

MHAU050003602026

RCS No. 32/2026



Sarala Prakash Londhe & Ors.

Vs

Anusaya Daulatrao Shelke & Ors.

ORDER BELOW EXH. 5

1) This is an application filed by the plaintiffs seeking temporary injunction as per Order XXXIX Rule 1 and 2 of the Civil Procedure Code, 1908 (hereinafter referred to as the CPC for brevity).

2) Out of Agricultural land total admeasuring 4H 72 R land in gut No. 71 village Lasurgaon, Tq. Vaijapur 40 R land each in the name of defendant Nos. 1 to 5 and the 59 R land in the joint name of plaintiffs and defendant Nos. 1 to 5 (hereinafter referred to as “suit property” for brevity) is the subject matter of the suit. The boundaries of suit property is as follows -

Towards East - Chandrabhan Shelke.

Towards West- Dheku river.

Towards North- Residential road.

Towards South – Land of Railways.

3) According to the plaintiffs, both the plaintiffs are sisters and defendant Nos. 2 to 5 are their brother. Defendant No.1 is the mother of plaintiffs and rest of defendants. Deceased Daulat Narayan Shelke was the father of plaintiffs.

4) Suit property is the ancestral property of plaintiffs and defendants. For the purpose of family arrangement it is

mutated in the name of plaintiffs and defendants. However, till today there is no partition of suit property. Suit property is jointly cultivated by plaintiffs and defendants. Plaintiffs take their share of income from suit property on Diwali of every year.

5) On Diwali of 2025 when plaintiffs asked their share of crops defendants told that, the rate of crops are low as of now and in January they would get good rate and would sell the crops in January 2026 and give the share to plaintiffs. Plaintiffs got information that, from the southern side of suit property railway track is sanctioned and the land is to be acquired by Railways. Thereafter, on 15.01.2026 plaintiffs in presence of near relatives demanded the partition of their separate share in suit property from defendants. However defendants flatly refused to partition the suit property. Defendants threatens plaintiffs that suit property is in their name, they would sell the same to Railways and would themselves keep the compensation amount and give nothing to plaintiffs. They warned plaintiffs from entering the suit property. Hence, plaintiffs have filed the present suit for partition of their share in suit property. According to plaintiffs there is prima facie case in their favour. There is possibility that defendants might create third party interest in the suit property. Therefore, plaintiffs prayed to temporarily restraining defendants from creating third party interest in suit property and bore-well which in the joint name of defendants, till final disposal of the suit.

6) Defendant Nos. 1 and 5 even though appeared in the suit, they failed to file their WS. Hence suit proceeded without

WS of defendant Nos.1 and 5.

7) Defendant No.2 to 4 filed their W.S. at Exh.12. Defendants admitted the relationship between the parties. According to defendants, both the plaintiffs are married around 25 years ago. During the lifetime of their father suit property was already partitioned on 08.02.1993 through mutation entry 1839. As per said partition respective parties are in possession of their 40 R land. Defendants have given boundaries of 40 R land each occupied by defendant Nos. 2 to 5. Rest 59 R land was kept by defendants father for himself. Plaintiffs consented for aforesaid partition and have taken cash amount in lieu of their share. Partition of property are taken place during the lifetime of their father. They prayed for rejection of present application.

8) After going through the application, documents filed along with it and argument of advocate of plaintiff following points arose for consideration and I have given findings thereon for reasons stated thereunder-

Sr. No.	Points	Findings
1.	Whether plaintiffs have established prima-facie case ?	Affirmative
2.	Whether the balance of convenience lies in favour of plaintiffs ?	Affirmative
3.	Whether plaintiffs will be put to irreparable loss, if injunction is not granted ?	Affirmative
4.	What order ?	As per final order.

Reasons

9) In support of their contention the plaintiffs have filed the 7/12 extracts of suit property. Defendants have relied upon mutation entry No. 1839.

AS TO POINT NO.1 TO 3 :-

10) It is settled position of the law that, any party claiming injunction against the other must prove firstly that, he has prima-facie case in his favor. Secondly that, balance of convenience lies in his favor, and lastly that, if injunction is refused, he will be put to irreparable loss. It is also settled law that, mere institution of suit does not entitle the plaintiff to relief. He must satisfy the Court that there is a fair and substantial question to be tried. No injunction would be issued if the final relief cannot be granted. To make out a prima-facie case for a temporary injunction, it is not required that, the plaintiff should establish his title, but it is enough if he can show that he has a fair question to raise as to the existence of the right alleged and the property in the meantime should be preserved as it is till the final order.

11) Perused the application, documents filed on record and considered the argument of the plaintiffs and defendants. Through the present interim application plaintiffs are praying before this Court to restrain the defendants from creating third party interest in suit property.

12) The relationship between the parties is undisputed. The 7/12 extract of suit property shows 40 R land each in the

name of defendant Nos. 1 to 5 and 59 R land in the joint name of plaintiffs and defendant Nos.1 to 5.

13) It is admitted to the both parties that, suit property originally belonged to Daulat Shelke. As per plaintiffs, suit property is their ancestral property. In WS defendant Nos. 2 to 4 have simply denied this fact. But no specification is given by defendant Nos. 2 to 4 how Daulat Shelke acquired the suit property. Therefore, at present it prima facie appears that, suit property is the ancestral property of plaintiffs and defendants. As per defendant Nos. 2 to 4 suit property is already partitioned as per mutation entry 1839 in the year 1993. As per explanation to Section 6 of the Hindu Succession Act, 1956, "partition means partition made by execution of a registered partition deed or partition effected by decree of Court". No registered partition deed or decree of Court is put forth by defendants to support their contention of previous partition. At this stage merely relying upon mutation entry 1839 it cannot be concluded that suit property is already partitioned by deceased Daulat amongst his sons and wife. Plaintiffs being daughters in light of amendment of Section 6 of the Hindu Succession Act, admittedly have right in suit property. There appears prima facie case in favour of plaintiffs. Defendants are denying the plaintiffs right in suit property. If third party interest created in suit property irreparable loss would be caused to plaintiffs. Rejecting the present application would cause more harm to plaintiffs to then defendants in reverse situation. Hence, I answer point Nos. 1, 2 and 3 as affirmative.

AS TO POINT NO.4:-

14) In view of my findings to point Nos.1 to 3, it is clear that plaintiffs have established prima-facie case in their favour. Thus, in answer to point No.4, I proceed to pass following order.

Order

1. The present application for temporary injunction is hereby allowed.
2. Defendant Nos.1 to 5 are hereby temporarily restrained from creating third party interest in the suit property which is in the joint name of plaintiffs and defendants and also the land in the name of each defendants till final disposal of suit.

Vaijapur.
Date- 24/04/2026

(Smt. S. K. Khan)
2nd Jt. Civil Judge J.D.,
Vaijapur.