

**MHAU110005882024****ORDER BELOW EXH.5**

Plaintiffs in a suit for simplicitor injunction, filed this application for temporary injunction, under Order 39, Rule 1 and 2 alongwith Sec.151 of Code of Civil Procedure, 1908 restraining defendants from alienating or creating any third-party interest over 1H.58R land in Gut no.422 situated at village Gevrai (Gungi), Tal. Phulambri, Dis. Aurangabad and also restraining defendants from obstructing and interfering with 40R land in Gut no.422 in possession of plaintiffs till disposal of the suit.

**Contentions of plaintiffs:**

2. Plaintiff no.1 is mother of plaintiff no.2 and 3 while, defendant no.1 is father in law and defendant no.2 and 3 are brother in laws. Plaintiff no.1 is widow of Sominath Ramrao Dakle i.e. elder son of defendant no.1 who died on 05/10/2016 while plaintiff no.2 and 3 are their children. Defendants having 1H.58R land in Gut no.422 which is their ancestral land which is till date not partitioned and in the name of defendant no.1 in 7/12 extract though, under family arrangement 1 acre land was given in possession of each of them. Since then, plaintiffs are in possession of 40R land in Gut no.422. Defendant no.1 tried taking undue advantage of his name upon 7/12 extract executed sale deed No.1176/2023 on 02/06/2023 for 33R land, part of undivided ancestral suit property, in favour of defendant no.2. To which, plaintiff no.1 filed objection to take mutation of said sale deed transaction, since then, defendants trying to harass plaintiffs to take back objection taken before Tahsildar and threatening plaintiffs to death and not to come to their 40R land, due to which plaintiffs are in fear of defendants and not dare to cultivation of land freely. Hence, present suit filed and prayed to allow present application.

**Documents filed by Plaintiffs:**

3. Plaintiffs filed on record 7/12 extract and Form No.8A of Gut no.422, pending ME No.2817 in respect of sale deed 1176/2023, application filed by plaintiff to police station Wadod Bajar against defendants and objection application filed by plaintiff before Tahsildar for proposed mutation entry No. 2817.

**Contentions of defendants:**

4. In spite of service of summons, defendants failed to appear, hence, suit proceeded ex-parte against all defendants.

5. After going through aforesaid and after hearing arguments advanced by Ld. Adv. S.S. Gaikwad for plaintiffs, following points arise for my determination and my findings are as under for the reasons stated hereinafter\_

<b>Sr. No.</b>	<b>Particulars</b>	<b>Findings</b>
1.	Do plaintiffs prove that they have prima facie case?	Affirmative
2.	Do plaintiffs prove that balance of convenience lies in their favour?	Affirmative
3.	Do plaintiffs prove that they would suffer irreparable loss in injunction is not granted in their favour?	Affirmative
4.	What order?	Application is allowed.

**REASONS****Point no.1 to 4:**

6. All points are inter-woven therefore, taken together to avoid any repetition. Plaintiffs filed suit for injunction against defendants stating they are in possession of 40R land in Gut no.422 within given boundaries while, defendants are obstructing their possession as well as defendant no.1 executed sale deed with defendant no.2 out of their undivided and joint family property wherein share of husband of plaintiff is also there. Hence, defendant no.1 do not have any right to

execute sale deed without taking consent of plaintiff. Hence, if injunction not granted, plaintiffs suffer irreparable loss.

7. Advocate of plaintiffs argued that plaintiffs already filed documents in their support and established prima facie case. Considering fact that defendants not appeared after service of summons and objected relations amongst parties, therefore, at primary stage nothing to deny relations of plaintiffs with defendants as Sominath, husband of plaintiff no.1 and father of plaintiff no.2 and 3 also having share in the ancestral property i.e.1H.58R land in Gut no.422. Therefore, plaintiffs shown prima facie case in their favour as well as balance of convenience in favour of plaintiffs and if injunction not granted, irreparable loss will be caused to plaintiffs as their shares are involved in the suit property. With regard to prayer of possession that have to prove by plaintiffs by leading evidence, hence, at this stage, it cannot be decided therefore, not considered.

8. Perused application and documents annexed with it. Heard Adv. for plaintiffs. Coming to document filed it can be seen that plaintiffs filed 7/12 extract of Gut no.422 which reflects that said property is in name of defendant no.1 in 7/12 extract. After going through ME No. 2817 in respect of sale deed 1176/2023 and objection application filed by plaintiff before Tahsildar for proposed mutation entry No.2817. These documents reflect that suit property is in the name of defendant no.1 who tried to execute sale deed in favour of defendant no.2 without taking consent of plaintiffs to which plaintiffs filed objection before revenue authority.

9. Firstly, going to check whether plaintiff having prima facie case in their favour, wherein plaintiffs are claiming their share through Sominath (deceased) who is son of defendant no.1 and brother of defendant no.2 and 3, thereby having 1/4<sup>th</sup> share in suit properties and as per family arrangement got 1Acre land in possession before his death for meeting his daily needs. As defendants not appeared and objected claim of plaintiff, prima facie case can be considered in favour of plaintiffs at this stage. Therefore, at this juncture, to

consider prima facie case, it can be clearly seen that plaintiffs being wife and sons of late Sominath, claiming share of Sominath in suit properties while, defendants are denying their claim, which goes to say that there is prima facie question to decide. Hence, I answered **point no.1** in **affirmative**.

**10.** Thereafter, have to see balance of convenience, in that respect, it has to be seen that presently, plaintiffs are claiming their share while, land is in the name of defendant no.1. Going through documents filed and pleadings, it seems that presently, name of defendants is mentioned upon 7/12 extract as owner and in possession of suit property. While, prayer of interim injunction to extent of not to create third party rights or alienate the property can be considered at this stage to avoid addition of parties which ultimately cause delay in proceeding. Also to avoid multiplicity of proceeding upon same subject it will be more proper to allow interim relief partly restrain defendants not to transfer suit property to third party or create third party interest thereupon. Considering aforesaid, the balance tilts in favour of the plaintiff. Hence, I answer point no.2 in **affirmative**.

**11.** Lastly, checking irreparable loss, considering that land in the hand of defendants being their ancestral land and plaintiffs claiming their share therein, it seems that if injunction not granted irreparable loss may incurred to plaintiffs as defendants may transfer or alienate suit property to another person which will affect rights of plaintiffs adversely, if they able to prove her claim after concluding trial. While, not to alienate the property till final decision in this matter, do not adversely affect interest of defendants. Therefore, in such situation, I held that if interim relief not granted to plaintiffs, they will suffer irreparable loss as compared to defendants. Hence, I answer point no.3 in **affirmative**. As I have answered point no. 1 to 3 in affirmative, I proceed to pass the following order.

### **ORDER**

1. Application is allowed.

2. Defendants are temporarily restrained from alienating or creating any third party interest in the suit property till disposal of the suit.
3. Costs shall follow the decision of the suit.

Date:22/11/2024

(V.V. Raojadeja)  
Civil Judge Junior Division  
Phulambri.

**CERTIFICATE**

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	: Shir. Y. B. Mirdhe,
Name of the Court	: C.J.J.D. & J.M.F.C., Phulambri
Date of order	: 22.11.2024
Original copy of order signed by the presiding officer on	: 22.11.2024
PDF copy of order uploaded on	: 22.11.2024