance of

convenience is in favour of the plaintiffs. Hence I answer point no.1 to 3 in the affirmative.

As to Point no.4 :-

13. As discussed above, the plaintiff has proved prima facie case in his favor. He also proved that irreparable loss would be cause to him, if the injunction is not granted. Further the balance pf convenience is in favour of the plaintiffs. Hence, the application of the plaintiff is entitled to be allowed. So far as cost of this application is concerned, it will be just and proper to adjust the same at the time of adjudication of the suit. Hence, for the reason I record my findings for point no. 4 and pass the following order:

O R D E R

1. The plaintiff application is allowed.
2. Defendants are temporarily restrained from alienating or transferring or creating third party interest in the suit property, till the decision of the suit.
3. Costs on cause.

Date :- 13/03/2020

(M. M. Alone)
Civil Judge Junior Division,
Karanja (Gh.)