

CNR NO. MHGA090002022022



**IN THE COURT OF JOINT CIVIL JUDGE (JUNIOR DIVISION), CHAMORSHI**  
**(Presided Over by Diksha D. Vighne)**

**Regular Civil Suit No. 06/2022**

Shri. Homdeo Raghunath Gawhare  
Age :- 75 years, Occ.:- Agriculture,  
R/o. Ward no.3, Chamorshi  
Tq.-Chamorshi, Dist.-Gadchiroli.

----- **Plaintiff**

**-Versus-**

1. Ramdas Raghunath Gawhare,  
Age :- 55 years, Occ.:- Agriculture,
2. Jivandas Raghunath Gawhare,  
Age :- 50 years, Occ.:- Agriculture,  
Both R/o. Ward no. 3 Chamorshi,  
Tq.-Chamorshi, Dist.-Gadchiroli.

----- **Defendants**

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**Appearance:-** Advocate for Plaintiff :- Smt. M. K. Atmande  
Advocate for Defendants :- Shri. V. G. Chilange  
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**Order Below Exh.20**  
(Passed on 15/11/2022)

This is an application filed by plaintiff for grant of temporary injunction under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure for restraining defendants from disturbing the possession of plaintiff over suit land Survey no. 380/1, Area 0.41 H.R. situated at Chamorshi and for restraining defendants from alienating suit land or creating third party interest in suit land.

**Four Boundaries of Suit Property :-**

**East :-** Land of Patru Budha Satpute.

**West :-** Land of Sampat Naitam.

**North :-** Land of Sampat Naitam.

**Sourth :-** Pandanvat.

(Hereinafter referred as "Suit land".)

**The brief facts of the plaintiff case is as under :-**

2] It is the contention of the plaintiff that plaintiff and defendants are real brothers. On 05-02-1994, the plaintiff and defendants had acquired ownership of the suit land by executing sale deed. Since then they are in possession of suit property and cultivating the same. After few years, families of plaintiff and defendants become nuclear. The plaintiff was in need of money for the marriage of his elder daughter. At that time, defendants had given him Rs. 20,000/- on account of plaintiff share in suit land be given to them for security of repayment of hand loan. Plaintiff further submitted that he was under burden of his daughters marriage and hence without thinking much more and without reading documents he had sign the documents prepared by defendants. After some time plaintiff went to ask for returned of possession of his land but defendants told him that unless and until you will returned borrow money till then possession will be keep with defendants. Therefore, after few years plaintiff had returned all borrowed money and ask for possession of land. At that time, defendant no.1 told him that his son Rupesh is cultivating his land and they will give him share of profit. The plaintiff agreed for the same and thereafter land was cultivated by defendants.

3] It is furter submitted by plaintiff that till today defendants does not given a single penny to the plaintiff. One day defendants and

son of defendant no.1 came to plaintiff and stated that the suit land is acquired by Government Authority under Chichdoh Project. For getting compensation from government they have to execute sale deed of suit land in favour of government. Plaintiff had trusted defendants statement and went with them at Sub- Registrar Office, Chamorshi. Defendants and son of defendant no.1 ask plaintiff to sign a document. Plaintiff without reading that document affix his signature on the document title as “Sthawar Jaminicha Vinamobadla Hakksodpatra” on 27-08-2021. Thereafter, plaintiff time to time ask defendants about compensation amount granted by government but defendant always said that it will take time to grant money from government. So plaintiffs son inquired at Chichdoh Project office there he got to know that there were no such sale deed made in favour of government. When son of plaintiff inquired at Sub-Registrar Office, Chamorshi then he got to know about illegal conspiracy of defendants that on 27-08-2021 defendants had fraudulently executed relinquishment deed in their favour by obtaining signature of plaintiff.

4] The plaintiff submitted that he has never transfer the title of the suit land to defendants. Therefore, plaintiff's son immediately move an application to Talathi Office as well as Sub Division Office, Chamorshi on 31-08-2021 to stop illegal mutation of suit land. Thereafter, defendants tried to dispossess the plaintiff by illegal means. Therefore, plaintiff has filed this application for temporary injunction to restrain defendants from distrubing his possession and from creating third party interest over suit land.

