

ORDER BELOW EXHIBIT-5 IN Spl.C.S. No.02/2017

This application is filed by the plaintiffs for the following reliefs –

- i) to restrain defendant Nos.1 & 2 from creating third party interest in the suit land ;
- ii) to restrain defendant No.2 from transferring Indica Vista Car (of Tata Motors) bearing registration No.MH-29/R-4092 and to restrain her from creating hurdle in the use and possession of it by the plaintiffs till the decision of the suit ;
- iii) to restrain defendant Nos.4 & 5 from transferring compensation amount of Rs.28,77,300/- to defendant No.2 for acquisition of 0.04 Are land Gut No.152, situated at Nagartas, Taluka Malegaon, District Washim, till the decision of the suit ;
- iv) to restrain defendant Nos.6 to 8 by order of temporary injunction from creating third party interest in the suit land and to restrain them from causing interference in possession of the plaintiffs over the suit land ;
- v) to restrain defendant No.2 from using and spending compensation amount of Rs.28,77,300/- till partition and apportionment of compensation or in alternative to direct her to deposit the same in this Court.

2. It is the case of the plaintiffs that defendant No.1 is their father, defendant No.2 is their mother and defendant No.3 is their sister. There were disputes in between defendant Nos.1 & 2. Hence, defendant No.2 is residing at her parental house as per her will.

Defendant No.1 has inherited agricultural land and other movable & immovable properties from his ancestors. From the income of the ancestral properties, defendant and the plaintiffs have purchased another agricultural land and other assets. Thus, the properties purchased by them are joint family properties. Those properties are not partitioned in between the plaintiffs and the defendants by metes and bounds. Properties are still joint and defendant Nos.1 & 2 are enjoying the same. Plaintiffs are deprived of their valuable rights to enjoy those properties.

3. It is further asserted by the plaintiffs that their family is having agricultural land Gut No.282, to the extent of 2 Hectares 80 Are, Gut No.286, to the extent of 56 Are, both situated at Davha, Taluka Malegaon, District Washim and land Gut No.152, to the extent of 1 Hectare 1 Are, situated at Nagartas, Taluka Malegaon, District Washim (hereinafter to be referred to as the suit lands). Land Gut No.152 is ancestral and joint family property. Defendant No.2 got prepared a sale deed in respect of land Gut No.152 by exerting pressure on the family members. Defendant No.2 is suffering from mental disorder. Defendant No.1 was under an impression that her behaviour would change upon the execution of sale deed in her name. Hence, he has executed a sale deed in her favor to avoid the family dispute. Said sale deed of land Gut No.152 was nominal, without consideration and possession was not handed over to her. However, she mutated her name in the record of rights. After registration of the sale deed dated 08.10.2015, defendant No.2 left the house in the month of May-2016 and went to her parental house and since then residing there. Land Gut No.152 is in possession of defendant No.1. He

has cultivated and sown the said land in this year.

4. It is further asserted by the plaintiffs that the said sale deed is nominal and hence it is necessary to challenge it. Defendant No.1 alone was not the owner. Plaintiffs have not consented for the execution of the sale deed. Said land is ancestral and joint family property. Hence, the said sale deed is not binding upon the plaintiffs. They are the joint owners.

5. It is further asserted by the plaintiffs that their family member have purchased the above mentioned Tata Indica Vista Car in January-2010 from Vinayak Jatal in the name of defendant No.2 from common funds of the family of the plaintiffs. Said car is in use and occupation of plaintiff No.1. He has paid the installments of the said car. Plaintiffs are having apprehension that defendant No.2, by taking undue advantage of the fact that the car is standing in her name, may transfer the said car illegally. It is therefore necessary to restrain her.

6. It is further asserted by the plaintiffs by way of amendment of the plaint that defendant Nos.4 & 5 have initiated the acquisition proceeding for expansion of National High Way 161. Defendant No.4 has passed an Award and thereby granted Rs.28,77,300/- as compensation for 0.04 Are land of Gut No.152. Plaintiffs have raised objection before him on 22.02.2019 and requested him to withheld the compensation. It is therefore necessary to restrain defendant Nos.4 & 5 from disbursing compensation amount to defendant No.2.

7. It is further asserted by the plaintiffs by way of amendment of the plaint that defendant No.2 is not having any right, title or interest to receive compensation of Rs.28,77,300/-. However,

defendant No.5 has capriciously and arbitrarily transferred the said amount to defendant No.2 even though he was fully aware that there is a dispute in between the plaintiffs and defendant No.2 in respect of the same. Defendant No.5 transferred the amount when the matter was under consideration before the High Court in Writ Petition No.5371 of 2019. Both the plaintiffs are jointly having $\frac{1}{2}$ share in the compensation.

