

MHND160009972025



RCS No. 165/2025
Sumanbai Dattarao Kamble
and Others Vs. Vishal Yadav
Khandare

ORDER BELOW EXH. 22

This is an application for restraining the defendant for alienating the suit property till final disposal of suit under Order XXXIX Rule 1 and 2 of Code of Civil Procedure.

The plaintiff's case is summarized as under :-

2. It is the case of the plaintiff that, the plaintiff No.1 to 3 are real sisters of defendant No.5 and aunt of defendant No.1,2 and 6. The defendant No.2 and 7 are the sister-in-law of the plaintiffs. The suit properties originally owned by Motiram Yadav Khandare. He died on 04/06/2011. He has two sons namely Subhash and Yadav and three daughters i.e. plaintiff No.1 to 3. Yadav Motiram Khandare is died on 05/02/2016 leaving behind his legal heirs defendant No.1 to 3. Deceased Motiram has not partitioned suit properties during his life time. Therefore, plaintiff have right in the suit properties. The plaintiff No. 1 to 3 asked their share on the occasion of 'Gudi Padwa' of 2025 but the defendants denied for the partition. Thereafter plaintiff sought the revenue documents of the suit properties and found that defendant

No. 1 to 3 have sold out land bearing gat No. 29 of village Pangara admeasuring of about 0H.40 R to the defendant No.4 by registered sale deed. Therefore, plaintiff constrain to file present suit for partition and sought the injunction.

The defendants case is summarized as under;

3. The defendant No. 1 to 4 failed to file their written statement and therefore the suit is proceed without written statement against them vide order dtd. 19/12/2025. The defendant No. 5 to 7 filed pursis vide Exh.16 and admitted the plaintiffs claim. Thereafter, plaintiff has filed present application and therefore defendant No.1 to 3 have file their say for this application at Exh.23. Therefore, say of defendant No.1 to 3 is to be considered for deciding this application.

4. According to defendant No.1 to 3 the relations between parties are admitted. However, according to them suit properties have been already partitioned between deceased Yadav and defendant No.5 in the year 2004. The plaintiffs have relinquished their share in the suit properties. Accordingly the mutation entry No. 471 dtd. 16/08/2004 and mutation entry No. 141 dtd. 30/12/2004 are recorded to the revenue record and since then plaintiffs have not objected for the said mutation entries. The sale transaction by the defendant No. 1 to 3 is admitted but as on today the said property is in the name of defendant No.4. Therefore, lastly they submitted that the plaintiffs father have partitioned suit

properties between his two sons and plaintiffs being daughters have relinquished their share and therefore they have no right to ask for partition. Hence, submitted to reject the application.

Argument by Ld. Advocate for plaintiff Shri S.K.Kadam:

5. The Ld. Advocate for plaintiff submitted that, the suit properties are ancestral properties of the parties. The suit property are not partitioned yet. There is no relinquishment of rights or release deed by the plaintiffs as claimed by the defendants. The defendant No. 1 to 3 admitted the nature of property and also admitted sale transaction by them to the defendant No.4. Therefore, he submitted that as the plaintiffs being daughters of Motiram have right in the suit properties. Hence, submitted to allow the application.

Argument by Ld. Advocate Shri S.U.Tikore for the defendants;

6. On the other hand. Ld advocate for defendants submitted that, the suit properties have been already partitioned vide mutation entry No.471 and 141. The plaintiffs have relinquished their share by executing a consent deed. The said entries are more than 20 years old. Therefore, plaintiffs were aware of the said partition. They have relinquished their share. Therefore, plaintiffs have file false suit and they were aware of oral partition between the parties which is effected by said mutation entries. Hence, submitted to reject the application.

7. I have considered following points for determination and recorded my findings thereon with reasons mentioned as fallows.

Sr. No.	Points	Findings
1.	Whether plaintiff has established prima facie case in his favour ?	Yes.
2.	Whether balance of convenience lies in the plaintiff's favour ?	Yes.
3.	Whether the plaintiff will suffer irreparable loss, if temporary injunction is not granted ?	Yes.
4.	What order ?	As per final order.