5] Learned advocate for plaintiff has submitted that suit land is self acquire property of plaintiff and defendant no.1 and 2. They are

brothers of each other. Plaintiff had borrowed hand loan of Rs. 20,000/- from defendants at the time of his elder daughter's marriage. After repayment of borrow money plaintiff ask for his separate share. That time Rupesh asked plaintiff to come at Registrar Office and sign the documents. On 27-08-2021 defendants had fraudulently executed relinquishment deed in their favour by fraudulently obtaining signature of plaintiff. Therefore, on 31-08-2021 son of plaintiff's had filed his objection before Talathi Office and Sub-Registrar Office, Chamorshi. According to learned advocate for plaintiff relinquishment can be done only when it is a ancestral or joint property where rights are already exists. But in this case the property is self acquired property therefore the relinquishment deed itself void-ab-initio. Thus, she has stated that the prima facie case is in their favour. Balance of convenience is also lies in their favour. As well as if injunction is not granted then plaintiff will suffer irreparable loss which cannot be compensated in terms of money. Hence, she has prayed for grant of temporary injunction in their favour.

6] Learned advocate for defendants has filed his say and submitted that plaintiff is a literate person and defendant no.1 and 2 are illiterate person. In 1994 the plaintiff and defendants purchased the 0.41 H.R. out of survey no. 380/1 mouza Chamorshi, Tq.-Chamorshi, Dist.-Gadchiroli. Since then they had cultivated suit land jointly till 2004. In December- 2004 plaintiff was in need of money for his daughter's marriage. Therefore, he gave proposal to the defendants for selling his share i.e. 50 decimal in above property. Considering the plaintiff's need the defendants decided to buy his share. Thus, on 23-12-2004 defendants gave Rs. 20,000/- to plaintiff. At that time, plaintiff assured that he will execute the sale deed in favour of defendants as earlier as possible. In April-2005 plaintiff and defendants went to Tahsil Office,

Chamorshi for execution and registration of sale deed. There plaintiff and defendants got to know that plaintiff can not execute sale deed in respect of only 50 decimals. Therefore, on that day the execution of sale deed could not happened. But plaintiff assured that he will never demand returned of his share from suit land. Since then defendants are cultivating the said land without any distrubance.

7] In first week of August-2021 the plaintiff son quarrel with him and threat him that if plaintiff does not demand his share in suit land then he will remove plaintiff from the house. Therefore, plaintiff decided that he will execute the reliquinshment deed in favour of defendants to avoid future complication in the suit land. Thus, on 27-08-2021 plaintiff had executed reliquinshment deed in favour of defendant no.1 and 2 caption as "Sthawar Shetjaminicha Vinamobadla Hakksodpatra". The said document was read over in presence of all. All admitted the contents to be correct. Rupesh Ramdas Gawhare and Vishal Prabhakar Somankar sign as attesting witnesses. Thereafter, the said documents was registered in the Sub-Registrar Office, Chamorshi. Thereafter, plaintiff kept mum near about six months after execution of the about documents. The plaintiff created a false story under the pressure of his son for grabbing the suit land from defendants. Therefore, plaintiff has filed this false suit against defendants. According to the defendants, plaintiff has no right, title and interest in the suit property. Thus, there is no prima facie case for protection of possession. As such plaitiff is not entitled to temporary injunction as sought for. Hence, he prayed for rejection of this application with compensatory cost.

