

**ORDER BELOW EXH. 05**  
(Passed on 01 July, 2021)

The present application filed by the applicant Sulkabai for temporary injunction as per Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, against the non-applicant (Manikrao) for not to disturb her possession of T.S. No.24 Gat No. 43/1 admeasuring area 1.36 H.R. agricultural land situated at Masurbhawda Tq. Deori Dist. Gondia till the final disposal of the suit. (Hereinafter, it is called as suit property.)

2. Brief avernments of the applicant as follows

It is the contentions of the applicant that Fulkabai is a second wife of deceased Shriram Puram (husband of the applicant). Sanjay is a son of deceased Shriram.

3. It is the contentions of the applicant that after death of deceased Shriram; she herself, Fulkabai and Sajay became an owner and possessor of the suit property.

4. It is the further contentions of the applicant that after death of her husband the non-applicant fraudulently prepared a false gift deed in respect of suit property in his favour. Accordingly, the non-applicant mutated his name in revenue record. Later on, on 07-01-2019 the applicant filed an application before Tahsildar, Deori. Later on, on 22-06-2020 the applicant filed an appeal before S.D.O., Deori for cancellation of mutation entry.

5. It is the further contentions of the applicant that she belongs to Schedule Tribe. It is the further contentions of the applicant that she herself, Fulkabai and Sanjay are an owner and possessor of the suit property. It is further contentions of the applicant that she herself, Fulkabai and Sanjay are cultivating the suit property. On 14-06-2020 the non-applicant obstructed possession of the applicant over the suit

property. The non-applicant is also trying to disturb a peaceful possession of the applicant over the suit property. Therefore, the applicant would have suffer irreparable loss if she would be dispossessed from the suit property. Therefore, the applicant filed the present application against the non-applicants for not to disturb her possession over the suit property till the final disposal of the suit.

6. The non-applicant appeared and filed his say to present application at Exh.27 dated 08-12-2020. The non-applicant denied all contentions of the applicant in the present application. The non-applicant in his special pleading averted that deceased Shriram married with the applicant but they have no issues from said marriage. Therefore, deceased Shriram performed second marriage with Fulkabai and they have one son from said marriage.

7. The non-applicant in his special pleading averted that no one has taken care of deceased Shriram, therefore, he has taken care of deceased Shriram. Therefore, due to love and affection in the year of 1995 deceased Shriram executed a gift deed of 1.20 H.R. agricultural land out of total 1.36 H.R. agricultural land i.e. suit property in his favour. Therefore, said 1.20 H.R. agricultural land was mutated in his name.

8. The non-applicant in his special pleading further averted that since 1995 he is cultivating 1.20 H.R. agricultural land out of total 1.36 H.R. agricultural land i.e. suit property. The non-applicant further averted that remaining 0.16 H.R. agricultural land out of total 1.36 H.R. agricultural land i.e. suit property is jointly cultivated by the applicant, Fulkabai and Sanjay. The non-applicant further averted that an application filed by the applicant before Tahsildar, Deori was rejected. The non-applicant further averted that the applicant has no legal right and title over the suit property. Moreover, the non-applicant further

averted that the applicant filed the present suit as well as present application illegally against him. Hence, the non-applicant prayed for rejection of the present application with costs of rupees 20,000/- (Twenty Thousand Only).

9. In view of rival contentions of both the parties following points arises for my determination, to which I recorded my findings thereon as under for the reasons given below.

Sr. No.	Points	Findings
1	Does the applicant proves the prima facie case in her favour?	No
2	Does the applicant proves balance of convenience lies in her favour?	No
3	Does the applicant proves she would sustain irreparable loss if temporary injunction is refused?	No
4	What order?	Application is rejected.

### REASONS

10. Heard the learned advocate Mr. B.T. Maskare for the applicant. Also heard learned advocate Mr. S.K. Bawariya for the non-applicant.

