


MHKO140009312025 	<p style="text-align: center;"><u>ORDER BELOW EXH.5 IN R.C.S. NO.222/2025</u></p> <p style="text-align: center;"><u>Balu Govind Gavade alias hanbar</u></p> <p style="text-align: center;"><u>Vs.</u></p> <p style="text-align: center;"><u>Suresh Jakoba Gavade alias Hanbar</u></p>
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Date - 10/04/2026

This is an application filed by plaintiff under Order 39 Rule 1 of the Code of Civil Procedure for interim relief.

02. Case of the plaintiff :

The Plaintiff submitted that, the Gat No. 422, Area 0 Hectare 41 R., Po. Kh. 0.02 R., Shetsara 0 Rs. 16 Paise, out of which 710 sq. m. area shown with the letters H,I,J,K,T,U,P,G in the map in question is the subject of this dispute, for a clear idea of it the conceptual map of Gat No.422 is attached, which is part of this application. The claimed land is the property of the Hanbar family. Accordingly, after the death of Sangappa Hanbar, the name of Laxman Yallappa was registered as n heir. After the death of Laxma, the name of 1. Nagoji, 2. Satba and 3. Satuppa were entered in the 7/12 sheet. After Nagoji, the names of Laxman DW7 etc. were taken to the government office. After Satba, the names of 1. Ramu, 2. Arjun, 3. Shivaji, 4.Arjun DW4, 5, 6 were entered in the 7/12 sheet. Dhondiba is deceased and has no direct heirs. Similarly, since Gopal Yallappa Hanbar has no children or grandchildren, the name of Jacoba and Govind came after him in 7/12. The names of the plaintiffs have been mentioned in sheet 7/12 as the direct heirs after the death of Govind. Approximately half of the area of Gat no.422 was given to Laxman, that part is shown separately in the hand map attached to the claim.

Out of Gat no.422, 330 sq. meter of common area was sold to defendant no.8 by Hopal Yallappa Hanbar, that part is shown in the accompanying map. Govind Yallappa Hanbar sold 510 Sq. meter of common area to defendant no.3, that part is shown in the accompanying map. Defendant nos. 3 and 8 have built houses, huts or sheds etc. with the consent of others. No one has raised any objection or complaint in this regard till date. Thus, the remaining area, i.e. the property which is the subject of this application is being peacefully enjoyed by defendant no.1 and the father of the plaintiff then the plaintiff, defendant nos.1 and 2. Shri. Dhondiba Yallappa Hanbar and Gopal Yallappa Hanbar died. But, since they had no children, the plaintiff had 1/8 share of the plaintiff each in their Gat no.422. Out of which, except for the area of 330 sq. meter sold by them, the names of Jacoba Yallappa Hanbar and Govind Yallappa Hanbar have been entered as heirs for the entire share in the remaining area of Gat no.522 and other lands. Accordingly, the plaintiff and the defendant nos. 1, 2 and 9 are in joint possession. Earlier, 1. Jakoba 2. Dhondiba 3.Gopal and 4. Govind Yallappa Hanbar had actual joint possession of the land. However, in order to take advantage of the fact that the plaintiff's father was outside the village, the father of defendant no.1 filed a claim against the father of plaintiff no.1 for declaration of right and continuous prohibition of R.C.S. no.16/2014. Finally, the said claim was dismissed on 20/10/2023. As mentioned above, the claimed lands are in common till today. It has not been distributed in a fair manner yet. Gat no.422 has many houses on all four sides. The land of Gat no.422 is adjacent to the village headquarters. Therefore, the defendant no.1 is trying to seize the area mentioned in the application no.1/A alone. Since last week, he has been constructing

construction at random places on the land of Gat No.422. Due to this the rights of the plaintiff have been affected. The plaintiff explained everything to defendant no.1. He also tried hard to say that we should distribute it amicably. But defendant no.1 is not in a mood to listen. He is illegally constructing the land saying. "The property is mine alone, it has nothing to do with you, go wherever you want". Due to this, the interests of the plaintiff have been threatened. The defendant has not taken/asked for the proper permission of the Grampanchayat. Also, he is planning to construct on an area exceeding the measurement of the property mentioned in his name on sheet 7/12. The defendant's action is not acceptable. To clarify the relationship between the plaintiff and the defendant, the genealogy is attached herewith and it should be considered as part of the claim. The plaintiffs have been compelled to file the present suit for a permanent injunction against the defendants, preventing the defendants, either themselves or through others, from carrying out construction in a manner that would interfere with the plaintiff's peaceful enjoyment of the common land. Considering the reasons, an injunction order should be passed immediately, directing the defendant nos. 1 and 2 not to carry out any construction on the claimed land and not to change the nature of the claimed land. The balance of convenience is in in the favor of the plaintiff and hence, present application.

