

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,
AUSA DIST. LATUR.
Reg. Civil Suit No. 66/2023

Lahu Ramchandra Gurav & Ors. Plaintiffs

V/S.

Ramchandra Motiram Gurav & Ors. Defendants

ORDER BELOW EXH. 05

(Dated: 16/04/2026)

This is an application under order 39 Rule 1 and 2 of the Civil Procedure Code for grant of temporary injunction preferred by plaintiffs to restrain the defendants from alienating or creating third party interest over the suit property till final disposal of the suit.

The facts of plaintiff's case runs as under:-

2] The plaintiff has filed present suit for partition and declaration against the defendants. The plaintiff sought to declare that, sale deed bearing No.262/2006 and Sale deed No.3392/2008 is not binding upon the plaintiff. The plaintiff further contended that, plaintiff No.1 and 2 as well as defendant No.4 and 5 are real brother and sisters. The defendant No.1 and 2 are their parents. Defendant No.3 is grand mother of plaintiff. Similarly, defendant No.6 and 7 are illegal purchaser of the suit property.

3] The plaintiff submitted that, the land bearing Survey No. 147/B/1 ad-measuring total area 09 H. 0 R being assessed at Rs. 11 59 paise, out of which 01 H. 41 R being assessed at Rs.1.60/- having boundaries as follows;

Towards East :	Yakatpur-Ausa Shiva
Towards West :	Land of Pushpabai Ramchandra Gurav
Towards South:	Yakatpur-Ausa Shiva
Towards North:	Hemant Kamlakar Kabade's land

(more particularly described in para no.3, of the application).
Hereinafter, referred as '**suit property**'.

4] The plaintiff further submitted that, suit property is ancestral property of plaintiffs. The erstwhile owner grand father of plaintiff and father of defendant no.1 namely Motiram Bhagwanta Gurav had sold their ancestral property situated at Mouje Wadgaon, Tq. Omerga vide sale deed no.1023/1991 on 23/04/1991. Thereafter, they had purchased the instant property land bearing Survey No.147/B/1 ad-measuring 01 H 41 R vide sale deed No.1569/1991 on 17/07/1991. Therefore, the instant property becomes ancestral property of the plaintiff, as it is purchased from the joint family income.

5] Moreover, the plaintiff submitted that, the defendant no. 1 sold 0H. 81R land to the defendant no. 6 vide sale deed no.262/2006 without any legal necessity for satisfaction of habit of alcoholism. Thereafter, defendant no.1 has against sold 01H. 01R land to the defendant no.7 vide sale deed no.3392/2008 without having any legal necessity. Therefore, plaintiff sought declaration that, those sale deeds are not binding upon their rights.

6] Further, plaintiff submitted that, without having perfect title the defendant no.1 and defendant no.7 are trying to alienate and to create third party interest the above mentioned suit property,

in order to cheat the plaintiff with malafide intention. Therefore, the plaintiff constrained to file the present suit and prayed for restraining the defendants from alienating or creating third party interest over the suit property till final disposal of the suit.

7] The defendant No.7 is contesting the suit and appeared on record, and filed her say cum written statement vide Exh.36. The defendant No.1 has not filed any reply or says to the instant application. The defendant No.7 has strongly and categorically denied the contentions of the plaintiff made in the plaint as well as in the application. The defendant submitted that, the suit is not maintainable as per prevailing laws. The plaintiffs have filed present suit in collusion with defendant no.1 to 6. The erstwhile owners of plaintiffs have already sold suit property to the present defendant in the year 2008. The defendants further submitted that, the suit property is purchased property by the family of plaintiffs, therefore is not an ancestral property of the plaintiffs.

8] The defendant no.7 further contended that, defendant no.1 has sold suit property to the defendant no.6 Vithoba Gangaram Kuchame for the purpose of loan adjustment. Thereafter, defendant no.1 has sold the suit property to defendant no.7 for the consideration of Rs.2,83,000/- and delivered possession of suit property. Thereby, defendant no.7 is in exclusive possession of suit property till date. Thus, she becomes a bonafide purchaser of suit property. The plaintiff have no any concern with the suit property as mentioned in the plaint. The defendant further contended in his written statement that, the plaintiff has filed bogus and vexatious suit against the defendant for wrongful gain. The defendant no.7 is

in exclusive possession suit property since 2008. Therefore, defendants precisely submitted that, plaintiffs have no possession over suit property and they have not approached with clean hands before court. Hence defendant no.7 prayed for rejection of the application.