8. It is further asserted by the plaintiffs by way of amendment of the plaint that defendant No.2 has executed registered sale deed dated 17.03.2021 in favor of defendant Nos.6 to 8. Said sale deed is illegal and null & void. Possession was not transferred to defendant Nos.6 to 8. Defendant No.2 was not absolute owner and thus she was not entitled to alienate the land. Previous sale deed was nominal and the same is under challenge in this suit. Plaintiffs have registered a plaint before the Sub-Registrar and complied the provisions of Section 52 of the Transfer of Property Act. Defendant Nos.6 to 8 were aware of the present suit. Still they got executed the sale deed and hence the same is illegal and not binding upon the plaintiffs.

9. It is further asserted by the plaintiffs that they are having a *prima-facie* case. They will suffer irreparable loss, if the temporary injunction is not granted. Balance of convenience lies in their favour. Hence, the application.

10. Defendant No.1 has filed the reply cum written statement (Exh.47). He has admitted the contents of paragraph Nos.1 to 13 by stating that it is a matter of record. Thus, he has admitted each and everything. With reference to paragraph No.14, he has stated that the

same needs to be decided as per law and evidence of the parties. In paragraph Nos.15 to 20 of his written statement, he has re-iterated the contents of the plaint. In addition thereto, he has stated that Gut No.152 is in joint possession of the plaintiffs and defendant No.1. He has closed his written statement without making any request to grant or not to grant the reliefs solicited by the plaintiffs.

11. Defendant No.2 has filed the reply cum written statement (Exh.9) and resisted the suit as well as the present application. She has not disputed the relation with the plaintiffs and defendant Nos.1 & 3. She has admitted that defendant No.1 has executed sale deed dated 08.10.2015 of land Gut No.152 in her favour. Likewise, she has admitted that 0.04 R Land of Gut No.152 was acquired by defendant Nos.4 & 5 and compensation was paid to her. Similarly, she has admitted that she has sold land Gut No.152 to defendant Nos.6 to 8. She has refuted all the adverse assertions of the plaintiffs. According to her, suit properties are not ancestral and joint family properties. Tata Indica Vista Car is not the property of joint family.

12. Defendant No.2 has further contended that she is the owner and possessor of land Gut No.152. Plaintiffs are not entitled for partition. Plaintiffs are not having share. They have instituted the suit in collusion with defendant No.1. She has purchased land Gut No.152 from defendant No.1 for consideration of Rs.8,00,000/- (Eight Lakhs Only) vide registered sale deed dated 08.10.2015. Since then, she is in possession of the same. She used to take coaching classes of tailoring. She also used to sell the products of Amway company. She was having Beauty parlor. Thus, she is having income from her business activities. She has purchased land Gut No.152 from her own income and from the

amount obtained by her from her mother and brother. Thus, land Gut No.152 is her self acquired property.

13. It is further contended by her that plaintiff No.1 is married. His behaviour was not proper with her. He many times assaulted her in presence of defendant No.1. Wife of plaintiff No.1 used to provoke him. Plaintiff No.1 and his wife have compelled her to leave the house. Offences have been registered against plaintiff No.1 in Police Station. He used to demand money from her, and upon her refusal, he used to beat her.

14. It is further contended by her that she has entered into an agreement of sale of Gut No.152 with a person. She has obtained some amount as earnest money. Sale deed is to be executed after obtaining remaining amount. Plaintiffs have no locus and cause of action. Suit is false and frivolous. Same is liable to be dismissed. Ultimately, she has prayed for dismissal of the suit and the present application.

15. Defendant No.3 has filed her reply cum written statement (Exh.48). Her written statement is identical with the written statement of her father (defendant No.1).

16. Defendant Nos.6 to 8 have failed to appear. Hence, the suit proceeded *ex-parte* against them.

17. Defendant Nos.6 to 8 have filed their written statement (Exh.100) and resisted the suit. They have admitted the facts of alienation of Gut No.152 by defendant No.1 to defendant No.2 and by her to them. They have denied all the adverse assertions of the plaintiffs. According to them, suit properties are not ancestral and joint family properties of the plaintiffs. Plaintiffs have suppressed the

material facts from the court. Their pleading is contradictory.

18. Defendant Nos.6 to 8 have contended that they are the owners of land Gut No.152 the extent of 97 R. They have purchased the said land from defendant No.2 for consideration of Rs.58,00,000/- (Fifty Eight Lakhs Only) vide registered sale deed dated 17.03.2021. They are in possession of the said land since 15.03.2021. Their names have been recorded in the revenue record. Previously, it was owned and possessed by defendant No.2. She had purchased land Gut No.152, to the extent of 1Hectare 01 Are, from defendant No.1. It was self acquired property of defendant No.1. 0.04 Are land of Gut No.152 was acquired by the State for the expansion of Akola-Nanded Highway and compensation was paid to defendant No.2.

