

MHLA140003222018 	Order Below Exh. 107 (Ulfatbi Vs. Sultan)
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Plaintiff No.3 has filed the instant application for a temporary injunction for restraining the defendant No.3 from alienating or creating any encumbrances over the suit property under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure.

The case of plaintiff is as under :

2. They have filed the suit for partition and declaration. The S.No. 17 measuring 2 H. 66 R purchased by Aminabi Mohamad Nawaz Burhan (Shaikh) i.e. mother of plaintiffs, who executed the Hibba and written memorandum dated 20.10.2013 in their favour regarding the suit property. Since then plaintiffs are the owner and possessor of S.No. 17. However, defendant No.1 brought into existence decree in RCS No. 243/2012 by playing fraud on their mother. The said decree was challenged by late Aminabi before the Hon'ble High Court vide Writ Petition No. 4798/2025. But the Hon'ble High Court directed them to challenge the said decree before the proper Court. Accordingly, they have filed Civil M.A. No. 438/2025 for cancellation of decree which is sub-judice. However, taking the benefit of revenue entry defendant No.1 executed the registered sale deed No.2603/2025 in respect of suit property in favour of defendant

No.3 without possession and consideration. Now, defendant No.3 is trying to dispossess them in order to alienate the suit property. If defendant No.3 alienate the suit property it would cause multiplicity of proceeding. Hence, on 20.08.2025 they again requested defendant No.3 not to alienate the suit property. But he did not pay heed to their request. On the contrary he filed false case against them at AUSA police station. Therefore, they constrained to file the present application and prayed for the consequential relief.

3. Defendant No.3 has filed his reply vide Exh.No. 109 and resisted the claim of plaintiff. It contended that, suit is bad for non joinder of necessary parties and also barred by law of limitation. The plaintiff has no locus standi to file present suit. He contended that, S.No. 17 measuring 2 H. 66 R purchased by defendant No.1 in the name of his mother. The defendant No.1 filed the suit bearing No. 243/2012 against his mother. The said suit was compromised in Lokadalat. Accordingly, name of defendant No.1 mutated to the revenue record of the suit property. Since then he became the owner and possessor of the S.No.17. He further contended that, S. No. 32 measuring 4 H. 45 R. was the self acquired property of defendant No.1. Being the owner and possessor of suit property, defendant No.1 executed the registered sale deed No. 2603/2025 in his favour by accepting consideration amount of Rs. 1,35,000,00/-. The family members of defendant No.1 were the consenting party to the said transaction. Accordingly, mutation entry No. 25500 was

certified. He is the bonafide purchaser of the suit property. Hence, he prayed for the rejection of the application.

4. Perused application, record, and say filed thereto by defendant No.3 vide Exh No.109. Perused the document on record. Heard learned advocate for plaintiff and defendant No.3.

5. The following are points for determination along-with my findings thereon for the reason to follow -

Sr. No.	Points for Determination	Findings
1.	Whether plaintiff No.3 has a prima-facie case ?	No.
2.	Whether the balance of convenience lies in favour of the plaintiff No.3 ?	No.
3.	Whether plaintiff No.3 would suffer irreparable loss if the application of temporary injunction is refused ?	No.
4.	What order?	As per final order.

REASONS

6. Plaintiff No.3 in support of his case produced on the record the following documents vide Exh. No.4 i.e. memorandum of Hibbanama dated 20.10.2015, 7/12 extract of S.No. 17 & 32, certified copies of sale deeds dated 04.12.2006, mutation entry Nos. 295, 182, 319, 245 and 594, copy of the Writ Petition No. 4798/2015, decree passed in RCS No.

243/2012 vide Ex. No. 29, photo copy of appeal filed before District Collector, Latur, copy of public notice dated 19.12.2023 vide Ex.No. 68/1, certified copies of sale deeds No.2603/2025 dated 13.05.2025 and copy of the Writ No. 4798/2015 dated 17.04.2025.

7. Defendant No.3 has also produced on the record photo copy of sale deed No.2603/2025 dated 13.05.2025, mutation entry No. 25500 and 7/12 extract of gat No. 17 and 32 vide Ex. No. 112.

