


<u>MHKO190002092025</u> 	<u>ORDER PASSED BELOW EXH.5</u> IN <u>R.C.S No.64/2025</u> <u>Satappa Narayan Dakre etc.1 Vs. Narayan Shivaji</u> <u>Dakre etc.4</u> (Date:09/05/2025)
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The plaintiffs have filed the present application under Order - XXXIX Rule 1 and 2 of the Civil Procedure Code, for grant temporary injunction against defendants.

02. **Description of property :**

A) Agricultural lands situated at village Rashiwade (Bu), Tal.Radhanagari, Dist. Kolhapur.

- 1) Gat No.1101, admeasuring H0.30R, out of it H.0.15R
- 2) Gat No.1115, admeasuring H0.16-20R, out of it H.0.08.10R
- 3) Gat No.1192, admeasuring H0.75-90R, Pot Kharab H0.04R out of it H.0.01-19R
- 4) Gat No.912, admeasuring H0.02R
- 5) Gat No.1188, admeasuring H0.35-30R, pot kharab H0.02-10R out of it H.0.14-34R

B) Agricultural land Gat No.405 admeasuring H0.29-30, Pot Kharab H0.02.00R out of it H0.21-98R situated at village Chande, Tal.Radhanagari, Dist. Kolhapur.

C) Registered Deed bearing No.1010/2018 dated 05/07/2018 executed by Defendant No.1, deceased Narayan Dakare and defendant Nos.3 & 4 with their common intention.

D) Registered Sale Deed bearing No.166/2024 dated 16/01/2024 executed by defendant No.1 in favour of defendant No.5 related to aforesaid property No.1(b) to the extent of area admeasuring H.O.14R.

(For the sake of brevity herein after to be referred as the “**suit properties**”).

03. It is contention of the plaintiffs that, plaintiffs are son and wife of deceased Narayan Dakare respectively. Defendant No.2 is the first wife of deceased Narayan Dakare. Defendant No.1 is son of defendant No.2. Defendant Nos.3 and 4 are sisters of deceased Narayan Dakare. The suit properties are ancestral properties of the plaintiffs and defendant Nos.1 to 5.

04. It is further contention of the plaintiffs that Indubai is first wife of deceased Narayan Dakare. However, initially she had no issue from the said wedlock. Therefore, deceased Narayan Dakare and his first wife Indubai agreed to solemnize the second marriage of deceased Narayan Dakare with plaintiff No.2. Accordingly, the second marriage of deceased Narayan Dakare was solemnized. Deceased Narayan Dakare and defendant No.2 had given in writing one document to father of plaintiff No.2 to effect that, son of plaintiff No.2 will have legal right over all the suit properties. After the marriage of deceased Narayan Dakare with plaintiff No.2, defendant No.2 gave birth to defendant No.1.

05. It is further contention of the plaintiffs that there is no partition between the plaintiffs and defendants by metes and bounds. There was ancestral house in the block No.1188 whereon deceased Narayan Dakare used to reside with plaintiffs and defendants.

06. It is contention of the plaintiffs that, defendant Nos.3 and 4 have relinquished their rights on 30/05/2018 by registered relinquishment deed No.1009/2018. Deceased Narayan Dakare purchased 0.14.R land out of block No.405 in the name of defendant No.1 in the year 2017 from Tarabai Tuka Chougule. Same has been purchased out of the joint family funds. Hence, plaintiffs are having undivided share in block No.405. Plaintiff No.1 had instituted similar suit bearing R.C.S. No.09/2019. During the pendency of the same defendant No.1 had executed sale deed bearing registration No.166/2024 which is bogus and same is not binding upon share of the plaintiffs.

07. The plaintiffs, from time to time, made request to deceased Narayan Dakare for partition. However, deceased Narayan Dakare denied the said request. Defendant Nos.1 and 2 mutually without the knowledge of deceased Narayan Dakare and defendant Nos.3 and 4 have executed alleged sale deed in respect of suit property 1(A)(5). It is bogus and not binding upon share of the plaintiffs. Defendants have erected steel structure of pillars with intention to raise construction in the suit property No.1(A)(3) and 1(A)(5).

08. Deceased Narayan Dakare was bed ridden for 6 months prior to his death. Plaintiffs took all the care of deceased Narayan Dakare. At that time deceased Narayan Dakare had expressed his willingness to give suit properties to plaintiffs by Will. Defendant Nos.1 and 2 were annoyed by the same when deceased Narayan Dakare informed it to them. Defendant No.1 had demolished the ancestral house without the consent of the plaintiffs. Deceased Narayan Dakare died on 25/01/2025. Plaintiff No.1 came from Pune to perform last rites. After that, there was discussion about the partition of the suit properties between plaintiffs and defendants.