03. Case of the defendant :-

Defendant no. 1 and 2 filed their reply to the present application below exhibit 20 and denied all the averments of the plaintiff. The description of the suit property is wrongly mentioned. Since the claimed land has been in the possession of the said

defendant for the last many years, the said defendant has full right to construct in the claimed land Gat no.422 and the said plaintiff has no right to interfere/object in it. Since the defendant is a co-owner in Gat no.422, the plaintiff cannot seek an injunction against the defendant as per law. One co-owner can not get injunction against another co-owner. Yallappa died on 02/12/1975, Yallappa had a total of 4 sons, the father of the plaintiff (Govind), the father of defendant no. 1 and 2 (Jakoba) and Dhondiba and Gaopal. Dhondiba died in the year 2003, and Gopal died on 25/05/2011. Dhondiba and Gopal died without issue and therefore, the father of the plaintiff, Govind and the father of defendant deceased Jakoba, are their legal heirs. After the death of the grandfather of the plaintiff and defendants no. 1 and 2, Yallappa, in 1975, a few years later, in 1980, oral distributions were made between the plaintiff's father Govind, the father of defendants no. 1 and 2, the deceased Jacoba, and Dhondiba and Gopal, and accordingly, they have separate possessions in the claimed property and accordingly, each of them has separate 8/A account statements. After an oral partition between the plaintiff's father Govind and the defendants No. 1 and 2 father Jakoba about 40 years ago, the plaintiff's father deceased Govind sold all the land that came to his share in the claim property to Satuppa Laxman Hanbar alias Gawade by registered purchase deed. Registration document No. 1937/2010 and therefore the name of the plaintiff's father has been removed from the claim property that came to his share. Therefore, the plaintiff has no right to any ownership or possession of the claim property. Therefore, since the plaintiff's father Govind has sold his share in the claim property, the plaintiff has no right to demand re-distribution of the claim property. The entries made in the plaintiff's name on the

7/12 sheet are incorrect and it is a principle of law that ownership does not derive from the 7/12 entry alone. Since the defendant sold all the land in Gat no. 422, including his share in Gat no. 422, in the year 2010 itself, there is no question of defendants no. 1 and 2 grabbing the plaintiff's share in Gat no. 422. Because the plaintiff has no claim on the land at all. Since the defendants have completed most of the construction work on the claim property and have incurred a significant amount of expenditure of approximately Rs. 5000/- for the construction, an immediate injunction against the defendants will result in immediate and irreparable loss to the defendants. On the contrary, the plaintiffs will not suffer any loss if an immediate injunction is not granted against the defendant. Hence, considering all these reasons, the application be rejected.

04. In view of the contentions of the parties, arguments advanced at bar, following are the points for determination along with my findings thereon for the reasons ensuing.

Sr.No.	Points	Findings
1	Whether plaintiff has made out prima-facie case in her favor ?	Yes.
2	Whether balance of convenience tilts in favor of granting application ?	Yes.
3	Whether irreparable loss will be caused to the plaintiff if the application does not come to be granted ?	Yes.
4	What order ?	Application is allowed.

REASONS

AS TO POINTS NO. 01 TO 03 :-

05. Heard learned advocate for the plaintiff he submitted that the plaintiff is having prima-facie case and as such if the relief claimed by the plaintiff is not granted then irreparable loss caused to the plaintiff cannot be compensated in terms of money and as such the plaintiff is entitled for the relief claimed by them. Further the plaintiff have filed written notes of arguments below Exh.45.

06. On the other hand, heard Learned Advocate for the defendant submitted that, It is a principle of law that one co-sharer cannot obtain an injunction against another co-sharer. The plaintiff's father Govind has already sold his share in the claimed land. This fact has been admitted by the plaintiff in the suit and the plaintiff no longer has any legal relationship with the claimed land. The property has already been divided between the plaintiff and the defendant and defendant nos. 1 and 2 have been constructing in the property allotted to them since before filing the suit and the said construction has gone above the boundary. The construction has been completed. Therefore, since the said application for prohibition has been filed late, the said application is not maintainable. The defendants have produced 2 witnesses on their behalf and they have also agreed with the defendant. Since the defendant is constructing his own part, there is no question of ousting the plaintiff in this matter. Thus, the plaintiffs have filed the application with great delay with the intention of harassing the present defendants and causing irreparable damage to them. Therefore, if the construction is banned immediately against the

defendants, the defendants will suffer immense loss. Hence, he argued that the application is not tenable and hence, be rejected. Further, the defendants have relief upon various citations and same are discussed below :-

a) **In Kanraj Khatri Vs. Nathuram Jain Reported in AIR 1997 Madhya Pradesh 92.**, it is held in this case, Easements Act (5 of 1882), S. 15 Light and air Right to plaintiff filing suit for restraining defendants from constructing house on adjacent plot also praying for temporary injunction. Absence of prima facie case delay in filing suit balance of convenience in favour of defendants no likelihood of irreparable loss to plaintiff. He is not entitled to temporary injunction. The facts of the present case and are different and hence not applicable to the present case in hand as the case cited is of Easement Act, whereas the the present case under the provisions of C.P.C.