19. It is further contended by them that in the year 2021-22, they have sown the crop of *Soyabean* and *Tur* in the suit property. *Talathi* of village *Nagartas* has given certificate of cultivation to them. It shows that they are in possession of the suit property. Plaintiffs were never in possession of the suit property as per their pleading itself. Plaintiffs are not having any right, title or interest in the property purchased by defendant Nos.6 to 8 from defendant No.2. Defendant Nos.6 to 8 would suffer irreparable loss, if temporary injunction, is granted in favour of the plaintiffs. They are *bonafide* purchasers. They have paid huge amount as valuable consideration. Plaintiffs want to evict defendant Nos.6 to 8 from land Gut No.152 under the garb of the court's order. Ultimately, they have prayed for the dismissal of the suit as well as the present application.

20. Perused the record and proceeding. Heard both the sides.

The points that arise for consideration and my findings thereon together with the reasons are as follows :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiffs are having a <i>prima-facie</i> case ?	No.
2. Whether balance of convenience lies in favour of the plaintiffs ?	No.
3. Whether the plaintiffs will suffer an irreparable loss, if injunction is not granted ?	No.
4. What order ?	Application is rejected.

REASONS

AS TO POINT NOS.1 TO 3 :-

21. Both the parties to the suit have filed various documents, including the documents issued by the Revenue authorities, on record. Same shall be considered at appropriate stage.

22. As can be seen from paragraph No.1 of this order, plaintiffs have claimed five interim reliefs. Relief clause numbers (i) & (iii) have now become infructuous since defendant No.2 has already sold land Gut No.152 to defendant Nos.6 to 8 and since defendant No.5 has already paid compensation to defendant No.2. Now, clause numbers (ii), (iv) and (v) are required to be considered.

23. Before proceeding further, it may be noted that it is not disputed that both the plaintiffs are the sons of defendant Nos.1 & 2. Defendant No.3 is the sister of the plaintiffs. Execution of sale deed by defendant No.1 in favour of defendant No.2 and by her in favour of defendant Nos.6 to 8 is also not disputed. Plaintiffs have asserted that

the suit lands, including land Gut No.152, are their ancestral and joint family properties and that defendant No.1 was not having authority to alienate land Gut No.152 to defendant No.2. They have therefore prayed for the declaration that the sale deed executed by defendant No.1 in favour of defendant No.2 and sale deed executed by defendant No.2 in favour of defendant Nos.6 to 8 are not binding upon them. Relief of declaration can only be considered after the conclusion of final hearing of the suit. As of now, plaintiffs have prayed for restraining defendant Nos.6 to 8 from creating third party interest and from disturbing their possession over land Gut No.152. On the other hand, defendant Nos.6 to 8 have contended that it is evident from the pleadings of plaintiffs themselves that they are not in possession of land Gut No.152 and hence, they can not seek temporary injunction against them. Their further case is that they are in possession of land Gut No.152 as owners thereof.

24. Having considered the rival submissions advanced on behalf of the plaintiffs, defendant No.2 and defendant Nos.6 to 8, I find that the contention of defendant Nos.6 to 8 that the plaintiffs are not in possession of land Gut No.152 is not without merit. It has been rightly pointed out by the learned advocate representing defendant Nos.6 to 8 that the plaintiffs themselves have pleaded in paragraph No.2 of the plaint that the property is still joint in the plaintiffs & defendants and defendant Nos.1 & 2 are enjoying the same; they have pleaded in paragraph No.4 of the plaint that land Gut No.152 is in possession of defendant No.1; they have pleaded in paragraph No.9 of the plaint that land is in possession of defendant No.1 & he is reaping the crops from the suit fields. It is seen that the plaintiffs themselves have pleaded that

the suit lands, including land Gut No.152, are in possession of defendant No.1. It is true that by way of amendment of plaint, plaintiffs have pleaded that they are in joint possession of the suit lands. However, the fact remains as to when the possession of a single person has turned into possession of all the members of joint family.

