

ORDER BELOW EXH.5 IN R.C.S. No.1015/2023.

**(Rekha@ Kusumbai Namdev Gore Vs. Chhaya
Sitaram Ghorpade & Ors.)**

MHAH140014252023



The plaintiff has filed the present application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunction restraining the defendants from alienating the suit property and creating any kind of charge on it and not to abstruct the possession of the plaintiff over the suit property.

Discription of suit property:

2. The suit property consisting of agricultural land having Gat No. 261/2 admeasuring about 1H, and Gat No. 296/2 admeasuring about 0H. 81R situated at Jalke Ku., Dist. Ahmednagar, which is more fully described in para 1 of the plaint. [hereinafter referred as 'suit property' for sake of convenience]

In brief, the case of the plaintiffs is as under:

3. Defendant Nos. 1 to 4 are the plaintiff's step-children and Defendant No. 5 is the plaintiff's daughter. The plaintiff's husband, namely Namdev Dhanaji Gore, passed away on 06.06.2023. The suit property is the ancestral joint Hindu family property of the plaintiff and the defendants, and all of them are in joint possession and enjoyment of the said property. Till today there is no partition of the suit property. However, Defendant No. 2 and 3 by deceiving the plaintiff's husband during his lifetime, executed a gift deed of the suit property in their own favour before the Sub-Registrar, Newasa, vide Document No. 1513/2023 dated 24/03/2023.

4. After the death of her husband, when the plaintiff approached the Talathi on 21/08/2023 along with an affidavit for entering her name as a legal

heir, she came to know that Defendant Nos. 2 and 3 had got the suit property transferred to themselves under the aforesaid gift deed dated 24/03/2023 and that Mutation Entry No. 18092 had been recorded accordingly. The plaintiff has raised objections to Mutation Entry No. 18092, and Complaint Case No. 04/2023 is pending before the Circle Officer, Pravarasangam.

5. The plaintiff has further stated that, the deceased Namdev had two wives. The mother of Defendant Nos. 1 to 4 was the first wife of the deceased Namdev. She died when Defendant No. 4 was two years old, and thereafter Namdev married the plaintiff. From this marriage, Defendant No. 5 was born. The plaintiff brought up Defendant Nos. 1 to 4. However, after the death of the plaintiff's husband, Defendant Nos. 2 and 3 drove the plaintiff out of the house. The plaintiff has a share in the suit property. When she demanded partition and separate possession of her share, the defendants refused and expelled her from the house. Hence, the present suit has been filed.

Defendants Case in short:

6. Defendant Nos. 2 and 3 have filed their say and written statement at Exh. 22. They stated that, the suit property was the self-acquired property of Namdev Dhanaji Gore. He executed a gift deed in favour of Defendant No. 2 and 3 of his own free will, and mutation entry No. 8092 has been effected on the basis of the said gift deed. The plaintiff had filed Complaint Case No. 04/2023 before the Circle Officer, Pravarasangam, in respect of this mutation entry. However, after due inquiry, the Circle Officer dismissed the said case and maintained the entry standing in the names of Defendant Nos. 2 and 3.

7. Defendant No. 2 and 3 further contend that, they have an undivided share in the suit property and are in actual possession and enjoyment thereof. The plaintiff is the second wife of deceased Namdev Gore and according to the Hindu

Succession Law, she has no right in the suit property. The plaintiff has filed a false suit by impersonating herself as Kusumbai, the first wife of the deceased Namdev. The plaintiff is residing with Defendant No. 2 and 3, and they are maintaining her. Since the plaintiff has no share in the suit property, she has no right to seek partition of the suit property or to file a suit for cancellation of the gift deed. The gift deed executed by deceased Namdev is legal and valid. The plaintiff has filed the present false suit at the instigation of her daughter's i.e. Defendant No. 5's husband. They, further state that in order to develop the suit property, loans had been taken jointly by deceased Namdev and the defendants, and those loans have been repaid by the defendants. A partition between deceased Namdev and his three brothers had already taken place in the year 1995–96 and the suit property was partitioned and transferred prior to 20/12/2004. Therefore, the plaintiff and Defendant No. 1, 4, 5 have no share in the suit property. Hence, the plaintiff has no prima facie case, nor does the balance of convenience lie in her favour. Therefore, present application be dismissed.