8. The plaintiff filed following documents on record.

Sr. No.	Description of documents	Dates	List of Exhibit
1)	Copy of 7/12 th extract of gat No. 129 of village Sapti Tq. Hadgaon	12/06/25	5-A/1
2)	Copy of 7/12 th extract of gat No. 32 of village Pangara Tq. Hadgaon	12/06/25	5-A/2
3)	Copy of 7/12 th extract of gat No. 29 of village Pangara Tq. Hadgaon	12/06/25	5-A/3
5)	Copy of mutation entry No. 352 in gat No.32 of village Sapti Tq Hadgaon	01/03/16	5-A/4
6)	Copy of mutation entry No. 471 in gat No.129 of village Sapti Tq Hadgaon	16/08/04	5-A/5
7)	Copy of mutation entry No. 141	-----	5-A/6

	in gat No.32 of village Sapti Tq Hadgaon		
8)	Copy of death certificate of deceased Motiram Yadav Khandare	28/04/25	5-A/7
9)	Copy of death certificate of deceased Sakhubai Motiram Khandare	28/04/25	5-A/8
10)	Copy of death certificate of deceased Yadav Motiram Khandare	28/04/25	5-A/9
11)	Mutation entry No.496 of village Pangara gat No. 29	26/12/24	5-A/10
12)	Certified copy of sale deed No. 3271/2025 with application to Talathi.	16/06/25	5-A/11

REASONS

AS TO POINT NO.1

9. On perusal of record, it appears that, the relation between the parties and nature of suit properties is admitted by the defendants. The original owner i.e. ancestor of the plaintiff and defendant No.1 to 3 and 5 is died on 04/06/2011. Therefore, the suit properties are ancestral properties of the plaintiffs and defendants. The defendant No. 5 to 7 have admitted the plaintiffs claim. However, the defendant No. 1 to 3 come with the case that the suit properties are already partitioned by mutation entry No. 471 and 141. Therefore it is necessary to consider those documents on the background of admitted position of relationship and ancestral properties between the parties.

10. On the perusal of mutation entry No. 471 it appears that, deceased Motiram has partitioned the property bearing Gat No.129 of village Sapti between defendant No.5 Subhash and deceased Yadav Khandare. As per said mutation entry the said entry is taken as per consent letter and application. Further perusal of mutation entry No. 141 it appears that, deceased Yadav Motiram Khandare, Motiram Yadav Khandare and Subhash Motiram Khandare have partitioned property bearing Gat No.32 of village Pangara by consent letter between them. However, those mutation entries did not disclose the plaintiff being daughters of deceased Motiram Khandare are parties to the said consent or partition deed. Those entries are on the basis of application and consent letter. The defendant No. 1 to 3 have not produced the consent deed or those applications to consider that the plaintiffs have signed the said application or consent deed as claimed by them. There is no any other document to show that, the plaintiff being daughters have relinquished by their share by registered the lease deed or consent deed. The defendant No. 1 to 3 have also not produced on record any registered partition deed to show that, there was previous partition between them. The theory of oral partition brought by the defendant No.1 to 3 is to be considered on evidence during trial. Therefore, prima face it appears that, suit properties are not yet partitioned between parties by metes and bounds. Hence, ***I answer the point No.1 in affirmative.***

AS TO POINT NO.2 AND 3 :-

11. Considering the point of balance convenience and irreparable loss, it is necessary to see in whose favour balance of convenience is tilting and who would suffer irreparable loss if injunction is not granted. I have already held that, the plaintiffs have birth right in the suit properties. Admittedly the defendant No.1 to 3 have already sold out some portion of the suit properties before filing the suit. Therefore, possibility of transfer of suit properties by the defendants by taking undue advantage of their name over the suit properties cannot ruled out. The defendants have not brought any legal document to show that, there is previous partition between the plaintiff and defendants. In these circumstances the balance of convenience is tilting in favour of the plaintiffs and more irreparable loss would cause to the plaintiffs if the defendants are not restrained from alienating the suit properties. Therefore, the application deserves to be allow with view to protect the rights of the plaintiff. Hence, ***I answer point No.2 & 3 in the affirmative.***

12. The plaintiffs have also prayed for issuing direction to defendants to produce the details of income of the suit properties. However, this prayer is not considered in the present application as the application is for restraining the defendants as per order XXXIX Rule 1 and 2 of CPC. The plaintiff have to take proper steps for that purpose or it can be considered at the time of final judgment as per mesne profit Order XX Rule 12 of CPC.

AS TO POINT NO.4 :-

13. Considering the answers given to point No.1 to 3,
in answer to point no.4 I pass the following order;

ORDER

1. Application is partly allowed.
2. The defendants are temporarily restrained from transferring the suit properties to any third person by any mode of transfer till final disposal of the suit .
3. The cost shall in main cause.

Place :- Hadgaon
Date :- 09.07.2026

(Amarjeet B. Jadhav)
Civil Judge, Junior Division,
Hadgaon Dist Nanded.

CERTIFICATE

I affirm that the contents of this PD.F file order/judgment are same word for word as per original order.

Name of Stenographer : Anita S. Godam

Name of court : C.J.J.D.& J.M.F.C., Court
Hadgaon

Order Date : 09.07.2026

Judgment/order signed
by Presiding Officer on : 09.07.2026

Judgment/order
uploaded on : 09.07.2026

