

**ORDER BELOW EXH. 5**

(Passed on 20<sup>th</sup> October, 2021)

The present application filed by the applicant for temporary injunction as per Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, against non-applicants for not to transfer and alienate Gat No. 348/1/A/1 admeasuring area 0.96 H.R. agricultural land, Gat No. 349 admeasuring area 0.22 H. R. agricultural land and house No. 45 situated at Wadegaon, Tq. Deori Dist. Gondia till the final disposal of the suit. (Hereinafter, it is called as 'suit property'.)

2. Brief averments of the applicant as follows;

It is the contentions of the applicant that the non-applicant No. 1 Bhayyalal Rokde is his grandfather. The non-applicant No. 1 Bhayyalal have two daughters namely, Dwarka and Ratnamalabai. Deceased Ratnamalabai is a mother of the applicant. On 03.04.2009 deceased Ratnamalabai performed marriage with Rekhchand Khemraj Kurve (father of the applicant). On 15.07.2012 deceased Ratnamalabai gave birth to the applicant. On 12.07.2013 Ratnamalabai died. The non-applicant No. 2 Dwarka in the year of 1992-93 performed a marriage with Shyamlal Atmaram Kawale. The non-applicant No. 3 Akash, non-applicant No. 4 Vikash and non-applicant No. 5 Amit are grandsons of the non-applicant No. 1 Bhayyalal.

3. It is the further contentions of the applicant that deceased Motiram Paikujji Rokde is a grandfather of deceased Ratnamalabai. Deceased Motiram have two sons, namely, non-applicant No. 1 Bhayyalal and deceased Bhaurao. Deceased Motiram have two daughters, namely, Sundarabai and Karanbai. In

the years of 1993-94 Motiram Rokde died. Deceased Sayabai is a mother of the non-applicant No. 1 Bhayyalal. In the year of 2014 Sayabai died.

4. It is the further contentions of the applicant that when deceased Motiram died at that time he had near about 4.50 to 5.00 H.R. agricultural land at Wadegaon, however, said agricultural land is an ancestral land. After the death of deceased Motiram partition has been taken place between all heirs in respect of an ancestral agricultural land as well as house. During said partition the non-applicant No. 1 Bhayyalal got share of Gat No. 348/1/A/1 admeasuring area 1.16 H. R. agricultural land, Gat No. 349 admeasuring area 0.22 H. R. agricultural land and ancestral house.

5. It is further contentions of the applicant that 0.20 H.R. agricultural land out of 1.16 H.R. agricultural land of Gat No. 348/1/A/2 sold by the non-applicant No. 1 Bhayyalal to Jaywanta Dhanlal Bisen. Now, the non-applicant have the suit property. The suit property is a joint ancestral property of the applicant as well as non-applicant No. 1 and 2.

6. It is further contentions of the applicant that on 09.06.2020 the non-applicant No. 1 Bhayyalal sold 0.76 H.R. agricultural land out of 0.96 H.R. agricultural land of Gat No. 348/1/A/1 to non-applicant No. 2 to 5 by way of registered sale deed.

7. It is further contentions of the applicant that on 07.07.2020 he issued legal notice through his advocate to the non-applicant No. 1 Bhayyalal and demanded for share in the suit

property. Accordingly, on 14.07.2020 the non-applicant No. 1 Bhayyalal reply to the said notice and denied his share.

8. It is further contentions of the applicant that suit property is an ancestral property of the applicant as well as non-applicant No. 1 and 2. Partition has not taken place in respect of the suit property. The applicant has a share in the suit property. Non-applicants are trying to sale out the suit property. The applicant would have suffer irreparable loss if non-applicants transfer or alienate suit property to any person. Therefore, the applicant filed the present application against non-applicants for not to transfer or alienate the suit property till the final disposal of the suit.

9. Non-applicants appeared and filed their say to present application at Exh. 20 dated 01.02.2021. Non-applicants denied all contentions of the applicant in the present application except the relations. Non-applicants denied that deceased Motiram is a grandfather of deceased Ratnamalabai. Non-applicants in their special pleadings averted that after death of father of the non-applicant No. 1 Bhayyalal ancestral property was partition between the non-applicant No. 1 and his brothers and sisters. During said partition the non-applicant No. 1 got share of 1.16 H.R. agricultural land of Gat No. 348/1/A and 0.22 H.R. agricultural land of Gat No. 349 situated at Wadegaon. Accordingly, the non-applicant No.1 Bhayyalal is an owner and possessor of said property. Karanbai (mother of Rekhchand) and the non-applicant No. 1 are brother and sister. During said partition Karanbai got share of 0.20 H.R. agricultural land. Accordingly, Karanbai sold said 0.20 H.R. agricultural land to Shantabai Bisen.