Defendants threatened that, they will construct house over the suit properties.

09. On 01/03/2025 defendants have brought construction material in the suit properties and have erected steel structure by digging pits. Defendants are trying to change the nature of the suit properties by raising construction. Therefore, plaintiffs have filed this application seeking temporary injunction against defendants. It is prayed that, defendants be temporarily restrained from raising any construction over the suit property, alienating the suit property and from creating any encumbrance over the suit property. The plaintiffs have prima-facie case and balance of convenience lies in their favour. If, the temporary injunction is not granted, then irreparable loss would be caused to them. Hence, they prayed that the application may kindly be allowed.

10. Defendants Nos.1 and 2 filed their written statement and say vide Exh. 22 and contested the application. They denied all the contents of the plaint. They denied the relationships as alleged by the plaintiffs. It is submitted by them that, father of defendant No.1 has died on 25/01/2025. Defendant Nos.1 and 2 are the only legal heirs. Plaintiffs are not concerned with the suit properties. Deceased Narayan Dakare and defendant Nos.3 and 4 had right to execute sale deed bearing No.1010/2018. Defendant No.1 is the legal owner and possessor of the block No.1188. Therefore, defendant No.1 has started construction in the same admeasuring 25 x 46 feet in the month of December 2024. Now the construction has reached slab level. Defendant No.1 has spent almost 10 Lakh rupees for the same. Suit property No.1(B) is self-acquired property of defendant No.1. Therefore, he has right to dispose of the same. Defendant No.1 has sold the same for legal necessity to defendant No.5. Plaintiffs have no right to raise obstruction regarding the same.

11. It is further submitted that, even if plaintiffs succeed in proving that, they are legal heirs of deceased Narayan Dakare, they have no right in block No.1188 as it is the self-acquired property of defendant No.1. Plaintiff No.2 has no legal right in the suit properties. Balance of convenience is in favour of the defendant Nos.1 and 2. If the application is allowed defendant Nos.1 and 2 will suffer huge financial loss whereas plaintiffs will not suffer any loss if the application is refused. Therefore, they prayed that present application be rejected.

12. After service of suit summons, defendant Nos.3 to 5 remained absent. Hence, the matter is proceeded ex-parte against them.

13. Heard the Ld. Advocate for the plaintiffs and defendant Nos.1 and 2 at length.

14. Following points arise for my determination. I have recorded my findings thereon for reasons given below.

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiffs proves that there is prima-facie case in their favour?	Yes.
2.	Whether the plaintiffs proves that balance of convenience lies in their favour?	No.
3.	Whether plaintiffs proves that irreparable loss would cause to them, if temporary injunction not granted in their favour?	No.
4.	What order?	As per final order.

15. The plaintiffs have filed 7/12 extracts of suit properties and assessment extract of house property along with list Exh.3. The plaintiffs have also filed extract of mutation entry No.1326, copy of registered sale deed No.1010/2018, death certificate of deceased Narayan Dakare and copy of relinquishment deed along with list Exh.3. They also filed copy of N.C. Report , photographs of disputed construction and payment receipt of the same. They also filed certificate given by Sarpanch, Village Rashiwade regarding family pedigree of plaintiffs and defendants and copy of ration card of plaintiffs and defendants along with list Exh.27. They also filed certified copy of map of Block No.1188 and Block No.1192, map of understanding showing construction of the defendants and copy of N.C. Report along with list Exh.29

16. Defendants filed xerox copy of order passed below Exh.5 in R.C.S. 09/2019 and xerox copy of sale deed of defendant No.1 of Block No.405 along with list Exh. 24.

SUBMISSION:-

17. The Ld. Advocate for the plaintiffs submitted that the plaintiff No.1 is son of deceased Narayan Dakare. The suit properties are ancestral properties of the plaintiffs and defendant Nos.1 to 4. Yet there is no partition between the plaintiffs and defendants by metes and bounds. The plaintiffs and defendant No.1 are cultivating suit properties as per their convenience. Defendant Nos.3 and 4 have relinquished their share in the suit properties. The plaintiffs requested deceased Narayan Dakare for partition but he denied the same. Deceased Narayan Dakare and defendant Nos.3 and 4 have illegally alienated the suit property bearing Gat No.1188 in favour of defendant No.1 by registered sale deed No.1010/2018. Defendant Nos.1 and 4 threatened to alienate the suit properties to third

person. The plaintiff No.1, being son of deceased Narayan Dakare, is having right in the properties of deceased Narayan Dakare. Moreover he is having undivided share in the suit properties. Therefore, prima-facie case and balance of convenience is in favour of the plaintiffs. If the temporary injunction is not granted, then it would cause irreparable loss to them. Hence, they prayed that the application may kindly be allowed.

