

MHAU020030982019



ORDER BELOW TEMPORARY INJUNCTION APPLICATION EXH.5

IN R.C.S. No.711/2019

Meena w/o Pandurang More Vs. Shevantabai wd/o Hari Sangale & others

[Decided on : 25/02/2025]

The plaintiff has filed the instant application for temporary injunction against the defendants under Order 39 Rule 1 and 2 of C.P.C. The plaintiff has filed the present suit for declaration and perpetual injunction.

2. Description of landed property is as under;

All that piece and parcel of land bearing Survey no.20, situated at Himayat Nagar, Tq. and Dist.Aurangabad total admeasuring 3 Acre 20 Gunthe to the extent of 17.5 Gunthe bounded as below;

Towards East - Road and then house of plaintiff,
Towards West - Government road,
Towards North - Land out of Sr. no.20,
Towards South - House of defendant no.1

(Herein after referred as “**suit property**”)

3. Heard learned advocates for the plaintiff and defendants. In view of the pleadings, documentary evidence on record, the submissions and arguments advanced by the advocates for the parties, following points arise for determination. My findings thereon are mentioned against them for the reasons discussed thereafter.

Sr. No.	POINTS	FINDINGS
1.	Does plaintiff prove that prima-facie case is in her favour?	: Yes.
2.	Does plaintiff prove that the balance of convenience lie in her favour?	: Yes.

3.	Does plaintiff prove that she would suffer irreparable loss if the application is rejected?	: Yes.
4.	What order?	: Application is partly allowed.

REASONING**As to Point No. 1 to 3 :**

4. It is the case of the plaintiff that defendant no.1 is her mother defendant no. 2 and 3 are her brothers, defendant no.4 to 7 are her sisters. Defendant no.8 to 23 are not having any relation with the family of plaintiff and defendant no.1 to 7, so also with the suit property, however, they by applying fraud have inserted their names in 7/12 extract of the suit property by using fraud documents. The father of the plaintiff by name Hari Asaram Sangle was died on 27.11.1994 leaving behind plaintiff and defendant no.1 to 7 as his legal heirs to the suit property. It is further submitted that after the death of her father, the amicable family settlement took place between plaintiff and defendant no.1 to 7 and partition was effected and in the partition plaintiff and defendant no.1 to 7 got their independent respective shares admeasuring 17.5 Gunthe land each in the suit property. So also their names have been mutated in the revenue record of the suit property being legal heirs of the father of plaintiff namely Hari Asaram Sangle by mutation no.196, however, only the name of defendant no.1 was appearing in on the 7/12 extract of the suit property being Karta of the family. Thus in view of succession of father the plaintiff and defendant no.1 to 7 are having an equal 1/8th share each in the suit property.

5. It is further submitted by the plaintiff that she is not sufficiently literate lady and a villager, not having knowledge about the worldly affairs and having faith and dependent upon her mother. Defendant no.1 without giving knowledge or information has played mischief with the plaintiff by selling some portion of the land from suit property and created third party interest in

the name of some persons including defendant no.8 to 23 in the suit property. On 25.06.2019 when defendant no.1 disputed the share and claim of the plaintiff in the suit property thereafter she got to know about the transactions done by defendant no.1. Prior to that on 14.06.2019 defendant no.2 had quarrel with defendant no.1 for the reason for not mutating name of the plaintiff to the suit property. Therefore, plaintiff has filed complaint against defendant no.2 in concerned police station bearing N.C. no.317/2019. Thereafter, plaintiff collected the information from the revenue record regarding alienation of some portion of the suit property in favour of defendant no.8 to 23. As well as she got the knowledge about the insertion the names of defendant no.1 to 7 to the revenue record of the suit property. The name of the plaintiff was not mutated to the revenue record of the suit property and however she has never sold the said land to any person. The defendant no.1 with the help of defendant no.2 to 7 sold some land from the suit property to defendant no.8 to 23 by executing registered instruments without taking consent of the plaintiff and without paying any consideration amount. It is further submitted by the plaintiff that the alienation of the suit property done by defendant no.1 is without consideration possession and without any purpose of fulfillment of any family necessity. Therefore, all the registered Sale Deeds as mentioned in para no.14 of the plaint are false, illegal, null and void and violating the principal of the provisions of the Transfer of property act. Therefore, plaintiff is seeking declaration in respect of those sale deeds as illegal, null and void by filing of the present suit.

