

MHKO150003332022



**R.C.S. No. 65/2022**  
Govind vs. Chandru

**ORDER PASSED BELOW EXH. 5**

This is an application filed by plaintiff under order XXXIX rule 1 and 2 of the Code of Civil Procedure Code, 1908 against defendant no. 1.

2. Suit property – Suit property mentioned in paragraph no. 1 of present application. (In short "suit property")

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

The suit property and other property from Gat No. 17 was purchased in the name of defendant no. 1 and defendant no. 8. The Gat No. 17 was originally owned by Vitthal Krishnaji Narvekar. The Vitthal Krishnaji Narvekar wanted to sell Gat No. 17. That time the defendant no. 8 approached to the family of plaintiff and asked for purchasing half share from Gat No. 17 and he has wanted to purchase half share.

4. The plaintiffs are the children of Bhau Govind Dongare. The Bhau Govind Dongare having brother namely Vishnu Govind Dongare and another brother that is the defendant no. 1. The defendant no. 4 to 6 are the children of the Vishnu Govind Dongare. The defendant no. 2 and 3 are the sisters of the plaintiffs.

5. The half share from Gat No. 17 was purchased in the name of defendant no. 1 for the Hindu joint family of defendant no. 1, father of plaintiff and father of defendant no. 4 to 6 namely Vishnu. In this circumstance, they have purchased that property. The father of plaintiff and Vishnu are doing job at Mumbai. They have paid the earnest amount for the purchasing that property.

6. After purchasing property, the Bhau Govind Dongare, Vishnu Govind Dongare and defendant no. 1 has partitioned that property and suit property came in the share of Bhau Govind Dongare. Since from that time, Bhau Govind Dongare was owner and possessor of suit property. After demise of Bhau Govind Dongare, the plaintiffs are the possessors and owners of suit property.

7. The defendant no. 1 has executed sale deed in the name of Vishnu Govind Dongare in respect of 0.18 R land on 10.07.2000. That property was possessed by defendant no. 4 to 6.

8. According to plaintiff, the suit property was purchased in the name of defendant no. 1. After partition, it was given in the share of Bhau Dongare. Since from that time, the Bhau Dongare was owner and possessor of suit property. But, the name of defendant no. 1 is shown in record. Therefore, the defendant no. 1 has obstructed to the plaintiff's possession.

9. The plaintiffs have requested defendant no. 1 for not obstructing. That time, defendant no. 1 has denied ownership and

possession of plaintiff. Therefore, plaintiffs have filed present suit for declaration of ownership and perpetual injunction.

10. By way of present application, plaintiff prayed for temporary injunction against defendant no. 1 that is restraining him from causing obstruction to the peaceful possession of them. They lastly prayed for allowing application.

11. The defendant no. 1 has filed his written statement at Exh. 25. He denied all allegation, pleading and prayer of plaintiff. According to him, the partition between him and his brothers was effected in the year 1971. Thereafter, he has purchased suit property along with his other property from his self income on 10.06.1975 from Vitthal Krishnaji Narvekar. Thereafter, he has needed some money. Therefore, he has executed sale deed in favour of his brother in respect of 0.18 R. on 10.07.2000. He is owner of remaining 0.36 R. land. The plaintiffs are not concern with suit property. He is owner and possessor of suit property. The plaintiffs have filed false suit. The plaintiffs are not in possession of suit property. He has denied that, there is partition effected and the suit property was given in the share of Bhau Dongare. He denied that, the suit property purchased for the benefit of Hindu joint family. He lastly prayed for rejection of application.

12. Heard learned Advocate Shri. A. G. Patil for plaintiff and Advocate Shri. S. V. Powar for defendant no. 1.

13. 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?	No
2.	Whether balance of convenience lies in favour of plaintiff?	No
3.	Whether the plaintiff would suffer irreparable loss, if temporary injunction is refused?	No
4.	What order ?	As per Final order.

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

### **REASONS**

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

15. The plaintiffs have pleaded that, the suit property was purchased for the Hindu joint family. Other hand, the defendant no. 1 denied that, the suit property was purchased for the benefit of Hindu joint family. There is no evidence produced by plaintiff which shows that, the suit property was purchased for the benefit of Hindu joint family. The plaintiffs have pleaded that, their father namely Bhau Govind Dongare has paid amount for purchasing suit property and it was purchased in the name of defendant no. 1. But, there is no evidence produced by plaintiffs which shows that, the father of them that is Bhau Govind Dongare has paid amount for purchasing suit property.

16. According to plaintiff, the partition effected between defendant no. 1, Bhau and Vishnu. In that partition, the suit property

came in the share of Bhau Govind Dongare. Other hand, defendant no. 1 denied that, there was partition effected and suit property given in the share of Bhau Govind Dongare. There is no evidence produced by plaintiff which prima-facie shows that, the suit property was given in the share of Bhau Govind Dongare in partition.

17. On perusing record it appears that, the suit property was purchased along with other 0.36 R land in the name of defendant no. 1 from Vitthal Krishnaji Narvekar by registered sale deed dated 10.06.1975. In that sale deed, it was not mentioned that, the suit property purchased for the Hindu joint family.

18. On perusing record it appears that, the defendant no. 1 has executed sale deed in respect of 0.18 R. land in favour of Vishnu Govind Dongare on 10.07.2000. The sale deed shows that, the consideration amount paid by Vishnu Govind Dongare to the defendant no. 1 and after execution of sale deed, the Vishnu has received ownership and possession of that property. The evidence of sale deed dated 10.07.2000 shows that, the suit property was owned by defendant no. 1.

19. The advocate for plaintiff relied on affidavit which was executed by Vishnu Govind Dongare. On perusing affidavit it appears that, the affidavit executed by Vishnu Govind Dongare and he stated that, his purchased property that is 0.18 R. land which was purchased by sale deed dated 10.07.2000 is Hindu joint family property and it was not actual transaction of sale deed. But, the registered sale deed is shows that, the property was owned by defendant no. 1. The Vishnu Govind Dongare has admitted ownership of defendant no. 1 by execution of sale

deed. Thereafter, he has taken benefit of sale deed. Thereafter, he has executed affidavit. The registered sale deed is prevails over the affidavit. Therefore, the affidavit is not reliable. Further, the defendant no. 1 has no knowledge about the affidavit or he is not party to that affidavit. Therefore, the affidavit executed by Vishnu Dongare is not binding on defendant no. 1. In this circumstance, I am not found any substance in the argument of advocate for plaintiff.

20. The advocate for plaintiff relied on affidavit of Govind Bhau Patil, Gundu Dhondiba Patil, Dhanaji Babu Patil. On perusing the affidavit it appears that, the witnesses stated that, the plaintiffs are in possession of suit property. But, the registered sale deed and 7/12 extract that is revenue entries extract shows that, the defendant no. 1 is in possession of suit property. Therefore, the documentary evidence and public documents are prevails over the affidavit of witnesses. In this circumstance, the affidavits are not reliable at this stage.

21. Considering all above discussion, I am coming to conclusion that, the plaintiffs have fails to prove that, the suit property was purchased for the Hindu joint family. Thereafter, the plaintiffs have fails to prove that, the suit property was given in the share of Bhau Govind Dongare in partition. The plaintiffs have fails to prima-facie establish their ownership and possession over the suit property. Therefore, plaintiff fails to made out 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. In this circumstance, the application needs to be rejected. Hence, I answer point 1 to 3 in negative and 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 - 31/07/2023.

(S.P. Jadhav)

Civil Judge J.D., Ajara.