18. In support of the above said submissions, the Ld. Advocate for the plaintiffs relied upon the following case law;

**Revanasiddappa & Anr. Vs. Mallikarjun & Ors. Civil Appeal
No.2844 of 2011**

19. Ld. Advocate for defendants argued that, there is no evidence as to exact location where defendant Nos.1 and 2 are raising construction. He argued that, hand sketch filed by plaintiffs is not reliable. He argued that, defendant Nos.1 and 2 are not raising any construction over the Block No.1192. He argued that, defendant Nos.1 and 2 are not raising construction over the entire block No.1188. Defendant Nos.1 and 2 are raising construction only 1150 Sq.ft admeasuring 25x46 ft over block No.1182. He further argued that, for the sake of argument if it is presumed that, defendant Nos.1 and 2 are raising partial construction over both block i.e. block No.1188 and 1192, it will not cause any prejudice to plaintiffs as Block No.1192 is admeasuring 0.1.19 R. He argued that, defendant No.1 and 2 have incurred almost Rs.10 lakh for construction. He further argued that, if present application is allowed defendant No.1 and 2 will suffer huge financial loss and if it is rejected no prejudice will be caused to plaintiffs. He argued that, construction is already at slab level. Under such circumstances prima facie case, balance of convenience are in favour of defendant Nos.1 and 2 and if present application is allowed defendant Nos.1 and 2 will suffer irreparable loss. Lastly he prayed that, present application be rejected.

20. In support of his argument Ld. Advocate for defendant Nos.1 and 2 relied upon following case laws -

a) Maruti Rau Mane and others Vs. Shrikant Maruti Mane and others, 2007 (3) MhLJ 813

b) Suresh Prasad Gupta Vs. Basudeo Prasad Gupta and Anr, 1990 AIR (Pat) 198.

: REASONS :

As to Point No.1 :-

21. According to the plaintiffs, the suit properties are ancestral properties of plaintiffs and defendants. Plaintiffs are entitled to ½ (one half) share in the suit properties. Defendant Nos.1 and 2 have denied the relationship as alleged by the plaintiffs.

22. Plaintiffs in support of their claim have filed xerox copy of ration card and certificate of family pedigree of plaintiffs and defendants given by Sarpacnh, Village Rashiwade vide list Exh.3. On perusal of the same, it prima facie appears that, plaintiff No.1 is the son of deceased Narayan Dakare and plaintiff No.2 is the wife of deceased Narayan Dakare. It is to be noted that, Ld. Advocate for defendant Nos.1 and 2 have not denied the above said documents during his arguments. Under such circumstances it prima facie appears that, plaintiffs and defendants are having relations as pleaded in the plaint.

23. It is admitted by the defendant Nos.1 and 2 that, suit properties Nos.1(A)(1) to (5) are ancestral properties of deceased Narayan Dakare. It is case of defendant Nos.1 and 2 that, Block No.405 is self acquired property of defendant No.1. Considering the above said

discussion, it is prima facie clear that, suit properties Nos.1(A)(1) to (5) are ancestral properties of plaintiffs and defendants.

24. In the case of *Revanasiddappa (supra)* the Hon'ble Apex Court in para No.54 (iii) held that "*while conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from voidable marriage has been annulled, the legislature has stipulated in sub-section (3) of section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person*".