6. It is further submitted by the plaintiff that during pendency of the present suit defendant no.1 executed one Partition Deed bearing Day Book no.5413 dated 19.08.2019 in favour of defendant no.2 and 3 and has given 40R land each to defendant no.2 and 3 and kept 38R land with herself. The defendant no.1 is not having any right to do the partition of the suit property. However, with a view to deprive the plaintiff from the suit land defendant no.1

to 3 have played mischief on the plaintiff by executing registered Partition Deed. The defendant no.1 with malafide intention has executed one registered Gift Deed in favour of defendant no.5 bearing no.6076/2019 dated 26.09.2019 and alienated 5445 sq.ft. land. The defendant n.1 also executed registered Gift Deed bearing no.6077/2019 dated 26.09.2019 in favour of defendant no.7 and alienated 5445 sq.ft. land.

7. It is further submitted by the plaintiff that when she approached defendant no.1 to 7 for insertion her name in the 7/12 extract of the suit property in respect of her share in the suit property they have denied the request of the plaintiff. Therefore plaintiff has filed the present suit for declaration and ownership and possession of her 1/8th share and also for perpetual injunction against defendant no.1 to 7 for not creating third party interest in the suit property.

8. The suit proceeded without written statement against defendant no.1 to 5 and 7 as per order below Exh.1 on 02.01.2020. The suit proceeded exparte against defendant no.13 as per order below Exh.1 dated 16.06.2022. The suit proceeded exparte against defendant no.6, 8, 9, 11, 14 to 20, and 22 as per order below Exh.1 on 03.08.2022 and suit proceeded without written statement and reply on Exh.5 against defendant no.10, 12, 21 and 23 as per order below Exh.1 on 03.08.2022.

9. It appears on perusal of the documents filed on record by the plaintiff with List Exh.4 that the name of defendant no.4 has been mutated in the 7/12 extract of and the Mutation Entry no.196 of the suit property being *Karta* of the family of the deceased Hari Sangle as Shevantabai plus seven. The pleadings of the plaintiff regarding the partition of the suit property after death of her father Hari Asaram Sangle on 27.11.1994 and distribution of their respective share admeasuring 17.5 Gunthe land each from the suit property have remained undisputed. It further prima-facie appears on perusal of the documents on record that defendant no.1 by taking advantage of the fact that

her name reflected into the revenue record of the suit property has executed registered Sale Deeds in respect of the portion of the suit property in favour of defendant no.8 to 23 as mentioned in paragraph no.14 of the plaint. It prima-facie further appears from documents on record that the defendant no.1 has executed registered Partnership Deed bearing no.5413/2019 and given share of 40 R land each from the suit property to defendant no.2 and 3 and kept 38 R land from the suit property with her. It prima-facie further appears from documents on record that the defendant no.1 has executed registered Gift Deeds bearing no.6076 and 6077 both dated 26.09.2019 and given land admeasuring 5445 sq.ft. from the suit property each to defendant no.5 and 7.

10. It is pertinent to note that the plaintiff being daughter of the deceased Hari Sangle is having her 1/8th share in the suit property and as claimed by the plaintiff in pleadings that after the death of her father in amicable family arrangements defendant no.1 to 7 have given her share in the suit property by giving her 17.5 Guntha land from the suit property. Prima-facie it appears that defendant no.1 by taking disadvantage of the fact that her name is reflecting in the revenue record of the suit property has alienated and distributed the entire suit property to defendant no.2 to 23. Therefore, I am of the opinion that plaintiff is having prima-facie case. It is pertinent to note that the measure portion of the suit property is right now standing in the revenue record in the name of defendant no.2 to 7. Prima-facie it appears that there is substance in the submission of the plaintiff that the defendant no.2 to 7 by taking advantage of the facts that their names are appearing in the revenue record of the suit property, in view of the alleged Partition Deed dated 19.08.2019 and the Gift Deeds dated 26.09.2019 can further create third party interest in the suit property.

11. In view of the reasons discussed in para no.4 to 9, I am of the opinion that the plaintiff is successful to establish the prima-faice case in her favour. The plaintiff has prima-facie established that she has her share and

right in the suit property. It is pertinent to note that, plaintiff in her pleadings submitted that defendants are trying to create the third party interest in the suit property. Therefore, I am of the opinion that the balance of convenience is with the plaintiff and only she will have to suffer the irreparable loss if the interim relief is not granted in her favour. Hence, I answer **point nos.1 to 3 in the affirmative** and to answer **point no.4** I pass following order.

ORDER

1. Application (Exh.5) is partly allowed.
2. Defendant no.2 to 7 are restrained from creating any kind of third party interest in the suit property, till final disposal of the suit.
3. No order for costs.

Date – 25/02/2025.

(Vaishali Hangargekar)
3rd Jt. Civil Judge Senior Division,
Aurangabad.

C E R T I F I C A T E

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

Name of the Stenographer : Anant V. Chopade.

Court : 3rd Jt. Civil Judge, Sr. Dn., Aurangabad.

Order Date : 25/02/2025.

Order signed by the Presiding Officer on : 27/03/2025.

Order uploaded on : 27/03/2025.

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