

R.C.S.No. 170/2025

Surekha Balaso Valave etc.01 Vs. Bhikaji Bala More etc.03

CNR - MHKO130021902025

ORDER PASSED BELOW EXH.05

(Dt. 06/04/2026)

1. By way of instant application vide Order 39 Rule 1 & 2 read with section 151 of the Code of Civil Procedure Plaintiff/applicant has prayed for the relief of temporary injunction to restrain the Defendants or their agents from interfering with the joint possession of Plaintiff over the suit property and to ousts them from the suit property. Plaintiff/applicant has further prayed to restrain the Defendant No. 2 from alienating or creating any third party interest in the suit property till the final disposal of suit.

2. It is submitted that Defendants are interfering with the joint possession of Plaintiff over the suit property and they are trying to ousts the Plaintiff from suit property. It is submitted that the Plaintiff has filed the suit for declaration that the alleged Gift Deed bearing No. 1033/2021 dated 20/03/2021 executed by Defendant No. 1 and 2 is illegal and not binding on the Plaintiff. Plaintiff has further prayed for partition, separate possession and for the relief of perpetual injunction. In such circumstances It is submitted that if the Defendants alienate or create any third party interest in the suit property the suit will become infructuous.

3. Suit property is agricultural land bearing Gat No. 460, 463, 469 and 473 situated at village Vadgoan, Tal. Kagal and more specifically described in paragraph No. 2 of the application. It is submitted suit properties are the ancestral properties Bala Subrao More. It is submitted partition of suit property on the basis

measurement and by fixing boundaries is not effected till today. The daughters of Bala namely Susabai, Janabai and Mirabai have relinquished their share in the suit property and they have not been made party Defendants. Suit properties are the ancestral properties of Plaintiff and Defendant No. 1 and 2. It is submitted that recently Plaintiff got knowledge that Defendant No. 1 has alienated part of suit property in favour of Defendant No. 2 and therefore after verifying the 7/12 extract Plaintiff got knowledge that some part of suit properties are mutated in the name of Defendant No. 2. Plaintiff got knowledge that the suit properties are alienated by Defendant No. 1 by executing a Gift Deed in favour of Defendant No. 2 on 20/03/2021. It is submitted that since the Plaintiff and Defendant No. 1 and 2 are coparceners and the Plaintiff is in joint possession of suit property Defendant No. 1 has no right to execute the Gift Deed and create third party interest therein. Therefore Plaintiff was constrained to file present suit along with the present application.

4. Defendant No. 1 and 2 vide their Written Statement at Exh. 11 have denied the averments in the plaint. It is submitted that suit land Gat No. 460, 463, 469 and 473 situated at village Vadgoan are the separate properties of Defendant No. 1 Bhikaji Bala More. Defendant No. 2 is the grand daughter of Defendant No. 1 and Plaintiff No. 1 and 2 are the daughters of Defendant No. 1. It is submitted that Defendant No. 1 has solemnized marriages of Plaintiff No. 1 and 2 and they are residing at their matrimonial home after marriage. The marriage of Plaintiff No. 1 Surekha was solemnized on 12/06/1988. It is submitted that the wife of Defendant No. 1 Muktabai died on 12/04/2020 and son of Defendant No. 1 died on 06/11/2007 and the daughter-in-law of Defendant No. 1 Vijaymala died on 13/10/2007. It is submitted that Defendant No. 1 is aged 86

years old and Plaintiff No. 1 and 2 being daughters have never attended Defendant No. 1 to take care of her. The grand daughter of Defendant No. 1 i.e. Defendant No. 2 is taking care of Defendant No. 1. It is submitted that Defendant No. 1 and 2 do not have any source of income other than the suit properties. It is submitted that since Defendant No. 2 is taking care of Defendant No. 1 she has executed Gift Deed dated 20/03/2021 in her favour and accordingly her name is effected vide diary No. 1800 on 16/05/2021. Plaintiff No. 1 and 2 are neither taking care of Defendant No. 1 nor providing any medical aid to her. Hence the application of Plaintiff be rejected with costs.

5. The suit and application proceeded ex-parte against Defendant No. 3 and 4 vide order below Exh. 1.

6. Considering the averments in the plaint, written statement and say following points arise for my determination to which I record my findings with reasons.