9] In view of the facts, the following points arose for my consideration, and I, record my findings thereon for the reasons thereto are as under:

POINTS FOR DETERMINATION

Sr.No.	POINTS	FINDINGS
1)	Whether the Plaintiff have made out prima-facie case ?	No
2)	Whether balance of convenience lies in favour of the Plaintiff ?	No
3)	Whether the Plaintiff will suffer irreparable loss or damage, if temporary injunction is refused ?	No
4)	What Order ?	As per final order

REASONS

In order to substantiate his case, the plaintiff has filed following documents:

Sr.No.	Documents	Exh.No.
1)	Copy of 7/12 extract of Sy.no.147/B/1 Ausa, Tq. Ausa, Dist. Latur.	4/1
2)	Copy of Sale deed No.1023/1991 of Sy.no.2/8/1 and Sy.no.6/4 Wadgaon, Tq. Omerga.	4/2
3)	Copy of Sale deed No.1569/1991 of	4/3

	Sy.no.147/B of Ausa, Tq. Ausa, Dist. Latur.	
4)	Copy of Sale deed No.262/2006 of Sy.no.147/B/1 of Ausa, Tq. Ausa, Dist. Latur.	4/4
5)	Copy of Sale deed No.3392/2008 of Sy.no.147/B/1 of Ausa, Tq. Ausa, Dist. Latur.	4/5

Similarly, the defendant No.7 has filed following documents;

Sr.No.	Documents	Exh.No.
1)	Copy of Judgment in RCS No.416/2009.	50/1
2)	Copy of Decree in RCS No.416/2009.	50/2
3)	Copy of Decree in RCS No.203/2015	50/3
4)	Copy of Judgment in RCA No.83/2015	50/4
5)	Copy of Judgment of Sub Divisional Commissioner Officer, Aurangabad	50/5
6)	Copy of Mutation Entry No.12896.	50/6
7)	Copy of Judgment of Sub Divisional Commissioner Officer, Ausa-Renapur	50/7
8)	Copy of Mutation Entry No.3560.	50/8

10] Heard learned advocate for plaintiff Shri. Kohale and heard learned advocate for defendant No.7 Shri.Birajdar Heard both the advocate at length.

TO POINT No. 1 TO 4 :

11] As point nos. 1 to 4 are inter linked with each other, I prefer to discuss it under one common caption. Ld. Advocate for plaintiff submitted in consonance to his plaint and application. In

order to substantiate his submissions Ld. Advocate for plaintiff gathered attention towards documents filed on record. He submitted through his application that, *prima facie* case and balance of convenience lies in favor of plaintiff and irreparable loss would be caused to the plaintiff which could not be compensated in terms of money and accordingly prayed to allow the instant application.

12] Per Contra Ld. advocate for defendants has appeared and vehemently argued that the plaintiff is came with the ulterior motive and prayed to reject the application.

13] It is canon of settled legal principle that power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as the matter of right or course. The grant of injunction is at the discretion and must be exercised in favor of the party only if the Court is satisfied that, unless the other party is restrained by an order of injunction, irreparable loss or damage would be caused to that party. The court grants such relief on the principle of *ex debito justitiae* i.e. to meet the ends of justice.

14] Reverting back to the facts of the instant matter at the hand, the plaintiffs submitted that, the defendant no. 1 their father Ramchandra Gurav had sold 0H. 81R land to the defendant no. 6 vide sale deed no.262/2006. Thereafter, defendant no.1 has against sold 01H. 01R land to the defendant no.7 vide sale deed no.3392/2008 without having any legal necessity. The plaintiffs have interest in the suit property and therefore sought declaration that, those sale deeds are not binding upon their rights. Without having

perfect title, defendant no.1 and 7 are trying to alienate and to create third party interest the above mentioned suit property.

