

Order Below Exh.5
in
Special Civil Suit No.28 of 2025

Kailas Shankarrao Holkar] ... **Plaintiff**
vs.
Pravin Shankarrao Holkar & Ors.] ... **Defendants**

This is an application filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908.

2] The plaintiff has filed the suit for cancellation of the sale-deeds, declaration of right of preemption coupled with an injunction. The plaintiff has filed the suit in respect of the property bearing Gat No.115 adm. 5-H 29-R + *Potkharaba* 0-H 62-R s/a Lasalgaon, Tal. Niphad, Dist. Nashik. (Hereinafter referred to as the “suit property”).

3] The plaintiff and defendant No.1 Pravin Shankarrao Holkar are brothers *inter-se*. They were having ancestral property. The suit property is one of the property out of the ancestral property. Partition also came to be effected of the ancestral property. The suit property was divided / partitioned. The Eastern side portion came to the share of the plaintiff and the Western side portion came to the share of defendant No.1 Pravin Holkar adm. 2-H 64.50-R + *Potkharaba* 31-R, out of the total 5-H 29-R + *Potkharaba* 62-R. The suit property was equally distributed / divided. The plaintiff further pleaded that, defendant No.1 Pravin Holkar was about to dispose of the land bearing Gat No.114.

4] The plaintiff objected by paper publication dtd. 20/02/2024 in a local Daily Deshdoot. It was replied by defendant No.1 Pravin Holkar through legal advisor on 04/04/2024 and informed that, the Visar Pawati came to be executed on 17/01/2024. The plaintiff replied to it on 12/04/2024 and claimed preferential right

to purchase. Thereafter, the plaintiff expressed his wish to purchase the land bearing Gat No.114 through the notice dtd. 12/04/2024 and to execute the sale-deed. However, there was no any further discussion or interaction between them in this regard.

5] It is pleaded that, the plaintiff came to know about transaction of the suit property. Accordingly, the registered agreement to sell came to be executed on 13/09/2024 by defendant Nos.1 and 2 in favour of defendants No.6 to 11. On this information the plaintiff issued the notice in a local Daily Deshdoot on 03/10/2024 and objected for execution of the registered sale-deed on the basis of the agreement to sell. The purchasers were also informed in this regard on 02/10/2024.

6] It is pleaded that, the defendants though having knowledge of the objection and the right claimed still registered sale-deed came to be executed on 02/12/2024. Apart from this, defendant No.1 Pravin Holkar applied for measurement of the suit property fabricating his signature. The plaintiff objected the measurement as he had not consented and accordingly provided the information to the concerned land record office. The deep emotions of the plaintiff are attached to the ancestral property. Therefore, very much interested in purchasing the same from defendant No.1 Pravin Holkar and accordingly time to time informed defendant No.1 Pravin Holkar. Still without prior notice or information to the plaintiff defendant No.1 Pravin Holkar entered into the agreement to sell and subsequently executed the sale-deeds. The defendants are not the *bona fide* purchasers, as they were aware about objection and the right of preemption as claimed by paper publication. Hence, cause of action arose to sue.

7] Defendants No.1 to 5 resisted the suit by filing written statement vide Exh.88 and denied the averments of the plaint in toto. They pleaded that, the plaintiff has no concern with the suit property. The partition was effected in the year 2004, as such defendant No.1 Pravin Holkar became absolute owner. He has every right to deal / dispose of the property came to his share in the partition. Moreover, the sale transaction executed for the purpose of family need. The defendants are the adjacent land owners. They were interested in purchasing the suit property. Therefore, after due deliberation it was sold under the registered sale-deed. The plaintiff has no locus to claim preferential right. Accordingly, prayed for dismissal of the suit and rejection of the application.

8] Defendants No.6 to 8 resisted the suit by filing written statement vide Exh.89 on the ground that, the suit is not tenable. The plaintiff has no right to claim preferential right to purchase the suit property. The suit is filed suppressing the material facts. The plaintiff has not come before the Court with clean hands. The plaintiff has no right to claim equitable relief. The defendants being *bona fide* purchasers have gone through the revenue record in respect of the ownership and title of defendant No.1 Pravin Holkar, entered into the transaction. The defendants on the basis of the sale-deed became owner of the suit property. The revenue record reveal possession and ownership of the defendants. Accordingly, prayed for dismissal of the suit and rejection of the application.