25. In the above cited case, the Hon'ble Supreme Court in para No.42 discussed the topic "property of the parents" which is reproduced as under;

H. Property of the parents

42. *When a Hindu dies after the commencement of the Amending Act of 2005, his interest in the property of a Joint Hindu family governed by Mitakshara law has to devolve by testamentary or intestate succession and not by survivorship, as stipulated in sub-Section (3) of Section 6. The interest of a Hindu Mitakshara coparcener, for the purpose of sub-Section (3) has to be ascertained on the basis that a notional partition has taken place immediately before his death. The share in the property that would have been allotted to the intestate on the basis of such a notional partition is governed by the General Rules of Succession specified in Section 8, HSA 1956. The distribution of the property among the Class-I heirs is governed by the Rules specified in Section 10. In the distribution inter alia the surviving sons, daughters and mother of the intestate take one share each and likewise the widow (and all the widows together if there was more than one) take one share. In the distribution of the property of the deceased who has died intestate, a child who is recognised as legitimate under sub-*

Section (1) of Section 6 of the HMA 1955 or under sub-Section (2) of Section 16 would be entitled to a share. Since this is the property that would fall to the share of the intestate after notional partition, it belongs to the intestate. Under Section 16(3), a child conferred with legitimacy is entitled to the property of their parents only, and does not have any rights to or in the property of a person other than the parents. Hence, where the deceased has died intestate, the devolution of this property must be among the children - legitimate as well as those conferred with legitimacy by the legislature under Section 16(1) and 16(2) of the HMA 1955. Doing so would not offend or breach the restriction which is specified in sub-section (3) of Section 16.

26. In view of the observations of the Hon'ble Apex Court in above cited case, the child born out of void or voidable marriage is entitled to the share in the property of his parents only after they died intestate.

27. In the present case, deceased Narayan Dakare has died on 25/01/2025. Hence, the case of Revanasiddappa (supra) is useful to the case of the plaintiffs.

28. In case of Maruti Rau Mane and others Vs. Shrikant Maruti Mane and others (Supra) the Hon'ble Bombay High Court has observed that, children of null and void marriage could claim succession or inheritance to the properties of the parents only. This case law is relevant at the time of trial of suit on merits. At this point observations made in this case law are useful to plaintiff No.1 to prima facie presume that, plaintiff No.1 do have some rights in the suit properties.

29. The case of Suresh Prasad Gupta Vs. Basudeo Prasad Gupta and Anr (Supra) differs on factual matrix with case in hand. Therefore, it is not applicable to present case.

30. Considering the above said discussion, plaintiffs have made out prima facie case in their favour. Accordingly, I have answered point No.1 in the affirmative.

As to Point Nos.2 and 3-

31. Plaintiffs have come with the case that, defendant Nos.1 and 2 have started construction in both block No.1188 and block No.1192. In support of their contention, they have filed on record hand sketch map vide list Exh.29/3. On perusal of the same it appears that, defendants are raising alleged construction over block No.1188 and block No.1192. Same hand sketch also reveals that, defendant Nos.1 and 2 are not raising construction over the entire block No.1192.

32. There is no evidence apart from bare words and hand sketch filed by the plaintiffs to prima facie show that, defendant Nos.1 and 2 are raising construction in both block No.1192 and No.1188.

33. Plaintiffs have filed some photographs of the alleged construction vide list Exh.3. On perusal of the same it appears that the construction has already reached at the slab level. It is admitted in the plaint itself that, defendants have started construction over the block Nos. 1192 and 1188 in the month of December 2024. This fact shows that, plaintiffs have not approached this Court with earliest possible opportunity and they are not prompt in their action. Photographs filed by the plaintiffs vide list Exh.3 and 7 shows that, the construction has reached slab level and its almost complete. The photographs also show that, defendant No.1 and 2 have incurred huge expenses for the alleged construction. Above photographs supports the contention of the defendant Nos.1 and 2 that, they have incurred huge expenses for the alleged construction.

34. In the facts and circumstances of the case as such, it prima facie appears that if the defendants are restrained from raising further construction they will suffer irreparable loss. On the contrary plaintiffs have approached Court when the construction had already reached slab level. Now, if the temporary injunction is refused plaintiffs loss will not be greater than that of defendant Nos.1 and 2 if temporary injunction is granted. Therefore, prima facie it appears that, balance of convenience is in the favour of the defendant Nos.1 and 2. It is prima facie found that, irreparable loss will be caused to defendant Nos.1 and 2 if the present application is allowed. Therefore, I answer points Nos.2 and 3 in the negative.

As to point No.4 :-

35. Considering the above said discussion, I come to the conclusion that the plaintiffs do have a prima facie case. However, other two parameters for deciding the temporary injunction application are in favour of the defendant Nos.1 and 2. In view of the above said discussion and my findings on point Nos.1 to 3, the application is liable to be rejected. In the result, I pass following order.

- ORDER -

1. The application below Exh.5 is hereby rejected.
2. Costs will be costs in main cause.

Date:09/05/2025

(R.D.Shinde)
Civil Judge Junior Division,
Radhanagari.