15] In order to substantiate their contentions plaintiffs have relied upon, Sale deed no.1569/1991 of S.No.147/B of AUSA and submitted that, suit property is ancestral property of plaintiffs and they have interest in the suit property. *Per contra* defendant no.7 has relied upon, sale deed no.3392/2008 and submitted that, plaintiffs have knowledge about these sale deed and thereby defendant no.1 has accepted the consideration of Rs.2,83,000/- and delivered possession of the same. Accordingly, the name of defendant no.7 is recorded vide M.E. No.12896 on record of rights. Since 2008, defendant no.7 is in settled possession of suit property. In order to substantiate the rival submissions, it is needless to look *prima facie*, into the recitals of the alleged sale deeds. On meticulous perusal of recitals of both the documents, it reveals that defendant no.1 has accepted agreed amount to the tune with Rs.2,83,000/- on 15/11/2008 on the day of sale deed no.3392/2008. It also shows that, on the same day defendant no.1 Ramchandra has delivered the possession of suit property on same to defendant no.7. Moreover, it is pertinent to note that, defendant no.2, 4, 5 and 6 were present at the time of the impugned sale deed. Similarly, the defendant no.2, 4, 5 and 6 have signed as a witness to that sale deed alongwith Baburao Gundaji Shinde and Shesherao Parihar. This fact *res ipsa loquitur* shows the knowledge of execution of sale deed in favour of defendant no.7. After the execution of impugned sale deed, the name of defendant no.7 Girjabai Narayankar recorded over revenue rights through M.E. No.10896.

16] In addition to this defendant no.7 has drawn attention towards the decree passed in R.C.S. No.203/2015 by this court and shows that, the present plaintiffs had already obtained their shares in partition through the compromise court decree. It appears that, plaintiffs have knowledge about the possession of defendant no.7 as they have shown the name of defendant no.7 in the boundaries column, in the abovesaid compromise decree. Similarly, on meticulous perusal of orders of revenue proceedings filed on record, it prima-facie appears that, revenue authorities also held possession of defendant no.7 over the suit property.

17] Nonetheless, it is the contention of plaintiff that, the defendant no.7 is trying to create third party interest and to alienate the above mentioned suit property with malafide intention to the third parties, but on perusal of record, it appears that, since execution of sale deed no.3392/2008, the defendant no.7 is in possession of suit property.

18] In the background of above facts, the advocate of plaintiff Shri. Kovhale has tried to unfold the chronology of the incidents but unable to make *prima-facie* case. In such circumstance, it is needless to mention the on decision of Hon'ble Apex court,

In Diskush Dessai and another v. Don Bosco Farmers Rehabilitation Society, Sulcorna , AIR 1981 Goa Daman Diu 34;

'It is well settled that a court while considering the grant of temporary injunction has to satisfy itself as to whether its interference is necessary to protect the party applying for such relief from the particular type of injury which the court would call 'irreparable' before the legal right of the party is established at the trial. The court is further required to examine what would be comparable mischief

and inconvenience that would result from a refusal of such injunction'.

In the light of above discussion and the circumstances of the case, it appears that, interference is unwarranted and if such relief granted as prayed, then it would be *'irreparable'* for defendant.

19] Moreover, in order to determine the interim application, it is necessary to the plaintiff to show *prima-facie* the existence of an arguable case. Therefore it is needless to mention the ratio laid down by Hon'ble Apex court; **In M/S Great Eastern Energy vs M/S Jain Irrigation Systems Ltd, 2010(3) ALL MR 872**, it has observed that:

'no doubt, the application filed by the respondent no. 1 is governed by Order-XXXIX Rule-1 and Rule-2 of the Civil Procedure Code, yet, basically, the power to grant injunction is offspring of section 94 (c) of the C.P.Code. The interim injunction can be granted by invoking section 151 of the C.P. Code when it is found that there exists a good case and on equitable principles, the plaintiff is entitled to such remedy, though the application is not covered by Order-XXXIX Rules 1 and 2. It is well settled that interim injunction can be granted when there exists a prima facie case in favour of a party, there is material to infer irreparable injury which may be caused to such a party and when the balance of convenience lies in his favour.

The expression "prima facie case" does imply existence of an arguable case. It also means that there must be some material which on the face of it tends to

show that triable issues are involved. At the stage of considering interim application, the Court is not required to render any finding on merits. The material placed on record is required to be examined at horizontal level. In-depth scrutiny so as to render final finding of fact is not called for'.

However, in the light of above decision of the Hon'ble Apex court and facts of the instant case in hand, the arguable case is not available to the plaintiff on its face.

20] In the present case, *prima facie* there is no reason to believe that balance of convenience lies in favor of plaintiff. If the defendant is not restrained then plaintiff would not suffer any hardship. Thus, the *arguable case* is not available to the plaintiff in the light of '**M/S Great Eastern Energy**' (*supra*). Hence, in view of the above findings, the answer as to point no.1 to 3 is recorded in negative. For the answer of point no.4, the following order is passed:

ORDER

- 1) The application (Exh.05) is rejected.
- 2) Cost in cause

Date: 16/04/2026
Ausa.

(Shri. P. P. Awate)
Jt. Civil Judge J.D., AUSA.