9] In view of the pleadings, following points arose for determination and I record my findings thereon with reasons stated there below :-

Sr. No.	<u>Points</u>	<u>Findings</u>
1]	Whether the plaintiff has made out <i>prima-facie</i> case ?	No
2]	Whether the balance of convenience lies in favour of the plaintiff ?	No
3]	Whether the plaintiff will suffer irreparable loss or injury, if temporary injunction is refused ?	No
4]	What order ?	As per final order

Reasons

10] The plaintiff in support relied upon the following documents vide list Exh.3, Exh.81 and Exh.91 *viz.*

- 1] Copies of the 7/12 extracts of Gat Nos.115 and 114
- 2] Public Notice in Daily Deshdoot, dtd 20/02/2024
- 3] Copy of the notice
- 4] RPAD receipt
- 5] Postal Acknowledgment receipt
- 6] Copy of the notice reply
- 7] Copies of the agreement to sell
- 8] Paper publication notice in Daily Deshdoot
- 9] Copy of the notice
- 10] Copies of the sale-deeds
- 11] Copy of the FIR

12] Postal receipt

13] Postal record

14] Copy of the complaint to the Niphad Police Station

15] Copy of the application for the measurement

11] Defendants No.1 to 5 in support relied upon the following documents vide list Exh.93 viz.

1] Certified copy of the order in the Case No.2 of 2004

2] Copy of the Ferfar Entry No.512

3] Certified copy of the application in Vahivat Case No.18 of 2008

4] Certified copy of the spot inspection panchanama in Vahivat case No.18 of 2008

5] Copy of the evidence affidavit of the plaintiff in Vahivat Case No.18 of 2008

12] Defendant No.10 in support relied upon the following documents vide list Exh.66 viz.

Copies of the 7/12 extracts of Gat Nos.40, 113, 114, 115 and 205

13] Heard the Lrd. Counsel Shri. S. Y. Bagade for the plaintiff, the Lrd. Counsel Shri. A. K. Bhosale for defendants No.1 to 5 and the Lrd. Counsel Shri. U S. Kadam for defendants No.6 to 12.

As to Points No.1 to 4 :-

14] In view of the submissions and the pleadings, apparently the suit property was the ancestral property. The partition was effected. The suit property was originally admeasuring 5-H 29-R + Potkharaba 0-H 62-R and it was partitioned equally between the

brothers *inter-se* i.e. the plaintiff and defendant No.1 Pravin Holkar. Thereafter, the names entered into the revenue record as per the partition.

15] Moreover, the sale-deeds came to be executed on 13/09/2024. Admittedly, the suit came to be filed after execution of the sale-deeds. No doubt, prior to that plaintiff after execution of the sale-deeds, had published objection on 20/02/2024 in a local Daily Deshdoot. It was replied by defendant No.1 Pravin Holkar. Thereafter the sale-deeds came to be executed. The sale-deeds executed in seven numbers. The agreement to sell are in six numbers. The defendants / purchasers are the family members. The sale-deeds executed as per their agreement with defendant No.1 Pravin Holkar.

16] Apart from this, the proceeding U/Sec.5 of the Mamlatdars' Court Act, 1906 was initiated against defendant No.1 Pravin Holkar by the plaintiff in respect of the access from the Western side of the suit property. The proceeding resulted in favour of the plaintiff as well the revision preferred by defendant No.1 Pravin Holkar came to be dismissed. The respective parties filed on record the documents i.e. agreement to sell, sale-deeds and the partition U/Sec.85 of the Maharashtra Land Revenue Code, 1966, the mutation entry, 7/12 extract etc.

17] On this background it is to be noted that, the plaintiff claiming preferential right to purchase the suit property being brother of defendant No.1. Moreover, his deep emotions are involved in the suit property being ancestral. At this juncture, it is just and proper to refer Sec.44 of the Transfer of Property Act, 1882 :-

“44. Transfer by one co-owner.—Where one of two or more co-owners of immovable property legally competent in that behalf

transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred. Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house."

18] Considering the relation between the plaintiff and defendant No.1, it is proper to refer Sec.22 of the Hindu Succession Act, 1956 :-

"22. Preferential right to acquire property in certain cases -

Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer

shall be preferred. Explanation.—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.”

19] Keeping in mind, the statutory provision and object behind the provisions, the plaintiff urged in respect of the recitals of agreement to sell and the sale-deeds i.e. para Nos.6 and 8. It is the contention of the plaintiff that, though the sale-deeds came to be executed, but there was no partition by meets and bounds of the suit property though on paper partition came to be effected. The plaintiff harped upon the recitals of the agreement to sell and the sale-deeds and contended that, therefore it can be considered that the possession of the suit property has not been handed over to the defendants. Thereby he can very well protect his interest in the suit property claiming relief of injunction so as to establish his preferential right to purchase. As the plaintiff and defendant No.1 Pravin Holkar having undivided share in the suit property, possession cannot be handed over.

