

**ORDER BELOW EXH.5**

(Passed on 12-06-2026)

The plaintiff has prayed for temporary injunction restraining defendants nos. 1 and 2 from making any kind of alienation of the suit properties i.e. agricultural field bearing gat no.24, admeasuring 1 H 28 Ares of village Lotkhed, Tq. Akot, Dist. Akola, another agricultural field bearing gat no. 214, admeasuring 2 H 84 Ares of village Lotkhed, Tq. Akot, Dist. Akola and agricultural field bearing gat no. 91, admeasuring 4 H 51Ares of village Lotkhed, Tq. Akot, Dist. Akola, boundaries as mentioned in plaint para no.2 (B), (C) and (H) respectively and also restraining them from making any kind of alienation in the house properties mentioned in para no.2 (I), (J) and (K), in any manner till conclusion of the trial under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure ( for short 'CPC').

2. The plaintiff claims to be the legal heir of original owner of the suit properties namely deceased Yamunabai. She has prayed for partition and possession of all the suit properties. It is also claimed that Will-deed dated 03.04.1995, Gift-deed dated 16.12.2009 and another Gift-deed of the same date be declared as null and void. In support of her contention, the plaintiff has given description of the family tree of deceased Yamunabai in the plaint para no.1. This family tree is undisputed. According to the plaintiff, all the suit properties mentioned in para no.2 of the plaint are undivided Hindu joint family properties which were originally owned by deceased Yamunabai. Recently the plaintiff

came to know from the revenue record that suit property mentioned in para 2 (H) of the plaint was mutated in the name of defendants nos.1 and 2. It is shown that they became owner of the said suit property on the basis of Will-deed dated 03.04.1995 alleged to have been executed by deceased Gangubai @ Shevantabai (grand daughter of original owner Yamunabai). It is submitted that the said Will-deed is surrounded by many suspicious circumstances and it cannot be acted upon. Mutation entry in respect of above mentioned suit property in the name of defendants nos. 1 and 2 is claimed to be illegal.

3. It is also contended that suit properties described in para 2(B) and (C) of the plaint were recorded in the name of deceased Chandraprabhabai who is daughter of original owner Yamunabai. It is shown that said Chandraprabhabai had executed Will-deed on 16.12.2009 in favour of husband of defendant no.1. After his demise, defendant no.1 shown to be owner of the said properties. It is further submitted that said Chandraprabhabai allegedly executed Gift-deed dated 16.12.2009 in favour of husband of defendant no.1 namely Sharad Gawande and defendant no.2. Sharad Gawande died on 07.03.2025 leaving behind him defendant no.1 as his wife. Thus names of defendants nos.1 and 2 are recorded in suit properties 2(B), (C) and (H). They are trying to take disadvantage of the said fact. They are likely going to transfer the said properties with the ulterior motive to deprive the plaintiff from claiming any right in the said properties. It is submitted that the said properties are ancestral properties of the plaintiff and defendants. The plaintiff has

definite share in the said properties including other suit properties. Hence, the temporary injunction as mentioned above is prayed against defendants nos. 1 and 2.

4. Defendants nos. 1 to 3 opposed the application by reply (Exh.26). They denied the entire allegations made in the plaint. The relationship between the parties is undisputed. However it is specifically contended that suit property of para 2 (H) was exclusive property of deceased husband of defendant no.1 namely Sharad Gawande. He received the said property along with defendant no.2 on the basis of Will-deed dated 03.05.1995 executed by Gangubai @ Shevantabai. It is also submitted that suit properties 2(B) and (C) were inherited by deceased Chandraprabhabai. She became owner of the said properties under Section 14(2) of Hindu Succession Act. She has every right to alienate the said properties. Therefore, she has transferred both the suit properties by way of registered Gift-deeds bearing no. 3331/2009 and 3332/2009 in favour of deceased Sharad Gawande and after his demise defendant no.1 being her wife inherited the said properties. It is further submitted that the plaintiff has received agricultural land bearing gat no.162, admeasuring 1 H 80 Ares of village Lotkhed, Tq. Akot, Dist. Akola from Shevantabai @ Gangubai on the basis of Will-deed dated 03.04.1995. Thus, she received her share and therefore, she does not have any right to claim partition and separate possession in all the suit properties. She sold the said properties and therefore, in order to grab share in the suit properties she filed the present false suit. The suit and application are therefore prayed to be rejected.

5. Defendants nos. 4 and 5 filed their written statement (Exh.22) and supported the claim of plaintiff.

6. The points for determination along with my findings thereon are as under :-

| Sr. No. | Points                                                                                                 | Findings                      |
|---------|--------------------------------------------------------------------------------------------------------|-------------------------------|
| 1)      | Whether the plaintiff has made out a <i>prima-facie</i> case ?                                         | .. Yes.                       |
| 2)      | Whether the balance of convenience lies in her favour ?                                                | .. Yes.                       |
| 3)      | Whether the rejection of application would result in irreparable loss to the rights of the plaintiff ? | .. Yes.                       |
| 4)      | What order ?                                                                                           | ..The application is allowed. |

### REASONS

#### AS TO POINT NOS. 1 TO 3 :-

7. I had an opportunity to hear both the learned advocates for the parties at length.

8. The plaintiff has relied upon almost 45 documents of revenue record of all the suit properties. Some of them are 7/12 extracts, mutation entries and valuation reports. In order to restrict my findings only to the extent of suit properties 2 (B), (C) and (H), I have carefully gone

through the entire documents in connection with the said three properties.

