

ORDER BELOW EXH. 6
Passed On 29/03/2018

This is an application under Order XXXIX Rule 01 and 02 r/w section 151 of The Code of Civil Procedure, for grant of temporary injunction restraining defendant nos. 1 to 4 from alienating the agricultural to defendant no.5 or any other person till the disposal of the suit.

02. According to plaintiffs, they along with defendant no.6 are owners of agricultural land from S. No. 69/4 (old 25/4), area 0 H 87 R, rent 1.65 Rs. Situated at village Nimbi, bounded by Towards East- Agricultural land of Babar, Towards West- Agricultural land of Suresh Deshmukh, Towards- North- Agricultural land of Suresh Deshmukh and Towards South- Agricultural land of Yogaji Gawli. (same is hereinafter referred as **suit property** for convenience). According to plaintiffs, the suit property was owned by Mahadu Tukaram Babar, who was father-in-law of plaintiff no.1 and Grandfather of other plaintiffs. Mahadu Babar died on 08/07/1990. Thereafter, his wife inherited the suit property. Rangubai died on 29/06/1995. After the death of Rangubai, name of her Son namely Sheshrao Mahadu Babar had to be entered in the record of the rights. But father of defendant nos. 1 to 4 namely Chandrashekhar entered his name as the owner of the suit property by making collusion with concerned revenue

officer. Deceased Rangubai never executed any document in his favour in respect of the suit property.

03. Plaintiffs filed one application before the Talathi and prayed to enter their names as owners of the suit property. They also published one notice in the newspaper and declared that, any transaction about the suit property will not binding upon them. Defendant no.5 published one notice in the newspaper and declared that, he is going to purchase the suit property. Plaintiffs are owners of the suit property. Defendant nos. 1 to 4 are willing to sell the same. Suit property is ancestral property of plaintiffs and defendant no.6. Plaintiffs are having prima facie case. Balance of convenience lies in their favour. There will be irreparable loss to them if the application is not allowed. At the end plaintiffs have prayed to allow the application.

04. Defendant nos. 1 to 4 filed say at exhibit no. 24 and contested the application. They admitted their relationship with plaintiffs. They denied all other adverse allegations raised against them. In additional reply, they submitted that, Mahadu Tukaram Babar and Maroti Tukaram Babar were real brothers. Mahadu is the father-in-law of plaintiff nos. 2 to 4 and Maroti is the father-in-law of defendant nos. 1 to 4. Both of them had purchased 4 Acer 12 R land from S. No. 69/4 (old no. 25/4) from one Kondabai

for the consideration of Rs. 700/-. Thus both of them were joint owners of the same. Thereafter, Maroti obtained some amounts as hand loan from his brother i.e. Mahadu. He executed nominal sale deed of his share 2 Acer 6 R land (the suit property) in favour of Mahadu. Maroti had repaid the amount in the lifetime of Mahadu. But before cancellation of the nominal sale deed, Mahadu died. Plaintiffs have suppressed material facts from the Court. They are aware about the litigations about the suit property. Father of plaintiffs, Chandrashekhar executed one Will on 21/06/2006 in respect of the suit property. Plaintiff no.2 was witness to that Will. Therefore, he is well aware about the nature and status of the suit property. Plaintiffs are having possession of the property of Mahadu.

05. After the death of Mahadu, his wife Rangubai became the owner of the suit property. Rangubai executed one partition deed in favour of father (Chandrashekhar) of defendant nos. 1 to 4. By way of that partition dated 10/03/1988 Chandrashekhar become the owner of the suit property. After the death of Chandrashekhar, defendant nos. 1 to 4 are now owners of the suit property. Suit property is in possession of the family of defendant nos. 1 to 4 since 1963. Plaintiffs have never raised any objection about the ownership of defendant nos. 1 to 4. They have also not challenged any revenue entry. Defendant nos. 1 to 4 are

owners of the suit property. Plaintiffs are not having any prima facie case. Balance of convenience does not falls in their favour. There will be no loss to plaintiffs if the application is not allowed. At the end plaintiffs have prayed to reject the application. The application is proceeded ex-parte against defendant no.5.

06. Shri. Chavan, learned advocate for plaintiffs submitted that, sale deed executed by Maroti in favour of Mahadu was registered document. Partition deed dated 10/03/1988 is illegal. Gangubai was not having any right to execute partition deed. Ferfar is also bogus. Partition deed is of the year 1988 and ferfar is of the year 1980. It shows that, ferfar is bogus. We came to know about the suit property on 20/12/2017. On the other hand Shri. Raje, learned advocate for defendant nos. 1 to 4 submitted that, name of Chandrashekhar was entered on the basis of partition executed by Rangubai. Plaintiffs have not raised any objection since 10/03/1988. Plaintiff no.2 was witness to the Will executed by Chandrashekhar. He was well aware about the suit property. The application is malafide.

07. Considering the contents of the application and say, documents filed on record and rival arguments of both the parties, following points arise for my consideration. I have recorded my findings with reasons thereon as under.