20] In continuation to this, the plaintiff shown his willingness to purchase the suit property and objected for transaction by issuing paper publication in a local Daily Deshdoot on 20/02/2024. Defendant No.1 Pravin Holkar replied to it. The plaintiff has sent the notices to the defendants not to enter into the sale transaction still the sale-deeds came to be executed.

21] To counter this, the defendants submitted that, the plaintiff has not come with the clean hands. The partition was effected in the year 2004. Accordingly, the names of the sharers entered into the revenue record i.e. the plaintiff Kailas Holkar and defendant No.1

Pravin Holkar. Defendant No.1 Pravin Holkar became the absolute owner of the share of the ancestral property. Defendant No.1 Pravin Holkar entered into the transaction for his family needs. The defendants being the adjacent land owners interested to purchase the suit property. The plaintiff Kailas Holkar has filed the suit after execution of the sale-deeds. The defendants being the *bona fide* purchasers on the basis of the revenue record entered into the transaction. The defendants being the *bona fide* purchasers on payment of the consideration amount as agreed became owner of the suit property. The suit property is standing in their names coupled with the possession.

22] In view of the facts discussed above, it is very clear that, the plaintiff initially took objection by issuing paper publication in a local Daily Deshdoot dtd. 20/02/2024. It was replied by defendant No.1 Pravin Holkar. Even prior to that, the plaintiff objected for disposal of the land bearing Gat No.114 which came into the share of defendant No.1 Pravin Holkar in the partition.

23] Considering the relief sought by the plaintiff, right of the preemption / preferential right to purchase the suit property, in the above set of the circumstances now become a matter of trial, because the suit has been filed after execution of the sale-deeds.

24] Interestingly, the plaintiff was aware about the transaction of the agreement to sell, as he objected. The paper notices was issued on 20/02/2024. The sale-deeds came to be executed on 13/09/2024 and the suit has been filed on 14/02/2025. As such, there is no explanation on the part of the plaintiff as to what prevented him to present the suit prior to execution of the sale-deeds. The recitals of the agreement to sell now can be looked into during the course of trial. The revenue record reveal that, the suit property is transferred in the

names of the defendants and they are in the possession. Defendant No.1 Pravin Holkar nowhere pleaded that, possession has not been handed over. Therefore, contention of the plaintiff that, in view of the recitals of the agreement to sell being conditional is not digestible.

25] Moreover, it is to be appreciated that, the plaintiff seeking relief that till execution of the sale-deeds of the suit property, the defendants be restrained from alienation of the joint family property. However, the plaintiff has not included the said properties in the suit. Therefore, *prima-facie* the said relief is without pleadings. The defendants specifically pleaded in respect of the ancestral property of the plaintiff and defendant No.1 Pravin Holkar i.e. Gat Nos.40, 113, 114 and 205. In view of the above discussion, the core issue of the preferential right can be decided only after the adjudication on the basis of the pleadings of the respective parties and the evidence in this regard.

26] The plaintiff ought to have presented the suit immediately after getting knowledge of the agreement to sell, as he issued the notices to the public at large in a local Daily Deshdoot on 20/02/2024. The relief of injunction being equitable and for that purpose one must do the equity. The plaintiff seeking injunction in respect of the suit property which came to the share of defendant No.1 Pravin Holkar in a partition of the year 2004 U/Sec.85 of the Maharashtra Land Revenue Code, 1966. Basically the plaintiff has to establish his preferential right and thereafter only can claim the equitable relief of injunction.

27] The time period in respect of the transaction of the suit property since the agreement to sell till execution of the registered sale-deeds being material for the plaintiff. Had it been the fact that, the plaintiff was very much interested in purchasing the suit property, he would have presented the suit only on the basis of the agreement to

sell. On the contrary, the suit came to be filed after execution of the sale-deeds. The defendants after going through the title and ownership of the suit property purchased. The right of plaintiff is not based upon the transaction between the defendants *inter-se* or the terms and conditions arrived between them or the recitals of the agreement to sell / registered sale-deeds. The plaintiff has to show the independent right accrued for claiming the preemptional right of the suit property.

28] Therefore, it is to be borne in mind that, so as to claim the preferential right the requirement i.e. an interest in any immovable property of an intestate has to be *prima-facie* shown with reference to Sec.22 (1) of the Hindu Succession Act, 1956. The plaintiff claiming right property allotted to defendant No.1 in partition. As such, the requirement of interest of an intestate devolving is not at all satisfied.

29] Therefore, in such facts and circumstances, the plaintiff has not made out the *prima-facie* case nor balance of convenience lies in his favour. Accordingly, I answer points No.1 to 3 in the negative and in answer to point No.4, I pass the following order :-

Order

1] The Application (Exh.5) is Rejected.

2] Cost in cause.

(Narendra N. Joshi)

Jt. Civil Judge, Senior Division,
Niphad

Date : 25/03/2026