8] Learned advocate for defendants has submitted that the suit

of plaintiff is itself not tenable because permanent injunction cannot be seek against co-sharer. Only if the property is exclusive then only permanent injunction can be ask for but in present case plaintiff has admitted that property is joint property. Therefore, plaintiff is not entitled for injunction against defendants. In this case, plaintiff is a literate and defendants are illiterate. Therefore, There are less possibility that defendants had fraudulently executed relinquishment deed in their favour from plaintiff. He further submitted that, the plaintiff wanted to execute sale deed in favour of defendants but due to fragmentation Act the sale deed of 50 decimal land could not be executed. Therefore, plaintiff had executed relinquishment deed in favour of defendants. He has point out the order of Tahsildar at Exh. 09 in which Hon'ble Tahsildar has directed to mutate names of defendants on suit land and directed to the plaintiff to go to competent Civil Court to challenge the legalilty of relinquishment deed. Therefore, learned advocate for defendants has submitted that there is no prima facie case in favour of plaintiff. As well as balance of convenience is also lies in favour of defendants because relinquishment deed is a registered document. Therefore, there is presumption of genuineness in favour of registered document. As well as irreparable loss will cause to the defendants because they had paid amount to plaintiff for his daughter's marriage and in returned plaintiff had relinquished his share in suit land in favour of defendants. 7/12 extract of survey no. 380/1 filed vide Exh. 24 shows that name of plaintiff was removed on 15-03-2022. But plaintiff is in possession of suit land it has cause irreparable loss to the defendants. He also submitted that, plaintiff has filed on record 7/12 extract of suit land of dated 21-07-2020. At the time of filing this suit the names of plaintiff was removed from 7/12 extract of suit land but plaintiff intentionally

did not filed latest 7/12 extract on record. It shows that plaintiff does not come with clean hand before court. Hence, he has prayed for rejection of application with heavy cost.

9] From the pleadings of the both parties, document placed on record and submission advanced by learned advocated for both party, following points are arise for my consideration and I have recorded my findings thereon with reasons to follow.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether plaintiff has made out a prima facie case ?	Yes.
2.	Who will suffer irreparable loss if temporary injunction is not granted ?	Plaintiff will suffer irreparable loss
3.	Whether balance of convenience lies in favour of plaintiff ?	Yes.
4.	What order ?	.... Application is allowed.

### REASONS

#### As to Point No.1 :-

10] Perused application and say thereon. Heard learned advocate Smt. M.K. Atmande for plaintiff and learned advocate Shri. V. G. Chilange for defendants. Perused record it is seen that the present suit is filed for cancellation of relinquishment deed and permanent prohibitory injunction against defendants. So, plaintiff has filed temporary injunction application to restrain defendants from distrubing plaintiff possession and from alienating suit land or create third party interest in suit land.

11] As per the case of plaintiff, defendants had fraudulently

obtained his signature on “Sthawar Jaminicha Vinamobadla Hakksodpatra” by pretending that the document is a sale deed in favour of Government for Chichdoh Project. As per the case of defendants, plaintiff had voluntarily executed “Sthawar Jaminicha Vinamobadla Hakksodpatra” in their favour because sale deed of 50 decimal land could not be executed. From the documents filed by plaintiff alongwith plaint has prima facie shows that plaintiff’s main allegation is that his signature was fraudulently obtained in relinquishment deed on 27-08-2021. Thereafter, further documents shows that plaintiff had written letters to Talathi Chamorshi and Sub-Divisional Officer Chamorshi on 31-08-2021 and 03-09-2021 respectively to file their objection. It also appears that on the day of execution and registration of relinquishment deed nobody from the family of plaintiff was present at Sub- Registrar Office, Chamorshi. But defendants and son of defendant no.1 was present. There is nothing on record to prima facie show that family members of plaintiff had knowledge or information about execution or registration of relinquishment deed.

12] The submission of learned advocate for defendants that permanent injunction can not seek against co-sharer is not tenable at this juncture because prima facie the main prayer of plaintiff is cancellation of relinquishment deed dated 15-03-2022. When the first prayer of cancellation deed will allow after deciding case on merits then the question of collateral relief injunction will arise. Therefore, this submission of learned advocate for defendants is not useful at this interim stage. The another submission of learned advocate for defendants that plaintiff is literate and defendants are illiterate therefore defendants cannot commit fraud cannot be accepted as general rule. Prima facie it is seen that even though plaintiff is literate person it does

