

MHKO150002312016



**R.C.S.No. 55/2016**  
Govind vs. Shevanta

**ORDER PASSED BELOW EXH. 106**

This is an application filed by plaintiff under order XXXIX rule 1 and 2 of the Code of Civil Procedure Code, 1908.

2. Suit property –

Ad measuring 0.47 R land from Gat No. 680 situated at village Kine, Tal. Ajara, Dist. Kolhapur.

(In short "suit property")

3. **In short case of the plaintiff is as under-**

According to plaintiff, the Balu is main predecessor of plaintiffs and defendants family. The suit property and other property are Hindu joint family property of plaintiff and defendants. The undivided share of plaintiffs are involved in suit property. They have requested defendant for partition and separate possession. But, defendants have refused request of plaintiff. According to plaintiff, the Balu has received suit property under the tenancy. As per tenancy law, Balu is owner and possessor of suit property. After demise of Balu, the childrens of Balu namely Appa, Ganu, Subhana, Tulsappa and Bhima have owned suit property as Hindu joint family property. The defendants have refused request of plaintiff. Therefore, plaintiff filed present suit for partition and separate possession.

4. By way of present application, plaintiff prayed temporary injunction against defendant no. 1 and 3, that is restraining them from making any construction over the suit property. According to plaintiff,

defendant no. 1 and 3 have try to make construction over the suit property. Their undivided share is involved in suit property. Therefore, the nature of suit property will be changed by construction of defendant. Therefore, they prayed temporary injunction that is restraining defendant no. 1 and 3 from making construction over the suit property. They lastly prayed for allowing application.

5. The defendants have filed their say at Exh. 115. They denied all allegation, pleading and prayer of plaintiff. According to defendant, the suit property was not owned by Balu under the tenancy. The suit property was originally owned by Ganu who is predecessor of defendant no. 1 to 18. The plaintiff are not concern with suit property. The Balu, Appa, Subhana, Tulsappa and Bhima are not concern with suit property. Therefore, the plaintiff,s right, title, interest is not involved in suit property. After demise of Ganu, the defendants have owned suit property. Therefore, they prayed for rejection of application.

6. Heard learned Advocate for plaintiff. The advocate Shri. V. R. Patil for plaintiff submitted written argument. Heard learned Advocate Shri. S. S. Nikam for defendant.

7. The following points are arises for my determination and I have given my findings thereon are as follows-

<b>Sr.No.</b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1.	Whether plaintiff has prima-facie case for grant of temporary injunction as prayed for ?	Negative
2.	Whether balance of convenience lies in favour of plaintiff?	Negative
3.	Whether the plaintiff would suffer irreparable loss, if temporary injunction is refused?	Negative
4.	What order ?	As per Final order.

8. Prima-facie case, balance of convenience, and irreparable loss are the three ingredients for temporary injunction.

### **REASONS**

#### **As to point No. 1 to 3-**

9. According to plaintiff, the suit property was originally owned by Balu under tenancy. The defendants have denied that, Balu has received suit property under the tenancy. Other than pleading, the plaintiff has not produced any evidence which shows that, the suit property was possessed or owned by Balu.

10. The suit property is Gat No. 686. The previous revisional survey number of Gat No. 686 is 188.

11. On perusing 9/3, 9/4 extract of suit property it appears that, the revisional survey no. 188 was converted into Gat no. 686. The 7/12 extract of revisional survey no. 188 was shows that, the property was previously owned by Irappa Chalu Wanjole. The mutation entry no. 727 shows that, as per order of sub-divisional officer, Gadhinglaj, the Ganu Balu Wanjole and Irappa Chalu Wanjole have received property in Gat no. 686. Thus, from the mutation entry no. 727, it comes on record that, Ganu Balu Wanjole first time received suit property. There is no record which shows that, the Balu who is father of Ganu has owned suit property.

12. The tenancy record M.E. No. 553 shows that, the Ganu has received some property form tenancy. But, the suit property is not mentioned in that mutation entry. According to plaintiff, Ganu as a manager of Hindu joint family owned suit property under tenancy. But, there is no evidence on record which shows that, the Ganu has owned suit property as manager of Hindu joint family.

13. The R.C.S. No. 50/1987 filed by plaintiff. The copy of plaint produced by defendant which shows that, that suit was withdrawn by plaintiffs on 05.02.1988. The suit property is not mentioned in that suit. That suit was for partition and separate possession. If suit property is owned by Hindu joint family, then it has to be inserted in R.C.S. No. 50/1987. But, the suit property is not subject matter of R.C.S. No. 50/1987. Therefore, the record of R.C.S. No. 50/1987 shows that, the suit property is not Hindu joint family property of plaintiff and defendant.

14. Thereafter, the plaintiffs have filed R.C.S. No. 21/1988. The copy of temporary injunction application produced by defendant on record. On perusing the copy of temporary injunction application, it appears that, the temporary injunction application was rejected by this court in the year 1988. The suit property is not subject matter of R.C.S. No. 21/1988. These circumstances also shows that, the suit property was not subject matter of Hindu joint family.

15. Considering all above discussion, I conclude that, the plaintiff fails to prima-facie establish that suit property was Hindu joint family property. Previously in this suit Exh. 5 that is temporary injunction application of plaintiff decided by my predecessor. On perusing that decision it appears that, my predecessor has found that, the plaintiff has failed to establish that, the suit property is Hindu joint family property of plaintiff and defendant. The plaintiffs have challenged that order before Hon'ble District Judge, Gadhinglaj. That miscellaneous appeal was pending.

16. Considering all above discussion, I am coming to conclusion that, the plaintiff fails to establish that, the suit property is Hindu joint family property of plaintiff and defendant and their undivided share is involved in suit property. Therefore, plaintiff fails to establish prima-facie case. The balance of convenience not lies in favour of plaintiff. If

application rejected then no irreparable loss will be caused to the plaintiff. Hence, I answer point 1 to 3 in negative. The application needs to be rejected. In answer to point no. 4. I pass following order,

**Order**

1. The application is rejected.
2. Considering peculiar circumstances, there is no order as to cost.

Place - Ajara.  
Date - 15.06.2022.

(S.P.Jadhav)  
Civil Judge J.D., Ajara.

Certificate

I affirm that the contents of this P.D.F file Judgment/order are same, word to word, as per the original Judgment/order.

Name of the Stenographer	Mrs. Y.S.Chavan.
Name of Court	C.J.J.D. Ajara
Judgment/order Dictated on	15-06-2022
Judgment/order typed on	15-06-2022
Judgment/order signed by the P. O. on	15-06-2022
Judgment/order uploaded on	16-06-2022