



**R.C.S.No.816/2016**

Narhari & ors. V/s Pratiksha & ors

MHLA06-002099-2016

**ORDER BELOW EXH.05**  
**(Date 01/01/2020)**

1. This application is filed by the plaintiffs under Order 39 Rule 1 & 2 of the Code of Civil Procedure to restrain the defendants from interfering and obstructing in their possession over the suit property.
2. As per the plaintiffs, following are the joint family properties of their family -

<b><u>Sr.No.</u></b>	<b><u>Survey No.</u></b>	<b><u>Area</u></b>	<b><u>Village</u></b>
1)	96	25R.	Ahmedpur
2)	97	57R.	Ahmedpur
3)	112/3	77R.	Ahmedpur
4)	148/1	77R.	Ahmedpur
5)	149/1	1H. 59R.	Ahmedpur
6)	76/2	1H. 21R.	Ahmedpur
7)	76/3	1H. 22R.	Ahmedpur
8)	76/4	1H.	Ahmedpur

3. As per the plaintiffs, plaintiff No.3 was real son of plaintiff No.1, who was later on adopted by late Gangadhar Shinde (husband of the defendant No.1 and father of defendant

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No.2, 3 & 5) The plaintiffs and defendants are related to each other as they are members of Hindu joint family. As per the plaintiffs, plaintiff No.1 was adopted by late Gangadhar Shinde and defendant No.1 by way of registered Adoption Deed No.2701/2005 dated 08/06/2005 and in that regard Mutation Entry No.2729 was also sanctioned. It is the contentions of the plaintiffs that, plaintiff No.1 has performed marriages of Pranita & Pratiksha by expending huge amount. Therefore, Pratiksha & Pranita have surrendered their rights in the family property in favour of plaintiff No.3 and defendant No.1, 2 & 3 by way of registered surrender deed No.463/07 dated 01/03/2007 and in that regard Mutation Entry No.2885 was also sanctioned.

4. It is the case of plaintiffs that, mother of plaintiff No1 Jijabai and defendant No.1 to 3 have also surrendered their rights in the joint family in favour of plaintiffs No.1 to 3 by way of registered surrender deed No.1246/14 dated 24/04/2014 and in view of that Mutation Entry No.5916 was sanctioned. As the defendants No.1 to 3 have surrendered their rights in the property, these defendants have no right in the suit properties. However, at the instigation of defendants No.4 & 6 they are trying to obstruct and interfere in the suit properties. Defendants have filed illegal suit bearing registration No. S.C.S. 4/2016 which is pending before the Civil Court. Therefore, to restrain the

defendants from their illegal acts, the instant application is filed.

5. Defendant No.1 has submits his written statement at Exh.20.and the same is adopted by him as say to interim application by pursis at Exh.21. The defendants No.2 & 3 have adopted the say submitted by defendant no 1 by pursis at Exh.23.

6. The defendants submit that the adoption deed allegedly executed, was not carried out as per the provisions of Hindu Adoption and Maintenance Act. Therefore, adoption deed is illegal. Defendants further contended that, they have not executed any kind of surrender deed in favour of the plaintiffs.

7. As per the defendants, defendant No.1 was taking education at Pune for which she was incurring expenditure. However, the plaintiff No.1 was refused to pay the expenses for expenditure incurred by her. The surrender deed allegedly executed was neither read over or explained to the defendants. The deeds were carried out by using undue influence by the plaintiff No.1. The defendants have specifically denied the allegations of instigation levelled against defendants No.4 & 6. The defendants have supported filing of suit No.4/2016 at the hands of them. The defendants have not made any kind of obstruction and interference in the possession of the plaintiffs, with these submissions the defendants have prayed to reject the

application.

8. Heard both the sides.

9. Rival contentions and pleading of both the parties

leads me to draw the following points -

<b><u>Sr.No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
1)	Whether plaintiffs prove prima facie case for grant of temporary injunction ?	In the affirmative
2)	Whether plaintiffs prove that balance of convenience lies in their favour ?	In the affirmative
3)	Whether plaintiffs prove that they will suffer irreparable loss, if temporary injunction is rejected ?	In the affirmative
5)	What Order ?	As per final order.

### **REASONING**

#### **As to Point No. 1 to 3 :-**

10. All the points are interlinked with each other, thus to avoid repetition of discussion of facts, these points are discussed together.

11. Plaintiffs are claiming their ownership over the suit properties being they are the exclusive owners of the suit properties. No doubt, the execution of adoption deed and Surrender deeds are denied by the defendants, but these are the registered document and are still in existence. These registered documents are not yet cancelled by the competent Court.

Therefore, these registered documents are still effective. The defendants have only raised contention about their illegality but nowhere in the entire say, they have mentioned that they have challenged those documents.

13. The plaintiffs are claiming their ownership over the suit properties. The property extract of these properties is on record perusal of which it appears that, properties at Survey No.96, 97, 112/3, 148/1, 149/1 and 76/3 denotes exclusive ownership of the plaintiff No.1 over these properties. On the contrary the properties bearing No.76/2 and 76/4 denotes ownership of plaintiff No.2 over these properties. The copies of surrender deeds and adoption deeds are on record which denotes that those documents were duly executed. At the moment there is no document which prima facie denotes ownership and possession of the defendants over the suit properties.

14. On the contrary the plaintiffs have the documents which prima facie denotes ownership and possession over the suit properties. Therefore, the plaintiffs are having prima facie case, the documents are at the stage favouring their ownership therefore balance of convenience lies in their favour, and if the defendants are not restrained from causing obstruction to the plaintiffs, the plaintiffs will have to suffer irreparable loss which could not be compensated. Therefore, on the backdrop of these circumstances I answer points No.1 to 3 in the affirmatives.

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**As to Point No.4 :-**

14. As points No.1 to 3 are answered in the affirmatives the application is liable to succeed. Thus, in the result in answer to point No.4 following order is passed:-

**ORDER**

- 1) Application (Exh.5) is allowed.
- 2) Defendants are hereby temporarily restrained from causing any kind of obstruction and interference in the suit properties specifically described in para No.8 of this application, till the final disposal of this suit.
- 3) Cost will be considered at final stage.

Date 01/01/2020

**(A. B. Jawale)**  
2<sup>nd</sup> Jt.Civil Judge, Jr.Divn.  
Ahmedpur.