

MHKO140000032024



Regular Civil Suit no.3 of 2024

Shivajii Parsu Desai
Vs.
Yashwant Parsu Desai

ORDER BELOW EXHIBIT- 5

[Passed on: 24/06/2025]

1. This application is made by plaintiff against defendants for grant of temporary injunction under Order 39 Rule 1 and 2 r/w 151 of the Code of Civil Procedure, 1908 and thereby prayed –

(a) to restrain the defendants from causing obstruction to the joint possession of plaintiff over the suit property. (b) to restrain the defendant from alienation or transfer of suit property in favour of third person.

Subject matter of the suit:

a) House bearing G.P P No.81/1/A, admeasuring 20.81sq. Mtr.,
b) house bearing G.P P No.81/1/B, admeasuring 36.43sq. Mtr.,
c) house bearing G.P P No.81/1/C, admeasuring 123.79sq. Mtr., and
d) house bearing G.P P No.81/2, admeasuring 20.81sq. Mtr.,
Aforesaid house property situated at village Bonjurdi, Tal. Chandgad, Dist. Kolhapur, is the subject matter of the present suit. (Hereinafter it is referred to as ‘the suit property’)

Facts pleaded by the plaintiff:

2. The plaintiff submitted that, the plaintiff and defendant no.1 to 4 are real brother and sister. Defendant no.5 is wife of defendant no.1. They are member of Hindu Joint family. The suit properties are ancestral properties of plaintiff and defendants. It is in their joint possession and cultivation. The predecessor of plaintiff and defendants namely- Parsu Ranaba Desai is died on 17/12/2013. After his demise, the plaintiff and defendants succeeded the suit

property as the legal heirs of deceased. They are in joint possessor. The suit property is not partitioned by metes and bound between them. It is difficult for plaintiff to continue the possession and cultivate the suit property in common. Therefore, he has requested the defendants for partition and separate possession. But defendants refused for the same. The defendants entered their name in the Grampanchayat record of the suit property without consent of the plaintiff. They are trying to transfer the suit property in favour of third person. Therefore, plaintiff has filed present suit. The suit will take some time to reach its conclusion. Hence, it is necessary to grant temporary injunction, as prima facie case and balance of convenience lies in favour of plaintiff. If the application is not allowed, then the plaintiff will suffer irreparable loss. Hence, present application.

The fact pleaded by the defendants:

3. The defendant no.1, 3 to 5 failed to appear inspite of service of summons. Hence the matter proceeded ex-parte against them. The defendant no.2 filed written statement and he has admitted the contents of the plaint.
4. Perused the record. Heard the learned advocate Shri. V. B. Kadukar for plaintiff. The defendants failed to appear and conduct the argument. Following are the points for determination along with my findings.

Sr. no.	Points	Findings
1	Whether plaintiff proves prima facie case ?	Yes
2	Whether balance of convenience lies in favour of the plaintiff ?	Partly Yes
3	Whether plaintiffs would suffer irreparable loss if the application is rejected ?	Partly Yes

4	What order?	As per final order
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REASONS

As to point no.1 to 3.

Provisions of Law-

5. *At this stage it is necessary to see that, whether the plaintiff has a prima facie case or not. Order 39 Rule 1 & 2 of Code of Civil Procedure confers discretionary power on civil court to grant temporary injunction where it is proved by affidavit or otherwise that, the suit property is in danger of being wasted, damaged or alienated by the party to the suit or where the defendant threatens to dispossess the plaintiff or to cause injury. The purpose of granting temporary injunction is to protect the subject matter of suit during the pendency of the suit. But for getting the relief under this rule the plaintiff must prove that, he has a prima facie case, the balance of convenience is lies in his favour and more hardship will cause to him if injunction is not granted.*
6. The Learned Advocate for plaintiff argued that the suit property is ancestral property of plaintiff and defendants. The plaintiff has equal right in the suit property. Hence, it is necessary to grant injunction in his favour. As discussed above, the defendant no.1, 3 to 5 inspite of having knowledge and service of summons, remained absent and failed to file written statement.
7. The plaintiff has filed present suit for partition, separate possession and perpetual injunction. According, to plaintiff the suit properties are ancestral property of plaintiff and defendants and they are in the joint possession of the suit property. So prima-facie it appears that the plaintiff is praying the relief of temporary injunction against co-owner. Hence, it is necessary to see whether the

injunction is granted against co-owner.

8. It is settled position of law that injunction can be granted against co-owner in circumstances, i.e if there is possibility of ouster if the co-owners action is causing damage to the property or reducing it's value and utility. In the present case the plaintiff raised two aspect, firstly that the defendants are causing obstruction and secondly that the defendants are trying to alienate the suit property. So far as obstruction is concerned, plaintiff has to establish his joint possession over the suit property. The documents i.e. Grampanchayat property record filed on record shows that the name of defendants is appearing in the record of suit property. Plaintiffs name is not recorded. Hence at this stage it appears that the plaintiff is not actual possession of the suit property. Therefore, it appears that there is no possibility of ouster or obstruction.
9. So far as second aspect i.e. alienation is concerned, the plaintiff on affidavit stated that the defendants are trying to alienate and create third party interest in the suit property. The defendants not appeared and failed to counter the said contention of plaintiff. The plaintiff has filed suit for partition. So the nature of suit property, rights and share of plaintiff and defendants in the suit property are going to be decided in the present suit. At this stage, no inference can be drawn as to merits. But till the final decision and till the determination of right and share, it would be proper to restrain the further alienation and transfer of suit property in favour of third person. If the injunction restraining the defendants from alienation is granted then the defendants will not suffer any prejudice or loss. Rather it would help in deciding the matter conclusively and to avoid the further complication.
10. In view of aforesaid discussion, I am of the view that, the application is to be partly allowed to the extend of restraining

further alienation.

Accordingly I answer point no. 1 in Affirmative, point no.2 & 3 in Negative.

As to point no.4

To answer point No. 4 I pass following order.

ORDER

1. The application is partly allowed.
2. The defendants or any other persons on their behalf are hereby temporarily restrained from alienation or transfer or creation of third party interest in the suit property till final decision of this suit.

Date: 24/06/2025

[Waman D. Jadhav]
Joint Civil Judge Junior Division, Chandgad.
[Judge Code- MH03143]