

MHND170006102015



RCS No.34/2016.

Rajeshwar & Ors. Vs.
Syed Abdulla & Ars.

ORDER BELOW EXH.59.

01. Through this application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, the plaintiffs are seeking a temporary injunction against the defendants to restrain them from obstructing the peaceful possession of the plaintiffs in the suit property until disposal of the main suit, located at Gut No.291, measuring 14Hector 63R, as specifically mentioned in Paragraph No. 01 of the plaint, situated in at. Dhanora, Taluka Himayatnagar, District Nanded. Which will be referred here in after as a suit property for the sake of brevity.

The germinating facts of this litigation are as under.

02. The plaintiffs pleaded that, The suit land have been in the ownership, possession, use, and enjoyment of the plaintiffs since the time of their ancestors. The plaintiffs are a native resident of Village Dhanora, Taluka Himayatnagar, District Nanded. Due to employment, the plaintiffs came to reside at Brahmangaon and manages the cultivation of the suit land from Brahmangaon.

03. They further pleaded that, The suit land is Inam land. The said Inam was granted to Madhav Shivram Pant of Brahmangaon for rendering services (Khidmat) as a Nigaranakar of Wali Panch Pir, Dhanora. The plaintiffs are the legal heirs of Madhav Shivram Pant. Since the time of the plaintiff's ancestors, the service (Khidmat) of Wali Panch Pir, Dhanora has been continuously rendered, and even today the plaintiffs continues to render such service.

04. Prior to this, no one had ever raised any dispute regarding the ownership, possession, use, or enjoyment of the suit land with the plaintiff. However, without any reason, the defendants have, for the last few days, started raising disputes in respect of the suit land and is creating obstructions to the plaintiff's possession, use, and enjoyment. The defendant had filed an application before the competent court seeking a legal heir certificate by claiming to be the heir of Wali Pir Panch. As the plaintiff raised objections thereto, the defendant has not received any legal heir certificate till date. Hence, the defendant is unnecessarily disputing with the plaintiff and is causing obstruction to the plaintiff's ownership, possession, use, and enjoyment.

05. Earlier, the Marathwada Wakf Board, Aurangabad had filed Special Civil Suit No. 23/1967 against Madhav Shivram, challenging the plaintiff's ownership and seeking possession. The said suit was also decided in favour of the plaintiff and was dismissed on 31.10.1969. Thereafter, no one has caused any obstruction of any nature to the plaintiff's possession. Even prior thereto and since then, the suit land has remained in the ownership, possession, use, and enjoyment of the plaintiff and his ancestors.

06. Despite having no connection whatsoever with the suit land, the defendant Shri Abdulla entered the suit property on 12.06.2016 and raised a dispute regarding the ownership, possession, use, and enjoyment of the suit land with the plaintiff and the plaintiff's son. In respect thereof, complaints were lodged on 12.06.2016 by the defendant and by the plaintiff's son Shailesh at Police Station Himayatnagar, which are under inquiry. On the same day, with the intention of creating a dispute in the suit field and disturbing law and order, the defendant affixed two green flags on two trees standing in the suit field.

07. During the pendency of the suit, when the plaintiff went to the suit property on 10.04.2023 with a tractor for the purpose of ploughing, Defendant No. 2 telephoned the tractor driver and threatened him not to carry out the ploughing, stating that if he did so, he would be killed. Thereafter, when Plaintiff Nos. 2 and 3 personally went to the field on the same day, Defendant No. 2 also picked up a quarrel with the plaintiffs. Consequently, Plaintiff No. 3 lodged a report at Himayatnagar Police Station. Defendant No. 2 has no manner of right, title, or interest in the suit land. Even then, Defendants are causing obstruction and harassment to the plaintiffs in respect of possession, use, enjoyment, and cultivation of the suit land. Hence, it is necessary to grant an injunction against Defendants restraining him from causing any obstruction to the plaintiffs' possession, cultivation, use, and enjoyment of the suit land.

08. Apart from the plaintiff, the name of the plaintiff's brother Dattatraya is also recorded in the revenue record (Pere Patrak), and the name of the plaintiff's father Madhav Shivrampant is likewise recorded therein. The plaintiff's brother Dattatraya died on 05.12.2012. However,

there is no dispute whatsoever regarding ownership rights between the plaintiff and the legal heirs of the deceased Dattatraya.

09. Therefore, it is necessary to restrain the defendants, by an order of temporary injunction, from causing any obstruction, either personally or through anybody else, to the plaintiff's possession over the suit land till the disposal of the suit . Hence application be allowed.

10. The defendant No.1/1 and ½ filed pursis and also defendant No.2 also filed pursis at exhibit 80 and 81 respectively and contended that, their written statements be considered say of Exh.59. The defendant No.1 contended that, It is admitted that the suit land is Inam land. However, the contention that the said Inam was granted to Madhav Shivram Pant of Brahmangaon for rendering services (Khidmat) as a Nigaranakar of Wali Panch Pir, Dhanora is false and therefore denied. In fact, the said land was given to Madhav Shivram Pant by Wali Panch Pir on yearly basis for cultivation, and Madhavrao used to pay an annual amount of Rs. 900/-.