10. Non-applicants in their special pleading further averted that on 20.08.2015 the non-applicant No. 1 Bhayyalal sold 0.20 H.R. agricultural land out of 1.16 H.R. agricultural land of Gat No. 348/1/A to Jaywanta Bisen by way of registered sale deed. On 10.06.2020 the non-applicant No. 1 Bhayyalal also sold 0.76 H.R. agricultural land out of 0.96 H.R. agricultural land of Gat No. 348/1/A/1 to non-applicant No. 2 to 5 by way of registered sale deed, accordingly, non-applicant No. 2 to 5 are an owner and possessor of the suit property.

11. Non-applicants in their special pleading further averted that the non-applicant No. 1 Bhayyalal is a sole owner of the suit property and he has every right to disposed of the suit property. The non-applicant No. 1 Bhayyalal have 0.20 H.R. agricultural land of Gat No. 348/1/A/1 and 0.22 H.R. agricultural land of Gat No. 349. The non-applicant No. 1 Bhayyalal has given a plot to the applicant's mother during her life time, accordingly, Rekhchand constructed a house in the year of 2010-11. The applicant have no interest or title in the suit property. Non-applicants further averted that the applicant filed the present suit as well as present application illegally against them. Hence, non-applicants prayed for rejection of the present application with heavy costs.

12. 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 his favour?	No

2	Does the applicant proves balance of convenience lies in his favour?	No
3	Does the applicant proves he would sustain irreparable loss if temporary injunction is refused?	No
4	What order?	Application is rejected.

### **REASONS**

13. Heard the learned advocate Mr. M. C. Pogale for the applicant. Heard learned advocate Mr. B. T. Maskare for non-applicants.

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

14. The learned advocate Mr. M. C. Pogale for the applicant argued that 0.20 H.R. agricultural land out of 1.16 H.R. agricultural land of Gat No. 348/1/A/2 sold by the non-applicant No. 1 Bhayyalal to Jaywanta Dhanlal Bisen. The advocate further argued that on 09.06.2020 the non-applicant No. 1 Bhayyalal sold 0.76 H.R. agricultural land out of 0.96 H.R. agricultural land of Gat No. 348/1/A/1 to non-applicant No. 2 to 5 by way of registered sale deed. The advocate further argued that the suit property is a joint ancestral property of the applicant as well as non-applicant No. 1 and 2. The advocate further argued that suit property is in possession of non-applicants, therefore, on 07.07.2020 the applicant issued legal notice through his advocate to the non-applicant No. 1 Bhayyalal and demanded for share in the suit property, accordingly, on 14.07.2020 the non-applicant No. 1 Bhayyalal reply to the said notice and denied share in the suit

property. The advocate further argued that non-applicants are trying to sale the suit property. The advocate further argued that the applicant would have suffer irreparable loss if non-applicants transfer or alienate suit property to any person. Therefore, the advocate prayed for allow the present application. Moreover, the applicant also relied on some documents which are filed on record by him.

15. On the contrary the learned advocate Mr. B.T. Maskare for non-applicants argued that after death of father of the non-applicant No. 1 Bhayyalal ancestral property was partition between the non-applicant No. 1 and his brothers and sisters. The advocate further argued that during said partition Karanbai (mother of Rekhchand and sister of the non-applicant no.1 Bhayyalal) got share of 0.20 H.R. agricultural land. The advocate further argued that Karanbai sold said 0.20 H.R. agricultural land to Shantabai Bisen. The advocate further argued that on 10.06.2020 the non-applicant No. 1 Bhayyalal sold 0.76 H.R. agricultural land out of 0.96 H.R. agricultural land of Gat No. 348/1/A/1 to non-applicant No. 2 to 5 by way of registered sale deed, accordingly, non-applicant No. 2 to 5 are an owner and possessor of the suit property. The advocate further argued that the non-applicant No. 1 Bhayyalal is a sole owner of the suit property and he has every right to disposed of the suit property. The advocate further argued that the non-applicant No. 1 has given a plot to the applicant's mother during her life time, accordingly, Rekhchand constructed a house in the year of 2010-11. The advocate further argued that suit property is already partitioned. The advocate further argued that the applicant have no interest or title in the suit property. The

advocate further argued that the applicant filed the present suit as well as present application illegally against non-applicants. Therefore, the advocate prayed for rejection of the present application with heavy costs. Moreover, non-applicants also relied on some documents which are filed on record by them.

16. 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.

17. 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.”

18. 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.