Admitted Facts :-

8. The relation of plaintiffs and defendant No.1 are not in dispute. It is also admitted fact that S.No. 17 was purchased by Aminabi who was the mother of plaintiffs and defendant No.1. The S. No. 32 was purchased by defendant No.1. It is also admitted fact that defendant No.1 filed the suit bearing No. 243/2012 against her mother namely Aminabi and they entered into compromise regarding gat No. 17. The said decree was subsequently challenged by late Aminabi before the Hon'ble High Court vide Writ Petition No. 4798/2015. The copy of the said writ dated 17.04.2025 indicates that the said writ withdrawn by applicant with the liberty to file the appropriate proceeding before the same Court. It is also not in dispute that defendant No.1 executed the registered sale deed in favour of defendant No.3. Accordingly, his name is mutated to the revenue record of the suit property vide mutation entry No. 25500.

9. It is well settled that for grant of temporary injunction three factors have to be satisfied which are the prima-facie case, the balance of convenience and irreparable loss. The term prima-facie case it does not mean that the plaintiff should have the hundred percent case which in all probability succeed in trial. The term irreparable loss mean loss or injury would ensue before the legal right would be established at trial. The comparative hardship means hardship or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from granting it.

10. On the perusal of record it can be seen that, the present suit came to be filed for declaration of ownership, partition, separate possession and perpetual injunction in the year 2018. The record further goes to show that S.No. 17 and S.No. 32 were purchased by Aminabi and defendant No.1 on 04.12.2006 respectively. At the cost of repetition it is necessary to note that defendant No.1 and late Aminabi entered into compromise regarding S. No. 17 in RCS No. 243/2012 and that she challenged the said decree before the High Court. But subsequently, she withdrawn writ petition to file the proper proceeding before the Court. Accordingly, they have filed the Civil M.A. No. 438/2025 and same is sub-judice but the copy of the said is not filed on record. Moreover, there is nothing on record which prima facie indicates that defendant No.3 is trying to alienate the suit properties or entered into agreement to that effect.

11. It is settled law that, the interim injunction should be granted by the Court after considering all pros and cons of the case in the given facts involved therein on the risk and responsibility of the party. The order can be passed on settled principle taking into account the basic grounds i.e. prima facie case, balance of convenience and irreparable loss. The delay in the approaching the Court is good ground for the refusal of interim relief but in exceptional cases it can be granted if there is apprehension that suit property may be developed in a manner that it acquires irretrievable situation. The Court may grant the relief even at the belated stage provided Court is satisfied that applicant has not been negligent in pursuing the case.

12. Now, come to facts of present case, the suit is filed in the year 2018 for the relief of declaration, injunction, partition and separate possession. Admittedly, defendant No.1 and late Aminabi entered into compromise regarding S. No.17 in RCS No. 243/2012 and said decree challenged by late Aminabi vide Writ Petition No. 4798/2015 and said writ withdrawn on 17.04.2025. The record further shows that my Ld. predecessor passed the order dated 20.12.2023 against defendant No.1 restraining him from alienating suit property bearing gat No.32 admeasuring 4 H. 45 R. till next date vide Exh. No. 70. Admittedly, defendant No.1 executed registered sale deed in respect of suit properties in favour of defendant No.3 on 13.05.2025. Thus, it can be prima facie seen that despite of filing present suit in the year 2018 and granting temporary relief

vide Ex. No. 70, plaintiffs have been negligent in pursuing the case. In the backdrop of above discussion it can be said that, plaintiff No.3 has failed to make out the prima facie case to grant the relief of temporary injunction. So as, plaintiff No.3 has no prima facie case and thus, the rejection of the application would not cause any irreparable loss to him. Thus, considering this aspect, plaintiff No.3 has failed to prove the necessary ingredients for the grant of temporary injunction and failed to prove points No.1 to 3. Hence, I answer points No.1 to 3 in negative and record my findings accordingly. To answer the point No.4, I pass the following order -

ORDER

1. The application is rejected.
2. Cost in cause.

Date: 20.06.2026
Ausa

(Shunhangi H. Nalawade)
3rd Jt. C. J. J. D, Ausa