11. The contention of the plaintiff that he is the sole legal heir of Madhav Shivram Pant is denied, as the plaintiff has not produced any documentary evidence before the Court in support of the same. The statement that since the time of the plaintiff's ancestors, the service (Khidmat) of Wali Panch Pir, Dhanora has been continuously rendered and that even today the plaintiff is rendering such service is false and concocted, and hence denied.

12. The contention that no one ever raised any dispute with the plaintiff regarding the ownership, possession, use, and enjoyment of the

suit land is denied. In fact, the plaintiff was never in possession of the suit land, nor did he ever enjoy or use the same, and the plaintiff has no ownership rights over the suit land. Therefore, there is no question of raising any dispute with the plaintiff in respect of the suit land. The allegation that the defendant has unnecessarily raised a dispute with regard to the suit land and has obstructed the plaintiff's possession, use, and enjoyment is false. On the contrary, the defendants have been in possession of the suit land since long as heirs of Mutawalli (Archak) Shri Lal s/o Majid of Wali Panch Pir, and they have been performing and continue to perform all religious rituals such as offering chadar, organizing Annadan, taking out sandal, etc. Hence, the suit land is in the possession of the defendant.

13. The contention that the defendant had filed an application before the present Court for obtaining a legal heir certificate claiming to be the heir of Wali Panch Pir and that due to objections raised by the plaintiff the defendant did not receive any legal heir certificate is incorrect and therefore denied. The defendant never filed any application before the present Court seeking a legal heir certificate as heir of Wali Panch Pir. The defendant had filed R.J.E. No. 02/2013 as heir of Mutawalli (Archak) Shri Lal s/o Majid of Wali Panch Pir, Dargah, Dhanora (J). Due to objections raised by the plaintiff, the said application was transferred to the Court of the learned Civil Judge, Senior Division, Bhokar, and the said application is presently pending.

14. The allegation that the defendant, having no connection whatsoever with the suit land, entered the suit field on 12.06.2016 is denied. The defendant has been visiting the suit land since long for the purpose of performing religious duties. The defendant has been, from

earlier times and even today, performing religious acts such as offering chadar to Wali Panch Pir, taking out sandal, and organizing community meals (Pangat). However, on 12.06.2016, as the plaintiff obstructed the defendant in performing religious rituals and interfered with the use and enjoyment of the suit land, the defendant lodged a report against the plaintiff at Himayatnagar Police Station. In reply to the defendant's report, the plaintiff lodged a false report against the defendant on the same day.

15. The allegation that the defendant affixed green flags on two trees in the suit field with an intention to create a dispute and disturb law and order is false. Green flags have been present on the suit land since long. Whenever the cloth of the flags becomes worn out, the defendant replaces the same on the occasions of religious ceremonies.

16. The contention that since the time when the suit land was granted as Inam to the plaintiff's father, the suit land has been in the ownership, possession, use, and enjoyment of the Deshpande family is false. The contention that the defendant has no connection whatsoever with the suit land is also false. The suit land has been in the possession of the defendant's family since the Deputy Collector, Nanded passed an order and the defendant's grandfather Shri Lal s/o Majid was entered as Mutawalli on the basis of a Government Gazette notification. Therefore, the present claim of the plaintiff is unauthorized and not tenable in law. The plaintiff is not entitled to obtain any order in his favour.

17. The plaintiff has produced forged and false documents and has no evidence or proof whatsoever. The plaintiff has incorrectly valued the suit and has paid insufficient court fees; hence, the suit is liable to be

dismissed. There is no question of any amicable settlement with the plaintiff. The contention that the plaintiff has not filed the suit in the same court is not admitted for want of knowledge. No cause of action has arisen in favour of the plaintiff to file the suit. As the suit land is an Inam land granted to Wali Panch Pir, the present Court has no jurisdiction to entertain the suit. Therefore, the plaintiff's application deserves to be dismissed.

18. On the other hand Defendant No. 2 has categorically denied the plaintiff's claim of possession, cultivation, and ownership over the suit land bearing Gut No. 291 admeasuring 14 Hectares 63 R situated at Village Dhanora (J), Taluka Himayatnagar, District Nanded. It is specifically contended that the plaintiff is neither in possession nor cultivating the suit land, and that Defendant No. 2 is presently in peaceful possession and cultivation thereof.

19. The defendant has denied that the suit land is an Inam land of Wali Panch Peer or that the plaintiff's father, Madhav Shivram, received the land for rendering Khidmat of Wali Panch Peer. It is further denied that the plaintiff is performing or continuing any Khidmat as successor. Reliance is placed on R.C.S. No. 23/1967 filed by the Marathwada Waqf Board, wherein even the plaintiff's father had denied that the suit land was Inam land, thereby contradicting the present pleadings of the plaintiff.

