

	R.C.S. No. 57/2023
	Parikshit Aarekar Vs Anapurna Aarekar
	CNR No. MHAM130014822023

ORDER BELOW EXH. 5
(Passed on 28.02.2025)

The present application is filed by the plaintiff for grant of temporary injunction under Order XXXIX Rule 1 and 2 of The Code of Civil Procedure, 1908 against the defendants to restrain them from creating third party interest in the suit property in RCS No. 57/2023.

02. Perused the application, say of the defendants and other documents on record. Heard Ld. Advocate of the plaintiff and Ld. Advocate of defendants.

03. Description of the Suit Property :

04. Agricultural land bearing Gat No. 128/1/A admeasuring 1H 74R situated at Mouje Juna Dhamangaon, Taluka Dhamangaon Railway, Dist. Amravati which is bounded as under :

East: Agricultural land owned by Satyanarayana Lahoti and Namdev Udakhe

West: Agricultural land owned by Raju Mahatme

North: Agricultural land owned by Agrawal

South: agricultural land owned by Baban Sakhere

05. Ld. Advocate of the plaintiff submitted that the suit property was originally owned by Ganpat Shivram Aarekar and earlier it had total area of 2H 95R. Ganpat Shivram Aarekar died on 19.11.1981. He had 4 sons and 2 daughters. The said 2 daughters relinquished their shares in favour of others on 24.12.1982. Thereafter, out of 4 sons, heirs of Shankar Aarekar and Mahadev Aarekar relinquished their shares in favour of others namely Narayan Aarekar and Shamrao Aarekar. Narayan and Shankar sold 1H 21R out of suit property. After the death of Narayan and Shankar, names of their heirs mutated in revenue records. The plaintiff is the grandson of Narayan Ganpat Aarekar. Ld. Advocate of the plaintiff further submitted that defendants are trying to create third party interest in the suit property and therefore injunction is necessary to avoid multiplicity of proceedings and to protect the interest of plaintiff. Hence, he prayed to allow the application.

06. On the other hand, Ld. Advocate of defendants opposed the application. He submitted that the suit property is yet to be partitioned and shares are not ascertained yet. The share of the father of plaintiff in the suit property is undivided and therefore defendants cannot alienate it. Defendants are not creating any third party interest in the suit property. Therefore, he prayed to reject the application.

07. Considering the submission of both the parties, following points arise for my determination to which I have recorded my findings along with the reasons thereon.

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff has prima facie case?	Yes
2.	Whether the balance of convenience lies in favour of the plaintiff?	Yes
3.	Whether the plaintiff will suffer irreparable loss if the injunction is not granted?	Yes
4.	What order?	Application is allowed.

REASONS

As to point No. 1 to 3

These points are interlinked to each other. Therefore, to avoid repetition I am discussing these together.

08. For the grant of temporary injunction, it is necessary for the plaintiff to show prima facie case in his favour. It is contended by the the plaintiff that the suit property was originally owned by Ganpat Shivram Aarekar. After his death, the said property mutated in the names of his heirs. Other heirs

relinquished their shares in favour of Narayan Aarekar and Shamrao Aarekar. After the death of Narayan and Shamrao, names of their heirs were mutated in the suit property. The plaintiff is the grandson of Narayan Aarekar.

09. On perusal of 7/12 extract filed on record by the plaintiff, it prima facie appears that the suit property is in possession of defendants. The plaintiff has also placed on record the mutation entries by which other heirs relinquished their shares in favour of Narayan and Shamrao. It appears from mutation entries that after the death of Narayan Aarekar names of defendants were mutated in revenue records.

10. Furthermore, defendants have not disputed that the suit property is the ancestral property of the plaintiff and defendants. Thus, the relationship between the plaintiff and defendants is undisputed. Defendants have contended that the suit property is yet to be partitioned. Therefore, it prima facie appears that the plaintiff has share in the suit property. Now, the plaintiff apprehends that defendants may create third party interest pending the suit. This apprehension of the plaintiff cannot be ruled as the suit property is in the possession of defendants. In this backdrop, plaintiff has certainly proved the existence of prima facie case in his favour. Hence, I answer point No.1 in affirmative.

11. As the plaintiff has proved the existence of prima facie case in his favour, balance of convenience also lies in

favour of the plaintiff. If defendants deal with the property pending the suit, another interest will be created in the property. This will certainly affect the interest of the plaintiff in the suit property. It will also lead to complexity of proceedings. Therefore, balance of convenience lies in favour of the plaintiff. Hence, I answer point No.2 in affirmative.

12. If the injunction is not granted, defendants may create third party interest in the suit property. If the third-party interest is created, plaintiff will suffer irreparable loss. Plaintiff will also have to face the hardship. However, if injunction is granted, defendants will not suffer any loss which can be said as irreparable. Hence, I answer point No.3 in affirmative.

13. Thus, I have already answered point No.1 to 3 in affirmative and held that prima facie case lies in favour of the plaintiff. Balance of convenience also lies in favour of the plaintiff. If the injunction restraining the defendants from creating third party interest is not granted, plaintiff will suffer irreparable loss. Further, to avoid complexity and multiplicity of proceeding, it is necessary to grant the relief of temporary injunction in favour of the plaintiff. Thus, the facts and circumstances of the present case are such that grant of temporary injunction is necessary.

As to point No.4

14. In view of the above discussion, to answer point No.4, I proceed to pass the following order:

ORDER

1. The application at Exh.5 is hereby allowed.
2. Defendants are hereby restrained from creating third party interest in the suit property in any manner till the disposal of the suit.
3. Parties to bear their own cost.

Sd/-

(Lushnali L. Tamgadge)
Jt. C.J.J.D., (Court No,2)
Dhamangaon Rly.

Date : 28/02/2025