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

11. The learned advocate Mr. B.T. Maskare for the applicant argued that Fulkabai is a second wife of deceased Shriram Puram (husband of the applicant) and Sanjay is a son of deceased Shriram. The advocate further argued that after death of deceased Shriram; the applicant, Fulkabai and Sajay became an owner and possessor of the suit property. The advocate further argued that after death of deceased Shriram the non-applicant fraudulently prepared a false gift deed in respect of suit property in his favour, accordingly, the non-applicant

mutated his name in revenue record. The advocate further argued that on 07-01-2019 the applicant filed an application before Tahsildar, Deori, and on 22-06-2020 filed an appeal before S.D.O., Deori for cancellation of mutation entry. The advocate further argued that the applicant belongs to Schedule Tribe. The advocate further argued that the applicant, Fulkabai and Sanjay are an owner and possessor of the suit property and also cultivating the suit property. The advocate further argued that on 14-06-2020 the non-applicant obstructed possession of the applicant over the suit property. The advocate further argued that the non-applicant has no interest or title over the suit property. The advocate further argued that the non-applicant is also trying to disturb a peaceful possession of the applicant over the suit property. The advocate further argued that the applicant would suffer irreparable loss if she would be dispossessed from the suit property. Therefore, the advocate prayed for allow the present application. Moreover, the applicant also relied on some documents which are filed on record by her.

12. On the contrary the learned advocate Mr. S.K. Bawariya for the non-applicant argued that deceased Shriram married with the applicant but they have no issues from said marriage, therefore, deceased Shriram performed second marriage with Fulkabai and they have one son from said marriage. The advocate further argued that due to love and affection in the year of 1995 deceased Shriram executed a gift deed of 1.20 H.R. agricultural land out of total 1.36 H.R. agricultural land i.e. suit property in favour of the non-applicant. The advocate further argued that said 1.20 H.R. agricultural land was mutated in the name of the non-applicant. The advocate further argued that since 1995 the non-applicant is cultivating 1.20 H.R. agricultural land out of total 1.36 H.R. agricultural land i.e. suit property. The advocate further argued that remaining 0.16 H.R. agricultural land out of total 1.36 H.R. agricultural land i.e. suit property is jointly cultivated

by the applicant, Fulkabai and Sanjay. The advocate further argued that an application filed by the applicant before Tahsildar, Deori was rejected. The advocate further argued that the applicant filed the present suit as well as the present application illegally against the non-applicant. Therefore, the advocate prayed for rejection of the present application with costs of rupees 20,000/- (Twenty Thousand Only). Moreover, the non-applicant has not filed any document on record.

13. Now coming towards legal position, the present application of temporary injunction filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, which is as follows

**Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 :-**

**Rule -1 :- Cases in which temporary injunction may be granted :-**

*Where in any suit it is proved by affidavit or otherwise -*

*(a) that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*

*(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,*

*(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,*

*the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienating, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.*

**Rule -2 :- Injunction to restrain repetition or continuance of breach :-**

(1) in any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing a breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) the court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.

14. For temporary injunction applications filed under Order 39 Rule 1 and 2, said applications are also related to legal provisions of section 36 and 37 of the Specific Relief Act,1963, which are as follows

**The Specific Relief Act,1963 :-****Section 36 :- Preventive Relief How Granted :-**

“Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual”.

**Section 37 :- Temporary and Perpetual Injunctions :-**

“(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of the suit, and are regulated by the Code of Civil Procedure,1908.

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit, the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.”

15. The court may grant temporary injunction to any party if he proved that property in dispute in a suit is in danger of being wasted, damage, alienation, sale, removal, dispossession and dispose or any other way. Before issuing a temporary injunction pending disposal of a suit, the applicant has to make out, firstly that he has got a prima facie title to properties. Secondly, the applicant must establish that he will suffer irreparable injury which is a matter which cannot be adequately compensated for by damages. Thirdly, the applicant must prove that the balance of convenience is in his favour, who is likely to suffer substantial mischief if the injunction is refused when compared to the mischief which might be caused to the non-applicant if the injunction is granted. Fourthly, the status quo must be maintained. The court has take into consideration all these points while granting a temporary injunction.

