

ORDER BELOW EXH. 49 IN R.C.S. No. 89/2015
(Mannabi Vs. Tabassum and others)

The present suit is filed by the plaintiff for declaration of ownership & perpetual injunction, wherein the present application is filed under O. 39 R. 1 & 2 r/w Sec. 151 of the Code of Civil Procedure.

2. By filing present application it is submitted that the plaintiff is mother of defendant no. 4. The defendant no. 2 & 3 are minor daughters of defendant no. 1. The defendant no. 1 is daughter in law of the plaintiff. The agricultural land bearing Gat No. 266 adm. 2 H 52 R situated at village Darji Borgaon, Tq. Renapur, Dist. Latur. The said land is having two equal parts. The first part is bounded as under:

Towards East	:	Land of Ranjana Pramode Gude
Towards West	:	Land of Omkar Acchutrao Mane
Towards South	:	Land of Namdeo & Datta Holkar
Towards North	:	Land of Shahabuddin Shaikh

The boundaries of the second part is as under:

Towards East	:	Land of Omkar Acchutrao Mane
Towards West	:	Land of Raosaheb Chambhar
Towards South	:	Land of Dagdu Dhangar & Khandu Chambhar
Towards North	:	Land of Kakasaheb Jadhav.

The above mentioned landed properties are the subject matter of suit. Hereinafter it is called as the "Suit Properties".

3. The defendant no. 4 and husband of defendant no. 1 Rabbani were cultivating the suit properties, however after attaining the

age of majority the defendant no. 4 and Rabbani were out of station for their livelihood, so due to their love and affection towards their mother the defendant no. 4 & Rabbani decided to gift the suit property in favour of their mother, therefore, on the day of Ramjan Eid of the year 2011, they orally gifted the suit property in favour of plaintiff in the presence of relatives & witnesses namely Ahmad Mohammad Shaikh, Bashir Shaikh, Khandu Babu Bhure, all r/o village Sindhgaon. The plaintiff had accepted the said oral gift i.e. Hibba on the same day. Since from the day of Hibba plaintiff was / is enjoying the suit property as exclusive owner and possessor thereof.

4. The son of plaintiff namely Rabbani died in the year 2012. After the death of Rabbani defendant no. 1 had obtained false certificate and behind back of the plaintiff got mutated their names to the 7/12 extract of the suit property. The defendant no. 1 to 4 by taking undue advantages of false revenue record are denying the ownership of the plaintiff over the suit properties.

5. On the day of Bakri Eid dated 26/9/2015 plaintiff was doing agricultural work at that time defendants came there and made obstruction and interference to the possession of the plaintiff. The defendants are trying to alienate the suit properties to others. When the plaintiff got knowledge of the same, she issued paper publication in daily newspaper "Punya Nagri" on 5/7/2018, if the defendants succeeds in their illegal acts then the plaintiff will suffer irreparable loss, therefore, the defendant nos. 1 to 4 may kindly be restrained by order of temporary injunction from alienating the suit properties.

6. The defendant no. 1 to 3 filed their say at Exh. 52 and submitted that the application is false, baseless and for harassing the defendants. They further denied that the plaintiff is owner of the suit

properties. It is specifically stated that the defendant no. 1 to 3 are in possession of the suit properties. They further submitted that the plaintiff is not owner of the suit property. Plaintiff has not filed any document to show that the defendant no. 4 and Rabbani made Hibba of the suit properties in favour of plaintiff. The plaintiff has made imaginary story only to grab the suit properties. Therefore, the application may be rejected with costs.

7. Considering the contents of the application following points arise for my determination and I have recorded my finding thereon with reasons as follows.

Sr. No.	POINTS	FINDING
1.	Whether plaintiff proves her possession over the suit property	In the Affirmative
2.	Whether balance of convenience lies in favour of plaintiff?	In the Affirmative
3.	Whether irreparable loss would be caused to the plaintiff?	In the Affirmative
4.	What Order?	: As per final order.

REASONS

8. In support of the present application plaintiff has filed affidavit of Ahmad Mohammad Shaik, paper publication in daily newspaper Punya Nagri dated 5/7/2018.

9. Heard the ld. adv. for the plaintiff. Perused documents filed on record.

AS TO POINT NOS. 1 TO 3 :-

10. After perusing the application it is seen that it is the

contention of the plaintiff that the defendant no. 4 and her son Rabbani made oral gift i.e. Hibba in her favour regarding suit properties and on the basis of said oral Hibba she has filed the present suit for declaration of ownership.

11. On perusal of record it is seen that the plaintiff has filed any document regarding her ownership. But, as the plaintiff is relying on oral Hibba and on the basis of said oral Hibba she has filed the present suit. The burden lies on the plaintiff to prove that her two sons made oral Hibba in her favour. It is the contention of the plaintiffs that the defendants are trying to alienate the suit properties. The plaintiff has not brought any evidence regarding the same. But she has filed paper publication made in daily newspaper Punya Nagri dated 5/7/2018. It shows that the plaintiff has apprehension that the defendants may alienate the suit properties. In these circumstances, if the defendants are not restrained by order of temporary injunction then the very purpose of filing the present suit will be frustrated.

12. The plaintiff has filed the affidavit of Ahmad Mohammad Shaikh. According to plaintiff said Ahmad is one of the witness, who was present at the time of Hibba. After perusal of record it is also seen that the defendant no. 4 also filed written statement at Exh. 25 and admitted the suit claim of the plaintiff. Therefore, prima facie it is seen that the plaintiff has prima faice case. The balance of convenience also lies in her favour. If the defendants are not restrained from alienating the suit properties then the plaintiff will suffer irreparable loss. Hence, I answer point nos. 1 to 3 in the affirmative and proceed to pass the following order.

ORDER

1. The application is allowed.

2. The defendants are hereby restrained from alienating the suit properties by way of sale, lease, mortgage, Hibba etc. or from creating any sort of encumbrance on the suit properties till final disposal of the suit.

Dated 25/6/2019

**(O. M. Mali)
Civil Judge J.D. Renapur.**