

Order below Exh.05 In R.C.S. No.126 of 2024

(Passed on this 08th day of August, 2025)

Halamabi Vrs. Rashidmohmad.

CNR NO. MHLA060003492024

This is an application filed by the plaintiff for temporary injunction as per Order 39 Rules 1 and 2 of the Code of Civil Procedure (CPC).

02. Perused the application, the plaint, written statement at Exh.32, pursis filed by the defendant at Exh.34 adopting written statement as say to this application, the documents produced by the plaintiff vide list of document Exh.4 and list of documents Exh.16.

03. The properties in dispute are situated at village Umerga Kort, Tq.Ahmedpur, Dist.Latur more particularly described in para. No.2 of the plaint (Henceforth, for the sake of brevity the properties in dispute described in para. No.2 of the plaint will referred as the 'suit properties').

Admitted facts :-

04. The plaintiff is a sister of the defendant and the original owner of the suit properties was the father of the plaintiff and the defendant viz Habib Abdul Sayyad.

05. The facts of the plaintiff's case in brief are as follows;

Father of the plaintiff and the defendant viz. Habib Abdul Sayyed died on 27.10.2023 and the mother of the plaintiff

and the defendant viz Fatimabi died on 14.02.2015. After them, the plaintiff and the defendant are the only legal heirs of them. The suit properties are in the names of deceased Habib and deceased Fatimabi. The suit properties are the ancestral properties of the plaintiff and the defendant. The plaintiff has one half share in the suit properties. Deceased Habib was addicted and would remain under the influence of additives. He had undergone two operations. The defendant had knowledge of the physical and mental condition of deceased Habib. The defendant took the disadvantage of bad health of deceased Habib and by misrepresentation got executed will dated 09.10.2019 in his favour. The said will is illegal. The defendant got executed the will from deceased Habib only to grab the suit properties. The said will was executed behind back of the plaintiff. Therefore, the said will is not binding on the plaintiff. No medical certificate is annexed with the document of will. It came to be executed in collusion with Sub Registrar, Ahmedpur. The plaintiff has undergone brain ham-rage in the year 2016, so she is paralyzed. She is 60% disabled. The defendant being ligatee of the will executed by deceased Habib is trying to alienate the suit properties to the third persons. Further, the plaintiff has apprehension that on the basis of the will, the defendant will take away valuable belongings in the bank locker of the deceased Habib. The plaintiff demanded her share in the suit properties to the defendant on 01.01.2024. But the defendant refused to give her share. Therefore, the plaintiff got 7/12 extract of the suit

properties, then she came to know about will in dispute. Therefore, the plaintiff is compelled to pray for partition and separation of his share, for declaration that the will dated 09.10.2019 bearing document No.3107/2019 is illegal and not binding on the plaintiff and permanent injunction restraining the defendant from alienating the suit properties to third persons and from taking away valuable belongings in the locker of deceased Habib.

06. The plaintiff pleaded in the application that she has prima facie case. She is an abandoned lady if the defendant succeeds in entering his name on the revenue record of the suit properties, it will cause irreparable loss to him. Thus, she prayed in the application for temporary injunction restraining the defendant from creating third party interest or entering his name on the revenue record of the suit properties and from restraining him from taking away valuable belongings in the bank locker provided by State Bank of India, Chandra Nagar, Latur branch.

07. The defendant admitted the facts stated in para. No.4 of this order and denied rest of the averments of the plaintiff. He contended that on the date of execution will dated 09.10.2019 deceased Habib was in good mental state and conscious enough. He was not addicted, his physical condition was also good. The properties in Gat No.13, 81, 88, 90, 314 out of the suit properties were the self acquired properties of deceased Habib. The plaintiff was present at the time of execution of will in favour of the defendant. She has given

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consent to the will. The will is executed in presence of panchas and the witnesses. The defendant rendered service to the deceased Habib in his old age. So, deceased Habib had natural love and affection for the defendant. Therefore, he executed will in favour of the defendant. Deceased Habib had executed gift deed in favour of the plaintiff of the landed properties in Gat No.81 adm. 2 H. 19 R and in Gat No.314 adm. 2 R and thereafter executed will in favour of the defendant. The plaintiff relinquished her rights in the suit properties. Since, gift deed was executed by deceased Habib in her favour, the deed to that effect has been executed before notary Shri J. V. Madre dated 14.06.2017 bearing Sr. No.552/2017. Thus, the suit and the application are liable to be dismissed.

