

**MHBI110017062024**

**R.C.S. No. 409/2024**  
**( Bapu Vs. Bhagwan)**  
**ORDER BELOW EXHIBIT – 40**

1. This is the application filed by the plaintiff under Order- 39, Rule-1 and 2 read with section 151 of the Code of Civil Procedure for grant of temporary injunction restraining the defendants from obstructing his possession over the suit property.

2. Plaintiff contended that, field bearing Block No. 569 admeasuring 10-H 63-R non cultivable 55-R out of it 50-R non cultivable 03-R situated at mauje Bangali Pimpala Tq. Georai Dist. Beed more particularly described in para No. 2 of this application is the suit property. He had purchased 80-R field in Block No. 569 vide registered sale deed No.1434/1991 on 17.05.1991 for the consideration of Rs. 18,000/- from its original owner Tukaram Keshav Joshi. On the same day defendant No. 1 had also purchased 80-R field in that Block number from Tukaram Keshav Joshi vide registered sale deed No. 1435/1991 dated 17.05.1991 for the consideration of Rs. 18,000/-. The field purchased by the defendant No. 1 is situated towards northern side of the field of the plaintiff. Defendant No. 1 is his real brother. Since the purchase of the fields plaintiff and defendant No. 1 were cultivating their fields separately as its owners. Mutation entries were also taken accordingly. Plaintiff and defendant No. 1 is also having one brother namely Satyabhan Patilbuwa Gadade. Plaintiff and defendant No. 1 have by partition given 27-R and 26-R field out of their fields in Block No. 569 to their brother Satyabhan Patilbuwa Gadade which was recorded in the name of Indubai Satyabhan Gadade who is the wife of Satyabhan Patilbuwa Gadade. Prior to that Indubai Satyabhan Gadade was having 1-H 15-R field in Block No. 569. Thus, now in that Block No.

1-H 75-R field is recorded in the name of Indubai Satyabhan Gadade. Thus, now in Block No. 569, 50-R and non cultivable 03-R field is recorded in the name of plaintiff, 52-R and non cultivable 02-R field is recorded in the name of defendant No. 1. Fields of the plaintiff and defendant No. 1 are adjacent to each other. After purchase of the fields plaintiff and defendant No. 1 have made some improvements in their fields. In the current year when plaintiff was doing cultivating work in his field, on 01.06.2024 defendants appeared and obstructed to his possession over the suit property. Therefore, this suit is filed and by filing this application plaintiff prayed for interim injunction against the defendant.

**3.** By filing say vide their amended W.S. which is kept with Exh. 14 defendant No. 1 and 2 admitted the purchase of the 80-R each field in Block No. 569 vide registered sale deeds. They also admitted relations with the plaintiff. They further admitted the mutation entries taken on the basis of registered sale deeds. They again admitted the giving of some fields to their brother Satyabhan Patilba Gadade which was recorded in the name of Indubai Satyabhan Gadade. However, they contended that after purchase of 80-R each field by the plaintiff and defendant No. 1 they were cultivating that field jointly with their brother Satyabhan Patilba Gadade. Therefore, there was no bandh/boundary in between the field of plaintiff and defendant. Though, plaintiff and defendant No.1 have transferred 27-R and 26-R field in Block No. 569 to Indubai Satyabhan Gadade and her name was recorded in 7/12 extract to that effect but it is not made clear within which boundary the field was given to Indubai Satyabhan Gadade. Therefore, plaintiff is required to prove the document of partition. After transferring the field to Indubai Satyabhan Gadade plaintiff and defendant No. 1 not remained in possession of 80-R field as per the

sale deed in their favour. After giving 27-R and 26-R field respectively by plaintiff and defendant No. 1 to the Indubai Satyabhan Gadade the boundaries in between the plaintiff, defendant No. 1 and Indubai's field were fixed. Due to improvements made by the defendant No. 1 in his field, to grab it plaintiff has filed this false suit. Therefore, defendant No. 1 and 2 sought for rejection of this application. This suit was proceeded without written statement of the defendant No. 3 and 4. They also not filed say to this application.

4. Heard Ld. Counsel for plaintiff and defendant No. 1 and 2. After considering the pleading and argument of the Ld. counsels for both sides following points arise for my determination to which I have recorded my findings against them for the reasons mentioned thereunder:-

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Does plaintiff prove that, prima facie case lies in his favour ?	<b>...Negative</b>
2.	Does plaintiff proves that, balance of convenience lies in his favour ?	<b>...Negative</b>
3.	Does plaintiff proves that, he will suffer irreparable loss if the injunction prayed not granted ?	<b>...Negative</b>
4.	What order ?	<b>...As per final order</b>

### **REASONS**

#### **AS TO POINT NO. 1 TO 4 :-**

5. Perusal of record shows that, in support of the contention taken by the plaintiff he has filed some documents with list Exh. 4.

Plaintiff has also filed affidavit of Satyabhan Patilba Gadade at Exh. 19. On behalf of defendants affidavit of Prabhu Pandit Hapte is also filed at Exh. 24. Affidavit of Nana Vaijinath Gadade on behalf of defendant is filed at Exh. 25. Affidavit of Suresh Santram Shinde is also filed at Exh. 26 by the defendants. Affidavits filed of the witnesses on behalf of plaintiff and defendants support the contention taken by them in their application and say.