25. Next point which is required to be considered is that husband (defendant No.1) has sold land Gut No.152 to his wife (defendant No.2). Generally, a wife is not in a dominating and commanding position. Defendant No.2 has filed various documents on record below list (Exh.12) to show that she is a working woman and that she is having source of income to purchase land Gut No.152. A perusal of the sale deed would show that defendant No.1 has sold it to her for consideration and handed over its possession to her on the date of the sale deed. Sale deed was registered. It is having presumptive value. Name of defendant No.2 was mutated in the Revenue record on the basis of the sale deed. Thus, the sale deed was acted upon. Moreover, defendant Nos.4 & 5 have passed an award in favour of defendant No.2 and paid compensation to her. This fact also goes in her favour and establishes that she has been recognized as the owner and possessor of land Gut No.152 by them. Plaintiffs have tried to take advantage of the order dated 10.05.2021 passed by Sub-Divisional Officer, Washim in an appeal filed by defendant No.2 against the plaintiffs whereby he has rejected her appeal and refused to direct the authority to take entry of her name in *Pere-Patrak*. A bare reading of the said order would show that the said appeal has not been decided on merit. It has been simply observed in the order that Special Civil Suit No.02/2017 is pending in the Court of Civil Judge Senior Division,

Washim and till its decision, entry of *Pere-Patruk* for the year 2017-18 is kept in abeyance. Hence, the said order does not advance the case of the plaintiffs. On the other hand, defendant Nos.6 to 8 have filed a certificate (*Dakhla*) issued by *Talathi Nagartas* whereby he has certified that defendant Nos.6 to 8 have sown *Soyabean & Tur* crops in land Gut No.152 in year 2021-22. In the circumstances, reliance placed upon the case of Baburao Nalwade Vrs. Tukaram Nalwade 2015(2) ALL MR 277 by the learned advocate representing the plaintiffs is misconceived. In the said case, long standing possession of the plaintiff was evident. However, in the case in hand, plaintiffs are not having any *prima-facie* proof of possession.

26. It may be noted that Indica Vista Car is in the name of defendant No.2. No material has been brought on record by defendant Nos.1 & 2 to grant the relief solicited by them in respect of the said car. They have also requested the court to restrain defendant No.2 from using and spending the compensation awarded to her by defendant Nos.4 & 5. It is relevant to note here that the issue of payment of compensation was carried by the plaintiffs to the High Court in Writ Petition No.5371 of 2019. Initially, the High Court has stayed the payment of compensation by an order dated 05.08.2019. However, the High Court was pleased to dispose of the said Writ Petition with liberty to the plaintiffs to avail the alternate remedy available to them under Section 3-G(5) [3-H(4)] of the National Highways Act. When defendant No.5 was about to make payment of the compensation to defendant No.2, plaintiffs have filed a Review Petition bearing Misc. Civil Application No.126/2021 before the High Court in Writ Petition No.5371 of 2019. However, no substantial relief was granted to them

by the High Court while disposing of the said application by an order dated 18.02.2021. Issue in that application was of the appropriate Section of the National Highways Act which is applicable to the case of the plaintiffs. Meanwhile, defendant No.4 has paid compensation to defendant No.2. In view of the chequered history of this case and in view of the fact that all the documents support the case of defendant No.2, I do not see any reason to restrain her from using and spending the compensation awarded to her by defendant No.5.

27. Insofar as the request of the plaintiffs to restrain defendant Nos.6 to 8 from creating third party interest in land Gut No.152 is concerned, it may be stated that *prima-facie* they appear to be *bonafide* purchasers. All the documents are in their names. In that view of the matter, I do not see any reason to restrain them, as prayed for, by the plaintiffs. It is pertinent to note that the documentary evidence support the case of defendant Nos.6 to 8. Whereas, no document advances the case of the plaintiffs. Their bald statement – contrary to the documents on record – cannot be accepted at this stage.

28. A bare reading of the documents, particularly, Mutation Entry Nos.458, 705 & 118 are sufficient enough to *prima-facie* contradict the case of the plaintiffs that they are defendant Nos.1 & 3 are the members of a joint family. Mutation Entry No.458 shows that land Gut No.152 was purchased by defendant No.1. By way of Mutation Entry Nos.705 & 118, defendant No.1 has shared land with his sons (plaintiffs Nos.1 & 2). Upon a consideration of all the attending circumstances, I find that no interim relief can be granted to the plaintiffs on the basis of vague and general statements. They have failed to make out a *prima-facie* case. Balance of convenience does not

lie in their favour. They will not suffer irreparable loss, if injunction is not granted. Hence, point Nos.1 to 3 are answered in negative. Resultantly, application stands rejected.

Date : 03.02.2022.

(S.K.Khan)
3rd Jt. Civil Judge (S.D.),
Washim.

“CERTIFICATE”

I affirm that the contents of this P.D.F. file Order are same word to word as per original Order.

Name of Stenographer : P.P.Sonune Stenographer (Grade-III)

Court & Judge Name : S.K.Khan,
3rd Jt. Civil Judge (S.D.) Washim.

Date of Order : 03.02.2022.

Order signed by the
Presiding Officer on : 03.02.2022.

Order uploaded on : 09.02.2022.