19. Now, considering this legal position the present application needs to be decided. The applicant filed the present suit for partition, separate possession and declaration. By deciding the present injunction application I am not deciding an ownership of the suit property. Now coming towards the present application, the applicant averred that suit property is an ancestral property,

therefore, he is having share in the suit property. For proving these contentions the applicant filed on record certified copies of 7/12 extract of agricultural land of gat no. 348/1/A and gat no. 349 at serial no.1 and 2, respectively, along with list of document below Exh.4. After perusal of said certified copies of 7/12 extract it prima facie appears that the non-applicant No. 1 Bhayyalal and deceased Sayabai's names have been mentioned on it. After perusal of said certified copies of 7/12 extract it prima facie also appears that it is of the year of 2014-2015. The applicant also filed on record certified copy of Form No.8-A at serial no.3 along with list of document below Exh.4. After perusal of certified copy said Form No.8-A it prima facie appears that the non-applicant No. 1 Bhayyalal and deceased Sayabai's names have been mentioned on it. It is pertinent to note here that entries in record of right shall be presumed to be true until contrary is proved. Therefore, after perusal of said certified copies of 7/12 extract and Form No.8-A it prima facie appears that the non-applicant No. 1 Bhayyalal and deceased Sayabai were a joint owner and possessor of said property in the absence of any authentic document of an ownership.

20. The applicant also filed on record certified copies of 7/12 extract of the suit property at serial no. 6 and 7 along with list of document below Exh.4. After perusal of said certified copies of 7/12 extract it prima facies appears that the non-applicant No. 1 Bhayyalal's name has been mentioned on it. After perusal of said certified copies of 7/12 extract it prima facie also appears that it is of the year of 2015-2016. It is pertinent to note here that entries in record of right shall be presumed to be true until contrary is

proved. Therefore, after perusal of said certified copies of 7/12 extract it prima facie appears that the non-applicant No. 1 Bhayyalal is an owner and possessor of the suit property in the absence of any authentic document of an ownership.

21. The applicant also filed on record a xerox copy of death certificate of deceased Sayabai at serial no. 5 along with list of document below Exh.4. Verified copy of school leaving certificate and marriage card of deceased Ratnamalabai at serial no.8 and 9 along with list of document below Exh.4. Verified copy of Aadhar card and birth certificate of Om at serial no.11 and 12 along with list of document below Exh.4. Death of Sayabai, marriage of deceased Sayabai and birth of Om all these facts admitted by non-applicants in their reply, therefore, no need to discuss about these documents.

22. Non-applicants averted that they are an owner and possessor of the suit property. For proving these contentions non-applicants filed on record xerox copies of 7/12 extract of the suit property at serial no. 1 to 4 along with list of document below Exh.19. After perusal of xerox copies of said 7/12 extract it prima facie appears that non-applicants names have been mentioned on it. It is pertinent to note here that entries in record of right shall be presumed to be true until contrary is proved. Therefore, after perusal of said xerox copies of 7/12 extract of the suit property it prima facie appears that non-applicants are a joint owner and possessor of the suit property in the absence of any authentic document of an ownership. The non-applicant No. 1 Bhayyalal also filed on record his affidavit at serial no.5 along with list of

document below Exh.19, wherein, he deposed as per the contentions of the application. It is pertinent to note here that it is not a proper to relied on said affidavit of the non-applicant No.1 Bhayyala because it is not the stage of the evidence, however, at this stage only prima facie matter has to be taken into consideration.

23. It is the contentions of the applicant that the suit property is an ancestral property. It is also contentions of the applicant that he himself and non-applicant No.1 and 2 are having share in the suit property. It is pertinent to note here that as already discussed above it prima facie appears that there is nothing on record to show that the suit property is an ancestral property. It is also pertinent to note here that as discussed above it also prima facie appears that non-applicants are an owner and possessor of the suit property. Furthermore, the applicant also admitted in his pleading that non-applicants are in possession of the suit property. Therefore, prima facie it can be stated that the applicant has no share in the suit property. Therefore, as discussed above the applicant failed to prove prima facie case in his favour. Therefore, I recorded my findings as to point no.1 in negative.

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

24. As to the findings given to point no.1 it is crystal clear that the applicant failed to proves prima facie case in his favour. The applicant in the present application averted that non-applicants are trying to transfer or alienate the suit property to any third person. As discussed in point no. 1 it prima facie appears that there is nothing on record to show that the suit property is an

ancestral property. On the contrary as discussed in point no. 1 it prima facie appears that non-applicants are an owner and possessor of the suit property. Therefore, it prima facie appears that the applicant does not have any share in the suit property. Therefore, I hold that the applicant failed to prove balance of convenience in his favour and he 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 :-**

25. 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 hereby rejected.
2. Parties to be bear their own costs.

Pronounced and dictated in the open court.

Sd/-

Date:- 20-10-2021

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