16. Now, considering this legal position the present application needs to be decided. The applicant filed the present suit for declaration and perpetual injunction. By deciding the present injunction application I am not deciding an ownership of the suit property. Now coming towards the present application, the applicant averted that she herself, Fulkabai and Sanjay are an owner and possessor of the suit property. On the contrary, the non-applicant averted in his reply that he is the possessor of the suit property. The applicant for proving her ownership and possession over the suit property relied on verified copy of Hissa Form No.4 at serial no.2 along with list of document below Exh.4. After perusal of verified copy of said Hissa Form No.4 it prima facie appears that deceased Shriram was in possession of the suit property. The applicant also filed on record xerox copies of 7/12 extract of Gat No. 113 and Form No.8-A at serial no. 10 and 11, respectively, along with list of document below Exh.4. After perusal of xerox copies of said 7/12 extract and Form No.8-A it prima facie appears that both these document are not of the suit property. The applicant also filed on record

two verified copies of P-1 at serial no.3 and 4 along with list of document below Exh.4. After perusal of verified copies of said P-1 it prima facie appears that both these document are not of the suit property.

17. It is also contentions of the applicant that after death of her husband the non-applicant fraudulently prepared a false gift deed in respect of suit property in his favour. Accordingly, the non-applicant mutated his name in revenue record. It is also contentions of the applicant that on 07-01-2019 she filed an application before Tahsildar, Deori, for cancellation of mutation entry. The applicant for proving her contentions relied on xerox copy of letter issued by her to Tahsildar, Deori at serial no.5 along with list of document below Exh.4. After perusal of xerox copy of said letter it prima facie appears that on 07-01-2019 the applicant filed an application before Tahsildar, Deori for deletion of name of the non-applicant from revenue record of the suit property. The applicant also filed on record verified copy of letter issued by Tahsildar, Deori to Talathi, Sindhiviri at serial no.6 along with list of document below Exh.4. After perusal of verified copy of said letter it prima facie appears that Tahsildar, Deori has directed to Talathi, Sindhiviri for making an inquiry and file his report in respect of the suit property. The applicant also filed on record xerox copy of inquiry report of Talathi, Sindhiviri at serial no.7 along with list of document below Exh.4. After perusal of xerox copy of said report it prima facie appears that on 20-07-1995 deceased Shriram has executed a gift deed in favour of the non-applicant, accordingly, the non-applicant's name has been mutated in revenue record of the suit property. The applicant herself filed a xerox copy of order of Tahsildar, Deori at serial no.12 along with list of document below Exh.4. After perusal of xerox copy of said order of Tahsildar, Deori it prima facie appears that an application filed by the applicant before Tahsildar, Deori was rejected.

18. On the contrary the non-applicant averted that due to love and affection in the year of 1995 deceased Shriram executed a gift deed of 1.20 H.R. agricultural land out of total 1.36 H.R. agricultural land i.e. suit property in his favour. Therefore, said 1.20 H.R. agricultural land was mutated in his name. After perusal of record it appears that the applicant herself filed a xerox copy of gift deed at serial no.9 along with list of document below Exh.4. After perusal of xerox copy of said gift deed it prima facie appears that on 20-07-1995 said gift deed executed by deceased Shriram Puram in favour of the non-applicant in presence of witnesses in respect of 1.20 H.R. agricultural land out of total 1.36 H.R. agricultural land i.e. suit property. The applicant also filed on record xerox copy of mutation entry at serial no.8 along with list of document below Exh.4. After perusal of xerox copy of said mutation entry it prima facie appears that Talathi has mutated the non-applicant's name in the revenue record of the suit property on the basis of gift deed of dated 20-07-1995 executed by deceased Shriram.