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether prima facie case lies in favour of plaintiff?	:-	Partly in the affirmative
2.	Whether balance of convenience lies in favour of plaintiff ?	:-	Yes
3.	Whether plaintiff would suffer irreparable loss if injunction is refused ?	:-	Yes
4.	What order?	:-	As per final order

:- REASONS :-

7. The suit of Plaintiff is for declaration that the Gift Deed dated 20/03/2021 executed by Defendant No. 1 in favour of

Defendant No. 2 is illegal and not binding on them and further for partition, separate possession and perpetual injunction against Defendant No. 2. Admittedly Bala More is the original owner of the suit properties. As per the contention of Plaintiff Bala Subrao More had two sons namely Bhikaji and Nivrutti and wife namely Sundarabai. Out of it the original owner Bala, wife Sundarabai, son Nivrutti and wife of Nivrutti Saubai are dead. According to the Plaintiffs Bhikaji had son namely Shivaji(father of Defendant No. 2), daughter Surekha(Plaintiff No. 1) and another daughter Anandi(Plaintiff No. 2). It is the contention of Plaintiff that Shivaji and his wife Vijay died in the year 2003. Partition was effected amongst Bhikaji and Nivrutti as per Anewari but partition is not effected by metes and bounds amongst Bhikaji and Nivrutti by measurement and fixation of boundaries.

8. The Defendant No. 1 and 2 in their Written Statement have filed the genealogy and so far as the genealogy filed by Defendant No. 1 and 2 is concerned the relationship between the parties and the genealogy contended by the Plaintiff appear to be identical. There is no dispute as to the genealogy and relationship between the parties.

9. Plaintiff has filed the 7/12 extract of suit properties on record. On perusal of the 7/12 extract of suit property bearing Gat No. 460 it reveals that the names of Saubai Nivrutti More, Aruna Prakash Patil and Dipali Patil are mutated over 11R land and the possession of Sandhya Shivaji More is shown over 11R land. On perusal of the 7/12 extract of suit property land Gat No. 463 it again reveals the name of Sandhya Shivaji More(Defendant No. 2) over 6 R land. On perusal of suit property land Gat No. 469, it again reveals

the name of Sandhya Shivaji More over 0.21.50R land and in suit property land Gat No. 473 name of Sandhya Shivaji More (Defendant No. 2) over 0.05R land. The name of Defendant No. 2 is mutated in the revenue record namely 7/12 extract vide Mutation Entry bearing No. 1800. The 7/12 extract also reveals that agricultural land namely the suit properties are Class-II lands and therefore the properties mentioned in these 7/12 extracts can be alienated by obtaining sanction of competent authority.

10. The Mutation Entry No. 1800 reveals that the suit properties mutated in the name of Defendant No. 2 on the basis of registered Gift Deed. Defendants have come out with the case that the Plaintiffs though are daughters of Shivaji have no right in the suit properties and the suit properties are the separate properties of Bhikaji Bala More i.e. Defendant No. 1. The Defendants thus have come out with the case that since the marriage of Surekha i.e. the elder daughter of Bhikaji is solemnized on 12/06/1988 and Plaintiff No. 2 is also married and they are residing at their matrimonial house and they are not taking care of her, they have no right in suit properties.

11. After amendment in the Hindu Succession Act, 1956 the daughters are coparceners and they have got right in the ancestral property by birth. Certainly the Plaintiffs being daughters of Defendant No. 1 prima facie have right in the ancestral property i.e. the suit properties. Admittedly Gift Deed is executed by Defendant No. 1 in favour of Defendant No. 2. If the Defendant No. 2 creates any third party interest or encumbrance in the suit property certainly it will affect the right and interest of Plaintiffs. It will lead multiplicity of proceedings. At this stage the Defendant No. 2 needs to be

discouraged from further alienating the suit property.

12. So far as the issue of possession over the suit properties of the Plaintiff No. 1 and 2 is concerned the 7/12 extract of the suit property does not find their names. The Plaintiff No. 1 and 2 contend that they are in joint possession over the suit property with the Defendant but there is no documentary evidence to show the joint possession of Plaintiff No. 1 and 2 in the suit property. Even otherwise the marriage of Plaintiff No. 1 and 2 is solemnized long back and they are residing at their matrimonial house. In such circumstances the prayer of Plaintiffs with respect to restraining the Defendant from interfering with their possession can not be granted.

13. Therefore Plaintiff has made out prima facie case for grant of temporary injunction only with respect to alienation. If the Defendant No. 2 is not restrained from alienating or creating any third party interest in the suit property it will cause greater hardship to the Plaintiffs leading to multiplicity of the proceedings and irreparable loss. Accordingly I answer point No. 1, 2 and 3 in favour of Plaintiff. In answer to point No. 4 I pass following order.

ORDER

1. The application (Exh. 5) is partly allowed.
2. Defendant No. 2 is restrained by temporary injunction from alienating or creating any third party interest in the suit property till final disposal of the suit.
3. Cost in main cause.