8. I have heard learned advocate for both sides and perused the record. On hearing and on perusal of the record, the following points arise for my determination, on which I have recorded my findings for the reasons stated thereunder.

Sr. No.	POINTS	Findings
1.	Whether the plaintiff has made out prima-facie case ?	Yes.
2.	Whether the balance of convenience is in favour of the plaintiff ?	Yes.
3.	Whether the plaintiff will suffer irreparable loss in the event of refusal of temporary injunction ?	Yes.

4.	What order?	Application is Allowed.
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REASON

9. In support of the suit and interim application, the Plaintiff has placed the following documents on record:

1. 7/12 extract pertaining to the suit property, Gat No. 296/2 and 261/2.
2. Affidavit before Tahasildar.
3. Mutation entry No. 7974.
4. Mutation entry No. 1826.
5. Death Certificate of husband of plaintiff.
6. Copy of Gift deed
7. Copy of plaintiff's Aadhar card.

The defendants also filed on record updated copies of 7/12 extract of suit properties.

As to Point No. 1 to 3

10. These points are interlinked with each other and hinge upon the same pivotal, hence, in order to maintain the flow of discussion, all the points are clubbed together for discussion.

11. It is settled position of law that the Court is required to consider the three ingredients namely the existence of a *prima-facie* case, irreparable loss and balance of convenience before granting temporary injunction.

12. According to the pleadings of the plaintiff, the suit property stands in the name of her deceased husband, Namdev Dhanaji Gore, and is the ancestral

property of the plaintiff and the defendants. In contrast, the defendants contend that a prior partition had already taken place between deceased Namdev Gore and his brothers, and therefore the suit property was the separate property of the deceased Namdev. Hence, during his lifetime, he voluntarily transferred the same in favour of Defendant Nos. 2 and 3 by executing a gift deed.

13. It is undisputed that after the death of Namdev's first wife, he married the plaintiff. It is also undisputed that the suit property stood in the name of deceased Namdev. The plaintiff and the defendants are the legal heirs of deceased Namdev. According to Defendant Nos. 2 and 3, the suit property was the self-acquired property of the deceased. However, at this stage, no evidence has been brought on record to substantiate this contention and that can be decided on merit after taking evidence. At this stage, considering pleadings of both parties and admitted facts it appears that upon death of Namdev, the plaintiff and defendants have share in suit property. Therefore, she has a prima facie case.

14. The second condition for granting temporary injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. In present suit the 7/12 extract of the suit property produced by the defendants shows that the names of Defendant Nos. 2 and 3 were entered only after the filing of the present suit. Since the plaintiff and the defendants have a share in the suit property, in such circumstances, if Defendant Nos. 2 and 3 transfer the suit property on the basis of the 7/12 extract standing in their names, the rights of the plaintiff are likely to be prejudiced. Also, there is possibility that if temporary injunction not granted it will cause multiplicity of litigation. In such circumstances the protection provided under section 52 of Transfer of Property Act is not

sufficient. Also, along with defendant the plaintiff has right to cultivate suit property. Hence, the balance of convenience lies in favour of plaintiff and if temporary injunction is not granted she will suffer irreparable loss. Therefore, I answer point no. 1 to 3 in affirmative.

As to point no.4 :

15. Considering the overall discussion and findings on point Nos. 1 to 3, the application deserves to be allowed. Hence, I pass following order.

ORDER

1. The application is allowed.
2. The defendants are temporarily restrained from causing any kind of obstruction to the possession of the plaintiff over the suit property and also to create third party interest on suit property by way of transfer till the final disposal of the suit.

Place: Newasa.

Date: 29/11/2025.

(Smt.Sandhya Y. Sul)

2nd Jt. Civil Judge, Junior Division,
Newasa, Dist. Ahmednagar.