b) **In Prakash S. Akotkar Vs. Mansoorkha Gulabkha and ors. Reported in AIR 1996 Bombay 36 Nagapur Bench.**, it is held in this case, Civil P. C. (1908), Order 39, Rule 1, 2 injunction grant of Co-owner in possession of property for and on behalf of other co-owners cannot claim injunction against other co-owners restraining them from interfering with his possession and enjoyment of suit property so as to exclude them from exercising their right as co-owners. In the present case the defendant yet have to prove that he is also a co-owner are in the suit property. Further, the facts of the present case are not applicable to the present case in hand. Hence, it is the burden upon the defendant to prove that they both are the to owners of the suit property. Hence, the case cited on the other hand the the plaintiff is also having equal share in the suit property to not applicable to the

present case in hand.

c) *In Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde, [2008(2)Mh.L.J.]*, it is held that in this case, Temporary injunction grant of at the stage of temporary injunction Court can refer to documents which are produced on record without formal proof. Again the facts are not applicable the present case in hand the citation helps the plaintiff instead. Hence, the present citation is of no use to the defendant.

d) *In Seema Arshad Zaheer & Ors. Vs. Municipal Corporation of GR. Mumbai and Ors., Supreme Court [2006(5)Mh.L.J]* it is held that in this case, Temporary injunction exercise of discretion to grant requirements. The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : 1) Existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; 2) When the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; 3) Clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs conduct is free from blame and he approaches the Court with clean hands. Again the facts of totally different then the case cited by the defendant, again the guidelines are laid down when the interim relief should be granted or confirmed.

e) *In Udayraj Babaso Patil Vs. Pramod Babaso Patil,[2023(3)Mh.L.J]*, it is held that in this case, Appellate Court has returned completely erroneous findings, impugned order of appellate Court set aside defendant allowed to carry out, complete construction and use of structure which shall be made subject to ultimate decision of pending suit before trial Court petition allowed. Again the case law cited is not at all applicable to the present case in hand. As the facts of the case cited are totally different as the case cited is an appeal against the judgment passed by the by the Trial Court. Documents are totally different in the case cited and the present case in hand. Hence, this citation is also not applicable to the present case in hand.

7) The plaintiff in other to prove is case have a filed overall 12 documents and any other documents below Exh.30 including 10 documents along with the photographs. On the other hand the defendant a filed only 7 documents including 5 documents below Exh.22. The plaintiff have filed all the documents including 7/12 extract of the suit properties in which a name of the plaintiff if reflecting and in some 7/12 extract name of the defendant is also reflecting. However, it is seen that only in some 7/12 extract the name of the defendant reflecting but in all the other major 7/12 extract the name of plaintiff is clearly reflecting. Also perused the documents filed by the defendant it is not clear that the defendant it also having share in the suit property. It is pertinent to note that ad interim relief was granted ex-parte against the defendant on 24/12/2025. Till date the defendant have not pressed the Exh.5 for the reasons best non to the defendants. Again perused the 7/12 extracts the name is reflecting of the other defendant also in this said extracts. The main contention of

the defendant is that the also wants to construct a construction over the suit property. But, It is pertinent to note that the present suit is filed for partition and directing the defendants not to construct any construction over the suit properties. It is seen that until and unless the share of the plaintiffs and the defendants is decided the defendant at this stage cannot be permitted to construct any type of constructions over the suit property. The plaintiff have not prayed that he also wants to construct over the suit property. The suit is for simplicitor partition. The defendant ought to have file a different suit for construction if he is having so much urgency. That is no such urgency shown by the defendants for the construction. The suit is filed on 10/12/2025 and since then the ad interim ex-parte relief is continued. The defendant never filed any application to the said ad interim relief which is granted in favour of the plaintiff. It means there is no such urgency for the defendants to complete the constructions. Hence, the application filed by the present plaintiff is having merit. On the other hand the defence of the defendants is having no base. If at all having any merit same will be decided after the conclusion of the trial but not at this stage. The defendants have only filed one application belwo Exh. 19 under order 8 Rule 6A for counter claim. And also prayed for ½ share in this suit property for defendant nos.3 to 7. However, till date the defendants have not placed that application for the reasons best known to the defendants. Hence, this too creates doubt upon the theory of the defendants and creates adverse inference against the defendants. Hence, this defense of the defendants too gets washed out. Hence, at this stage a prima facie case is made out by the plaintiffs, balance of convenience lies in the favor of plaintiff and irreparable loss will be caused to the plaintiffs if

this application is not allowed. Hence, I answer point no. 1 to 3 in affirmative and proceed to pass following order in answer to point no.4.

ORDER

- 1) Application is allowed.
- 2) The defendant no.1 to 9 are hereby restrained from carrying out construction in the suit property and not to change the nature of the suit property.
- 3) No order as to cost.

Sd/-

(V. S. Agarwal)
Civil Judge Jr.Dn.,
Chandgad.

Place : Chandgad.
Date : 10/04/2026.