Sr. no.	POINTS	ANSWER
1	Whether plaintiffs prove prima facie case in their favour?	No
2	Whether the balance of convenience is in favour of plaintiffs?	No
3	Whether there is any irreparable loss to plaintiffs, if the application is not allowed?	No
4	What order?	The application is rejected.

REASONS

Point no. 1, 2 and 3

08. For convenience, these three points are taken together for discussion. In the present case it is admitted fact that, defendant nos. 1 to 4 are having possession over the suit property. Relationship of the contesting parties is also not disputed. It is also not disputed that, defendant nos. 1 to 4 are intending to sale the suit property. Dispute is only about the ownership. According to plaintiffs they are owners of the suit property. In order to establish their case, they filed one ferfar of year 1963. Which shows that, Maroti Tukaram Babar had executed one sale deed in favour of Mahadu Tukaram Babar. Defendant nos. 1 to 4 admitted this fact in their say.

Plaintiffs have filed 7/12 extract of the year 1994-95 which is showing name of Rangubai as owner. Surprisingly plaintiffs have not filed current 7/12 extract of the suit property. The question arises as to why they have not filed the same, which can be easily available. Needless to say that, burden to establish prima facie ownership lies on plaintiffs.

09. On the other hand defendants have filed partition deed executed by Rangubai in favour of Chandrashekhar. Will executed by Chandrashekhar which his having signature of plaintiff no.2 as witness. 7/12 extract of the suit property filed by defendants shows names of defendant nos. 1 to 4 as owners. 7/12 extract is public document and is having presumptive value. Both the parties have filed various documents. But at this stage it will not be proper to express any opinion about the legality and relevancy of documents. At this stage prima facie opinion has to be formed. Defendant nos. 1 to 4 are having their names as owners of the suit property. Whether partition deed executed by Ragubai is legal or not, whether she was having any right to execute the same or not, these questions require detailed evidence. Hence, at this stage current entries in 7/12 extract will prevail. Shri. Chavan invited my attention towards copy of crops table of the year 1980. He submitted that, if Rangubai had executed partition in the year 1988 then how name of Chandrashekhar was entered in the year 1980. I have gone through the

document. I want to make here clear that, defendants are claiming ownership on the basis of partition deed. They have pleaded that, there family is having possession over the suit property in 1963. Crops table of the year 1980 is showing name of Chandrashekhar as cultivator and not as the owner. Therefore, this argument is not acceptable.

10. Copy of Will executed by Chandrashekhar shows that, plaintiff no.2 has signed the same as witness. The question is if the partition deed is illegal then why, plaintiffs were silent for such a long time. They could have raised objections earlier. How they came to know about their alleged rights in respect of the suit property in the year 2017, particularly when defendants are willing to sale their land. There is no explanation about this. Mere statement that, we came to know on 20/12/2017 is not sufficient.

11. Shri. Chavan, advocate for plaintiffs placed his reliance on the ratio laid down in **Vidyavati Vs. Sangita, 2015 (2) Mh. L. J. 660.** I have gone through the cited authority. Facts of the authority and present case are totally different. In the said case there was agreement to sale. For which huge amount of Rs. 1 crore was transferred. Considering the difference of facts of both the cases, with due respect to the ratio laid down in the cited authority, I held that the same is not useful for plaintiffs.

12. He further placed his reliance on Milind s/o Madhusudan Alsundekar Vs. Ajay s/o Prabhakar Rawat, 2016 (2) Mh. L. J. 656. In which temporary injunction was granted and defendant was restrained from creating third party interest in the suit property during the pendency of the suit. I have gone through the cited authority. In that case there was suit for specific performance of the contract. Substantial amount was paid by the plaintiff. The defendant was likely to create third party interest in the suit property. Hence, injunction was granted. In the present case there is no case of performance of the contract. Hence, with due respect to the ratio laid down in the cited authority, I held that the same is not useful for plaintiffs.

13. The plaintiffs have suppressed many facts of which they were aware. It appears that, they only wants to restrain defendants from selling the suit property. There is no prima facie proof of their ownership over the suit property. Considering the fact that, defendant nos. 1 to 4 are having their names as owners since long. There will be no inconvenience to plaintiffs. There will be no loss to plaintiffs if the application is not allowed. In fact, defendant nos. 1 to 4 will suffer the loss, if the application is allowed. From the discussion above I answer point nos. 1 to 3 in the negative.

Point No. 4

14. From the findings in negative to the points above, there is no parameter for grant relief of temporary injunction in favour of plaintiffs. Therefore, there is no point to grant the relief of temporary injunction in their favour. Cost of this application shall be cost in cause. In the result, I pass following order;

ORDER

The application is rejected.

Ad-interim injunction ,granted earlier is canceled.

Cost of this application shall be the cost in cause.

Pusad
Date : 29/03/2018

Anant Himmatrao Bajad
(6th Jt. C. J. Jr. Dn., Pusad)