9. On perusal of 7/12 extract (Exh.3/4) of suit property 2(B), it becomes clear that initially it was recorded in the name of original owner deceased Yamunabai. After her demise it was recorded in the joint names of deceased Sharad Gawande, the plaintiff and defendants. It can be further revealed that latter on it was recorded in the exclusive name of deceased Sharad Gawande and after his demise the name of his wife i.e. defendant no.1 is recorded. Thus, prima facie it can be seen that suit property 2(B), for some particular period was standing in the joint names of all the parties to the litigation. It shows that the said property is ancestral property and not the exclusive property of Chandraprabhabai. Nor she can be treated as exclusive owner of the said property under Section 14(2) of the Hindu Succession Act.

10. The learned advocate for the plaintiff correctly submitted that there is no document or anything else on record to suggest that deceased Chandraprabhabai has acquired the said property as an absolute owner. Had it been the case the 7/12 extract would not have mentioned the names of plaintiff and defendants as joint owners.

11. Similar is the situation in respect of suit property 2(C). It is also claimed to have been acquired by deceased Chandraprabhabai under Section 14(2) of the Hindu Succession Act. However, as discussed earlier there is no document showing that the said Chandraprabhabai acquired the said property by way of partition of the properties originally owned by her mother deceased Yamunabai (the original owner). If all the properties were originally owned by deceased Yamunabai, all the said properties could not be exclusively inherited by deceased Chandraprabhabai alone. She was the daughter of deceased Yamunabai. However, she was having brother namely deceased Bhaurao. The plaintiff and defendants are in fact claiming through said Bhaurao.

12. Under such circumstances I am unable to hold that suit properties nos. 2(B) and (C) were exclusive properties of Chandraprabhabai. Thus, prima-facie she has no right to execute Gift-deeds dated 16.12.2009 and donate both the suit properties only to deceased Sharad Gawande and that too to the exclusion of plaintiff and defendants. Indeed both the Gift-deeds are of the same date which is something unusual and suspicious.

13. Mutation entry no.420 in respect of suit properties no. 2(B) and (C), copy of which is filed at Exh.3/8 clearly shows that the said properties were transferred in

favour of Chandraprabhabai after demise of original owner Yamunabai citing that she was the only legal heir survived by deceased Yamunabai. It is not a fact. Indeed it is incorrect and I have already pointed out that undisputedly deceased Yamunabai is survived by legal heirs of her pre deceased son Bhaurao and daughter Chandraprabhabai.

14. As far as suit property 2(H) is concerned according to the defendants nos. 1 to 3, the said property was acquired by Shevantabai @ Gangubai as its absolute owner under Section 14(2) of the Hindu Succession Act. I unable to act upon on this contention also. Indeed Gangubai @ Shevantabai was survived by daughter Satyabhamabai and the existing parties to the suit are survived by Satyabhambai. Thus, the said defendants cannot take the defense of Section 14(2) of the Hindu Succession Act. Indeed on perusal of entire written statement I do not find a single line to the effect that there was any partition between Yamunabai and her son and her daughter or there was any partition between Gangubai or Satyabhamabai. Indeed there is no defense that the suit properties were partitioned at any point of time.

15. The learned advocate for defendants nos. 1 to 3 vehemently submitted that the plaintiff also received agricultural field bearing gat no. 162, admeasuring 1 H 80 Ares of Lotkhed, Tq. Akot, Dist. Akola on the basis of Will-

deed executed by deceased Shevantabai @ Gangubai dated 03.04.1995. She withheld this fact. She is guilty of suppression of material fact. The relief of temporary injunction cannot be granted in her favour. I am not able to act upon this submission. When I observed that prima-facie Shevantabai @ Gangubai cannot be an absolute owner of the suit property 2(H) so she also cannot be the absolute owner of field gat no.162, admeasuring 1 H 80 Ares. She cannot be the exclusive owner of the house properties also which are transferred in the name of defendants nos. 1 and 2. Even if this land is allegedly sold by the plaintiff, she is bound by the decision and outcome of this suit.

**16.** Besides it, when I have prima-faciely observed that all the properties mentioned in the suit are never partitioned between the parties to the suit or between their predecessors, it has to be said that they are ancestral properties. If I hold so, in my opinion claiming the relief of partition by the plaintiff would amount to raising a fair question which requires adjudication. Thus, in my opinion the plaintiff is able to establish prima-facie case. Balance of convenience lies in her favour. There would be no harm to defendants nos. 1 and 2 if they are restrained from making any kind of alienation of the suit properties. Per contra I find it necessary to protect the identity of those suit properties and to avoid multiplicity of proceedings. Accordingly I answer



points nos. 1 to 3 in the affirmative and in answer to point no. 4 pass the following order.

### **ORDER**

1. The application Exh.5 is allowed.
2. Defendants nos. 1 and 2 are temporarily restrained from transferring, alienating or creating any kind of third party interest in the suit properties i.e. agricultural field gat no.24, admeasuring 1 H 28 Ares land, agricultural field gat no. 214, admeasuring 2 H 84 Ares land and agricultural field gat no. 91, admeasuring 4 H 51 Ares land mentioned as suit properties para no.2 (B), (C) and (H) and also house properties described as para no. 2 (I), (J) and (K) in the plaint till conclusion of the suit.
3. Costs in main cause.

Date : 12.06.2026.

( Shivnath M. Kale )  
I/c Jt. Civil Judge Senior Divison,  
Akot.

**CERTIFICATE**

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

|                        |   |                              |
|------------------------|---|------------------------------|
| Name of Steno          | : | S.M.Rothe                    |
| Court Name             | : | Jt. Civil Judge, S.D., Akot. |
| Date                   | : | 12/06/2026.                  |
| Order Signed by P.O on | : | 12/06/2026.                  |
| Order Uploaded on      | : | 12/06/2026.                  |