



Reg.Civil Suit No.14/2024
Aasha Kathole & Ors. - Vs-
Sushila Kathole & others

ORDER BELOW EXH.05

(Passed on 04.04.2026)

This is an application filed by plaintiffs under Order 39 Rule 1 & 2 r/w 151 of the Code of Civil Procedure for grant of temporary injunction to restrain the defendants from creating third party interest on the basis of will deed from disturbing possession of the plaintiffs and from encroaching upon the suit property described below.

Description of properties -

2. A) Survey No.746/6 total area 0.5R out of that 0.03H open space, situated at Shegaon, Tq.Shegaon, Dist.Buldhana having boundaries:

East :- Nagzari Road

West:- House of Sahdev Kherde, Ramchandra Palhade

North:- House of Narayan Dindokar

South:- House of Sheshrao Dindokar

(Hereinafter the above properties are referred to as 'the suit properties' for short).

Undisputed and admitted facts of the case are as follows:-

3. The plaintiffs and defendants are relatives. Shivram Shankar Kathole purchased the suit property from Maroti Tukaram Kathole on dated 11.02.1967 total admeasuring 3.75 guntha survey No.746/6 situated at mouje Shegaon, Tq.Shegaon,



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Dist.Buldhana. It is also not disputed that, Shivram Kathole executed registered will deed dated 07.12.2015 in favour of defendant No.2 & 7 and the said will deed is acted upon and accordingly the names of defendant No.2 & 7 have been recorded in the record of right having mutation entry No.4634.

The plaintiffs case in nutshell for disposal of the temporary injunction application.

4. The suit property is ancestral property of plaintiffs and defendants and they have equal share in the suit property. Shivram Shankar Kathole had four children namely Digambar, Dattatraya, Avadhut and Mankarnabai. Shivram Kathole died on 18.09.2018. During his existence, after marriage of Mankarnabai, the suit property was orally partitioned between Shivram, Digambar & Dattatraya and accordingly they were in possession of their share i.e. 1.25 guntha. Defendant No.2 & 7 without giving any intimation to plaintiffs created bogus will deed by taking advantage of old age of Shivram Kathole and they have mutated their names on revenue records.

5. Therefore, the plaintiffs have moved to SDO, Khamgaon for cancellation of mutation entry No.4634 and the said appeal is pending. Upon perusal of the will deed dated 07.12.2015, it can be seen that, the age of the Shivram Kathole is mentioned as 90 years but he was only 89 years old. Shivram



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Kathole was well educated and used to sign on any document. However, on the said will deed deceased Shivram has not signed but the thumb impression is appearing. The overall circumstances shows that, the will deed is sham and bogus.

6. Avdhut was the son of deceased Shivram Kathole and Avdhut Shivram Kathole has taken care of deceased Shivram throughout his life. Therefore, there was no reason for omitting the name of Avdhut from the said will deed. On dated 02.02.2024 for the first time plaintiffs came to know that, defendant No.2 & 7 has created this false registered will deed.

7. The defendant No.2 started raising construction over the said suit property and trying to encroach upon it. The defendant No.2 & 7 are trying to create third party interest over the suit property. The plaintiffs have sent notice to defendant No.2 & 7 on dated 06.03.2024. However, the said notice returned with endorsement that, defendant No.2 did not found on the present address and the said notice is served to defendant No.7. Considering the above mentioned facts the plaintiffs have prima facie case, the balance of convenience is lies in their favour and they will suffer irreparable loss. Hence, prayed to allow the application.

8. On the contrary, the defendant No.1, 2, 5, 7 & 8 strongly resisted the application by filing reply vide Exh.39.



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Thereafter, the defendant No.4, 6 & 11 have also accepted the said written statement by filing pursis. The defendants disputed the four boundaries and description of the property. They have specifically submitted that, the suit of the plaintiff is barred by law of limitation as well as it is barred for not paying proper Court fees.