19. The applicant also averted that on 14-06-2020 the non-applicant obstructed her possession over the suit property, therefore, on 14-06-2020 she filed a report in Police Station, Chichgad. For proving these contentions the applicant filed on record xerox copy of report at serial no.14 along with list of document below Exh.4. After perusal of xerox copy of said report it prima facie appears that on 16-06-2020 the applicant filed a report against the non-applicant in respect of the suit property in the police station chichgadh. The applicant also filed a verified copy of report at serial no.1 along with list of document below Exh. 23. After perusal of verified copy of said report it prima facie appears that on 29-10-2020 the applicant filed a report against the non-applicant in respect of the suit property in the police station, chichgadh. Mere filing of report in the police station does not mean that the applicant is in possession of the suit property.

20. As discussed above it prima facie appears that the applicant is not in possession of the suit property. As discussed above it prima facie appears that on 20-07-1995 deceased Shriram Puram executed a gift deed in favour of the non-applicant in presence of witnesses in respect of 1.20 H.R. agricultural land out of total 1.36 H.R. agricultural land i.e. suit property. Furthermore, as discussed above it also prima facie appears that the non-applicant is a possessor of the suit property on the basis of the gift deed executed by deceased Shriram. However, as discussed above it also prima facie appears that on the basis of gift deed non-applicant's name has been mutated in revenue record of the suit property. However, the applicant herself filed a verified copy of 7/12 extract of the suit property at serial no.1 along with list of document below Exh.4. After perusal of said verified copy of 7/12 extract it prima facie appears that the non-applicant's name has been mutated in the revenue record of the suit property. Furthermore, for proving the contentions that said gift deed is false, bogus, frivolous, illegal and void it required evidence to be lead by the applicant. Therefore, after perusal of record and all relevant documents it prima facie appears that the applicant is only making oral allegations against the non-applicant.

21. After perusal of all the documents on record as discussed above it prima facie appears that the applicant is not in possession of the suit property. On the contrary as discussed above it prima facie appears that the non-applicant is in possession of the suit property. Moreover, as discussed above the applicant failed to prove that she is an owner and possessor of the suit property. However, the applicant averted in the present application that on 14-06-2020 the non-applicant obstructed her possession over the suit property. Said allegations of the applicant appears to be vague because it prima facie appears that the applicant is not in possession of the suit property, on the contrary, it prima facie appears that the non-applicant is in possession of the suit property,

therefore, question of obstruction does not arises. Therefore, as discussed above the applicant failed to proves prima facie case in her favour. Therefore, I recorded my findings as to point no.1 in negative.

**As to Point No. 2 and 3 :-**

22. As to the findings given to point no.1 it is crystal clear that the applicant failed to proves prima facie case in her favour. The applicant also failed to prove her possession over the suit property. Therefore, question of obstruction to the applicant's possession over the suit property by the hands of the non-applicant does not arises. Therefore, I hold that the applicant failed to prove balance of convenience in her favour and she would suffer irreparable loss if the injunction is refused. Therefore, I recorded my findings as to point no.2 and 3 in a negative.

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

23. Considering, all the legal principles required for granting the temporary injunction and as to findings given to point no. 1 to 3, I hold that the applicant is not entitled to the relief of temporary injunction. Therefore, I proceed to pass the following order.

**ORDER**

1. The present application Exh.5 is rejected.
2. Parties to be bear their own costs.

Pronounced and dictated in the open Court.

Sd/-

Date:- 01-07-2021

Mohmad Wasim Akram  
S/o Mohmad Jalal Sheaikh  
Civil Judge Junior Division, Deori

**CERTIFICATE**

I 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(L.G.) : Pramod B. Bisen  
Court Name : C.J.J.D., Deori  
Date : 01/07/2021  
Judgment signed by  
the Presiding Officer on : 01/07/2021  
Judgment uploaded on : 01/07/2021