6. Copy of 7/12 extract filed with list Exh. 4 of field Block No. 569 shows that, 1-H 75-R and non cultivable 05-R field is recorded in the name of Indubai Satyabhan Gadade. 52-R and non cultivable 02-R field is recorded in the name of defendant Bhagwan Patilbuwa and 50-R and 03-R non cultivable field is recorded in the name Bapu Patilbuwa Gadade. Thus, it appears that in field Block No. 569 total 53-R field is recorded in the name of plaintiff Bapu Patilbuwa Gadade. As per the contention of the plaintiff he had purchased total 80-R field in Block No. 569 and out of it 27-R field was given by him to his brother Satyabhan Gadade which is recorded in the name of Indubai Satyabhan Gadade. As per his further contention defendant No. 1 has also purchased 80-R field in that Block number and out of his field 26-R field was given by defendant No. 1 to his brother Satyabhan Gadade which is recorded in the name of Indubai Satyabhan Gadade. Perusal of the certified copy of the registered sale deed No. 1434/1991 shows that, plaintiff Bapu Patilba Gadade had purchased 80-R field in Block No. 579 from Tukaram Keshav Joshi. Four boundaries mentioned in that sale deed shows that, towards southern side there was remaining field of the vendor Tukaram Keshav Joshi. Perusal of certified copy of sale deed No. 1435/1991 shows that, defendant No. 1 Bhagwan Patilba Gadade had purchased 80-R field in Block No. 569 from Tukaram Keshav Joshi. Perusal of the four boundaries in that sale deed shows that, towards

southern side there is field purchased by Bapu on the same day. Thus, it appears that out of total field purchased by plaintiff and defendant No. 1 from Tukaram Keshav Joshi field purchased by the plaintiff Bapu was towards southern side and field purchased by defendant No. 1 Bhagwan was towards northern side.

7. Perusal of the certified copy of Ferfar No. 937 and 938 filed with list Exh. 37 shows that, plaintiff Bapu Patilba Gadade had transferred 27-R field to Indubai Satyabhan Gadade in partition and that Mutation entries was taken on the basis of written document on stamp paper of Rs. 20/-. It further shows that, in partition defendant No. 1 Bhagwan Patilba Gadade had also transferred 26-R field in Block No. 569 to Indubai Satyabhan Gadade and Ferfar was taken accordingly on the basis of written document on stamp paper of Rs. 20/-. Thus it appears that field admeasuring 27-R and 26-R in Block No. 569 was transferred in the name of Indubai Satyabhan Gadade in view of written partition. However, the stamp paper on which that written partition was done is not filed by either plaintiff or defendants in this case. The four boundaries of 27-R field given by plaintiff Bapu Patilba Gadade and 26-R field by defendant No. 1 Bhagwan Patilba Gadade to Indubai Satyabhan Gadade can be found only on the document of partition occurred in between them. Therefore, there is no document on record to show that within which boundaries the 27-R and 26-R field were given by the plaintiff and defendant No. 1 to Indubai Satyabhan Gadade.

8. In his plaint plaintiff has shown the field of defendant No. 1 towards northern side of his field. However, field belonging to Indubai Satyabhan Gadade is also shown towards northern side of the defendant No. 1. As per the contention taken by the plaintiff since the purchase of the fields by plaintiff and defendant No. 1 they were

separately cultivating their fields. Therefore, if 27-R field was given of the field of plaintiff Bapu Patilba Gadade to Indubai Satyabhan Gadade then the field of the Indubai Satyabhan Gadade was required to be situated either towards eastern, western or southern side of the plaintiff as plaintiff is claiming that field of defendant No. 1 is still adjoining to his field. Hence, field of Indubai Satyabhan Gadade may be to be within the field shown by the plaintiff in his possession. Though, plaintiff has filed affidavit of his brother Satyabhan Gadade in support of his contention but such affidavit was not filed of the Indubai Satyabhan Gadade whose interest lies in the disputed field. Considering the nature of the proceeding it appears that there is the dispute regarding the location of fields belonging to the plaintiff, defendant No. 1 and Indubai Satyabhan Gadade. Therefore, if any order in respect of the suit property is passed then it may affect the interest of the Indubai Satyabhan Gadade. However, plaintiff has not made Indubai Satyabhan Gadade as a party to this suit who appears to be necessary party. Therefore, prima facie case does not appear to be in favour of the plaintiff. As to the balance of convenience and irreparable loss if injunction as prayed is granted then it may affect the interest of the third party i.e. Indubai Satyabhan Gadade which may cause irreparable loss to her. Therefore, I answer point No. 1 to 3 in negative and for the answer to point No. 4 proceed to pass following order.

**ORDER**

01. This application is hereby rejected.
02. Cost in cause.

Date : 31-01-2025

**(Shri. S. P. Wankhade)**

**C.J.J.D. AND J.M.F.C. GEORAI**

**Certificate**

I affirm that the contents of this PDF file are same word to word as per original order.

Dictated on : 31/01/2025  
Transcribed on : 31/01/2025  
Checked & signed on : 31/01/2025

Sd/-  
( V. V. Mandve )  
Stenographer Grade- 3  
C.J.J.D & J.M.F.C., Georai.