9. The plaintiff No.2 & 3 have raised their objection in respect to mutation entry of defendant No.2 & 7 on the revenue record on dated 19.01.2020. Therefore, the contentions of plaintiff that, for the first time they have come to know about the said will deed dated 07.12.2015 on dated 02.02.2024, is a false statement. Therefore, the plaintiffs does not come with clean hands before the Court. The plaintiffs have taken wrong mutation entries in the ancestral properties situated at Part 4 having Gut No.767/3, Gut No.764, Gut No.946/4, Gut No.767/8, Gut No.763/2, Gut No.767/8-A, Gut No.936/3. However, plaintiffs did not mention these properties in the suit. Hence, the suit of the plaintiffs is liable to be dismissed.

10. The will deed executed by Shivram Kathole is legal and valid. The said property is not in possession of plaintiffs. On the contrary, the construction is already raised upon on property and it is in possession of defendants. The plaintiffs have filed this suit in order to harass the defendants. Hence, prayed for rejection



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of the application.

11. Perused the application, say and record. I have gone through the documents relied upon by the parties. Heard both Advocates at length. The learned Advocate for the plaintiffs argued as per his application and relied upon mutation entry record dated 29.01.2024, photocopy of 7/12 extracts of gut No.764/6 dated 29.01.2024, 28.09.2018, photocopy of will deed 07.12.2015, mutation entry No.4634 dated 10.01.2024, mutation entry No.6472 dated 10.01.2024, copy of 7/12 extract of Gut no.746/6 dated 15.04.2024.

12. On the contrary, the learned Advocate for the defendant argued as per his reply and relied upon Namuna 6-A vide Exh.65.

13. At the outset, it is important to mention that, the plaintiffs are not disputing the fact that, the will deed is executed on dated 08.12.2025 in favour of defendant No.2 & 7 by deceased Shivram Shankar Kathole and the said will deed is registered. Further it is not disputed that, the said will deed is also acted upon and accordingly mutation entry No.4634 is recorded in the names of defendant No.2 & 7.

14. It is their contention that, the said will deed is bogus and sham. However, it is important to note that, whether the sale



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deed is bogus and sham requires evidence. During the course of trial the plaintiff will get an opportunity to prove their contentions. However, prima facie it is seen that, the registered documents i.e. will deed dated 07.12.2015 is executed in favour of defendant No.2 & 7.

15. It is pertinent to note that, the registered document has presumption of validity in the eyes of law. Moreover, if any person is objecting the contents of registered document then the burden is upon that person to prove the same as per Section 101 of the Indian Evidence Act, 1872. The plaintiffs did not file on record any document to show that, they are in possession of the suit property. Moreover, upon perusal of the Gavnamuna 6-A of the year 2018-2019 of survey No.746/6 filed vide Exh.65 shows that, the plaintiff namely Sunil and Arun Kathole have raised an objection for mutation entry No.4634 on dated 19.01.2020. This clearly shows that, the plaintiffs were aware about the existence of will deed dated 07.12.2015 and regarding the mutation No.4634 way back on dated 19.01.2020. However, the plaintiffs claims that, they have first time came to know about the existence of will deed on dated 02.02.2024 which is exactly contrary to the said document.

16. The plaintiffs also failed to demonstrate that, the suit property was in their possession and it was orally partitioned by



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deceased Shivram Shankar Kathole. Considering the above discussion the plaintiffs have no prima facie case, in the result balance of convenience does not lie in their favour and plaintiffs failed to prove that irreparable loss. After considering all the above discussion, I proceed to pass the following order.

ORDER

The application (Exh.5) is rejected.

Shegaon
Date : 04.04.2026

(Smt. M.K.Gote)
Jt Civil Judge, J.D.,
Shegaon.



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Certificate

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

Name of Steno: G.D.Bhoyte, Stenographer Grade-III.

Name of Court: Jt.Civil Judge Jr.Dn., Shegaon.

Dictated on : 04.04.2026

Checked & Signed on 04.04.2026

Uploaded on 04.04.2026