not mean that plaintiff has full knowledge about registration and documentation. It also appears that the name of defendants were mutated on 7/12 extract of suit land on 15-03-2022 by order of Hon'ble Tahsildar Chamorshi. Hon'ble Tahsildar is a revenue officer. He is delegated with power to mutate name on revenue record based on registered document. The jurisdiction to verify legality of any registered document is lies with competent Civil Court. Hence, even though name of plaintiff was removed from 7/12 extract of suit land on 15-03-2022 it does not prima facie confirmed that relinquishment deed executed on 27-08-2021 is legal and valid. Prima facie it appears that if plaintiff wanted to relinquish his right in favour of defendants then immediately after four days of registration of relinquishment deed he could not sent letter to Talathi Chamorshi for filing his objection to mutate names of defendants on suit land. Therefore, I prima facie find that plaintiff does not wanted to relinquish his share in suit land to defendants. Moreover, when there is near family members like son to the plaintiff then prima facie it create suspicion that plaintiff had voluntarily executed and registered relinquishment deed in favour of defendants. I have prima facie find that there is a bonafide dispute raised by plaintiff and there is an arguable case for trial which need to be decided on merits. Hence, I find that plaintiff has prima facie case. Thus, I answer point no.1 in affirmative and record my findings accordingly.

**As to point no.2 and 3 :-**

13] In the above discussed point I hold that plaintiff has prima facie case. In this case, it is admitted by both parties that plaintiff is in possession of suit land. It is also submitted by plaintiff that he does not have any other agricultural land. His occupation is agriculture. If his possession over suit land has gone then it will cause irreparable injury to

him resulted into irreparable loss which cannot be compensated in terms of money. It is appear from the record and submission of learned advocate for defendants that name of plaintiff was removed from 7/12 extract of suit land by order of Hon'ble Tahsildar. It is settled principle that 7/12 extract is not proof of ownership. But the possibility of creating third party interest in suit land by defendants on the basis of their name in 7/12 extract of suit land, cannot be ruled out. In that situation interest of third party will be created. Which will resulted into multiplicity of proceeding and delay in conclusion of trial. Thus, I find that plaintiff will suffer irreparable loss if injunction is not granted in his favour and also he will suffer comparative mischief, hardship and inconvenience. Thus, balance of convenience is in favour of plaintiff. On the other hand, it is prima facie seen that plaintiff is in possession of his share and cultivating the same. As well as, defendants are cultivating their share in suit land. The share of plaintiff is in question before this court. There is no dispute regarding share of defendants in suit land. Thus, the share of defendants in suit land will not be taken from them. But if defendants are not restrained from distrubing possession of plaintiff or creating third party interest then there is likelihood that possession of plaintiff will be taken away. Thus, I prima facie find that, for now defendants are not facing any irreparable loss which cannot be compensated in terms of money as well as balance of convenience is also not in their favour. Hence, accordingly I answer point no.2 as to the plaintiff if injunction is not granted in his favour and point no. 3 in affirmative and record my findings accordingly.

**As to Point no.4 :-**

14] As I have already discussed above that prima facie case is in favour of plaintiff and he is entitled for temporary injunction. As well as

balance of convenience is also in favour of plaintiff and he will suffer irreparable loss. Thus, to protect possession of plaintiff there is need to restrain defendants from disturbing possession of plaintiff and to restrain from creating third party interest till conclusion of trial. Thus, in the result I pass following order.

**ORDER**

1. Application is allowed with cost.
2. Temporary injunction is granted in favour of plaintiff.
3. Defendants and other persons claiming through defendants are restrain from disturbing plaintiff's possession over his share in suit land in any manner till further orders.
4. Defendants are restrain from alienating suit land or from creating encumbrance or creating third party interest on suit land in any manner, till further orders.

Date: 15.11.2022

(Diksha D. Vighne)  
Jt. Civil Judge (Jr. Dn.),  
Chamorshi.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file are word to word same, as per original Judgment.

Name of Stenographer : Mr. M.R.Mohurle, Stenographer (Grade-3)  
Name of Court : Jt. Civil Judge (Jr.Dn.) & JMFC, Chamorshi.  
Date of Judgment : 15/11/2022.  
Judgment checked and  
signed by Presiding Officer on : 15/11/2022.  
Judgment uploaded on : 16/11/2022.