08. Heard Ld. Advocate for the plaintiff. The argument of the defendant is deemed to be heard vide order below Exh.5 dated 10.07.2025.

09. Ld. Advocate for the plaintiff argued that the defendant has not submitted any document in support of the defence. The suit properties are of deceased Habib and the ancestral properties of the plaintiff and the defendant. As per chapter 10 of Mohammedan Law a Muslim cannot dispose of more than 1/3 of his properties by way of will i.e. Vasiyat. Medical certificate must be annexed with the will. As per the defendant, the plaintiff was present and had given consent to the will in favour of the defendant. Then the question remains unanswered why the plaintiff did not make her signature over the document of the will. If the deceased Habib had intention to

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bequeath all his properties to the defendant then he ought to have executed gift deed because there is no limitation to the proportion for transferring the property by way of gift. The plaintiff has moved application before revenue authority taking objection to take entry in the name of the defendant on the basis of the will. No prejudice would cause to the defendant if the relief as prayed is granted in favour of the plaintiff. Thus, he requested to allow the application.

10. Following points arise for my determination, I record my findings with reasons thereon as follows;

Sr. No.	Points for determination	Findings
1.	Does the plaintiff prove that she has prima facie case?	Yes
2.	Does the plaintiff prove that balance of convenience lies in her favour?	Yes
3.	Whether irreparable loss will cause to the plaintiff if the application is rejected?	Yes.
4.	What order?	The application is partly allowed as per the final order.

As to Points No.1 to 3 :-

11. The discussion requires to record finding on points No.1 to 3 is the same and interlinked. Hence, they are discussed together.

12. The parties are admittedly governed by the Mohammedan Law. There is prescribed mode of execution of will under the Mohammedan Law. The law prescribes who is competent to bequeath the property, what property is liable for bequeath and who is competent to be a legatee. As per Mullas Principle of Mohammedan Law chapter 9 Section 117 a Muslim cannot bequeath his property to his own heirs. However, the bequeath is valid if other heirs give consent on the death of the testator .

13. In the case in hand, the will in favour of the defendant is admitted by the defendant. Further, the defendant is a legal heir i.e. son of deceased Habib is also admitted. Therefore, it is undisputed that Mohammedan deceased had executed will in favour of his own heir. Now, the question remains whether consent of the other heirs was obtained or not. As per the plaintiff, deceased had executed will behind her back. The will in dispute is not produced on record. However, as per the Principles of Mohammedan Law, the consent of the heir has to be obtained after the death of the testator. It means in order to make a will in favour of the defendant valid one, the consent of the plaintiff being other heir of the deceased must have been obtained after death of deceased Habib. Since, the defendant has not raised this contention, it means prima facie the will in favour of the defendant is without obtaining consent of the plaintiff after death of deceased Habib. Hence, prima facie this Court leads to the conclusion that although the will is not produced on record, undisputedly its validity is doubtful.

14. As per the plaintiff, the defendant is trying to create third party interest in the suit properties or take away the valuable belongings of the deceased from the locker of the bank. Hence, the plaintiff has prima facie case. If the third party interest is created in respect of the suit properties and valuable belongings in the locker, it will cause irreparable loss to the plaintiff. Thus, balance of convenience lies in favour of the plaintiff. This Court has no authority to restrain the competent revenue authority from exercising lawful powers. Therefore, no injunction to revenue authority can be granted.

15. Thus, in view of above discussion, the plaintiff has prima facie case and balance of convenience in his favour in respect of restraining the defendant from creating third party interest in the suit properties. Hence, to that extent I, answer points No.1 to 3 in the affirmative.

As to Points No. 4:-

16. In the light of affirmative findings to points No.1 to 3 the application deserves to be partly allowed in respect of restraining the defendants from creating third party interest in the suit properties and valuable belonging in the bank locker in the name of the deceased. Thus, to answer point No.4, I pass the following order;

ORDER

1. The application partly allowed.
2. The defendant is restrained from alienating or creating any kind of third party interest in

the suit properties till the final adjudication of the suit. Further, he is restrained from taking away valuable belongings of the deceased from the bank locker on the basis of the will in dispute till final adjudication of the suit.

3. The cost with main suit.

Place: Ahmedpur.

Date:- 08.08.2025.

(Swanandi D. Wadgaonkar)

Jt. Civil Judge, J.D., Ahmedpur.