20. Defendant No. 2 has further stated that the plaintiff himself has admitted his inability, due to old age, to render services to Wali Panch Peer. It is contended that the green flags placed on the suit land by Defendant No. 1 were removed by the Tahsildar and Police of Himayatnagar. The defendant has denied the plaintiff's ancestral possession or entitlement to

the suit land and asserted that the land was never granted to the plaintiff's forefathers for Khidmat of the Dargah. Hence, the plaintiff has no locus to file the present suit. With regard to revenue entries, Defendant No. 2 has expressed lack of knowledge about the alleged brother of the plaintiff's father and has alleged that the plaintiff, in collusion with revenue officials, has falsely got his name entered in the 7/12 extract.

21. It is further contended that even if the suit land is assumed to be Inam land of Wali Panch Peer, the provisions of the Hyderabad Inam Atiyat Enquiries Act squarely apply. As per the said law, continuity of Khidmat is mandatory, and Muntakhab must be sanctioned within six months of the death of the previous Mutawalli/Archak or Khidmatgar. The plaintiff admittedly resides at Brahmangaon, about 30 kilometers away from the suit land, which clearly indicates that no Khidmat is being performed by him. Moreover, no Muntakhab has been sanctioned in favour of the plaintiff by the Atiyat Court after the death of his father. Without such authorization, the plaintiff cannot claim possession or title.

22. Defendant No. 2 has asserted long-standing possession, stating that his grandfather was cultivating the suit land even prior to police action, and thereafter his father and subsequently Defendant No. 2 continued in possession. It is further submitted that the revenue authorities conducted enquiries regarding possession and cultivation for the years 2022, 2023, and 2024, and concluded that Defendant No. 2 is in possession of the suit land.

23. Lastly, Defendant No. 2 has stated that for the agricultural year 2024–2025, he has cultivated the suit land and sown soybean crops which

are presently standing. On these grounds, the defendant has contended that the suit is false, vexatious, and not maintainable, and has prayed for dismissal of the present application in the interest of justice.

24. Heard Ld. Advocate for the plaintiffs and Ld. Advocate for the defendants at length. Considering the rival contentions of the parties and documents on record, the following point arises for my consideration for the determination of this application and I have recorded my findings thereon with the reasons given there below.

Findings	Points
1. Do the plaintiffs have prima facie case to grant temporary injunction as prayed?	No.
2. Whether the balance of convenience lies in favour of plaintiffs?	No.
3. Whether the plaintiffs will suffer irreparable loss in the event of not granting temporary injunction?	No.
4. What order?	Application at Exh.59 is Rejected.

: REASONS :

Points No. 1 to 3 being interlinked, are discussed collectively as follows:

25. In relation to Point No. 1 – Prima Facie Case:

For deciding the first point, it is necessary for the plaintiffs to prima facie establish that they have possession over the suit property and

defendants are trying to obstructing their peace full possession over the same. As per the pleadings, the plaintiffs contends that The suit land has been in the ownership, possession, use, and enjoyment of the plaintiffs since the time of his ancestors. Thy further pleaded that, The suit land is Inam land. The said Inam was granted to Madhav Shivram Pant of Brahmangaon for rendering services (Khidmat) as a Nigaranakar of Wali Panch Pir, Dhanora. The plaintiffs are the legal heirs of Madhav Shivram Pant. Since the time of the plaintiff's ancestors, the service (Khidmat) of Wali Panch Pir, Dhanora has been continuously rendered, and even today the plaintiffs continues to render such service.

26. After going through the documents placed on record by both the parties and also affidavits of the plaintiffs of neighbours. It is necessary to observe that a plaintiff seeking discretionary relief must approach the Court with clean hands. It is an admitted position that the suit property is Wali Panch Peer Inam land. However, from the 7/12 extract of the suit property dated 17.06.2016, it is prima facie evident that the names of the plaintiffs are not recorded therein so as to show that they are in cultivation or possession of the suit property.

27. It is further seen prima facie that the plaintiffs have produced a Pera Patrak of the year 2006, wherein the name of the plaintiff father Madhavrao is reflected. However, significantly, the plaintiff has not produced any recent Pera Patrak to demonstrate continued cultivation or possession over the suit property. On the contrary, in the Pera Patrak for the year 2016, the name of the plaintiff is not shown in respect of the suit land that they are cultivating the suit property.

28. Though the plaintiffs have filed an affidavits of a neighbouring landholders to contend that the plaintiffs are in possession of the suit land, no contemporaneous or cogent documentary evidence such as recent Pera Patrak, cultivation records, or other revenue documents is placed on record to prima facie substantiate such possession. Mere oral assertions or affidavits, in the absence of supporting documentary evidence, are insufficient at the interim stage.

29. It is also necessary to note that as per the Maharashtra Government Gazette dated 07.11.1974, the name of the Mutawalli is recorded as Syed Lal s/o Syed Majid. In these circumstances, the rival claims regarding Mutawalliship, Khidmat, and possession over the suit land require detailed appreciation of documentary as well as oral evidence of both the parties, which cannot be conclusively decided at the interim stage.

30. Another important aspect which weighs against the plaintiff is the inconsistent stand taken by him. In the present suit, the plaintiffs have pleaded that the suit land is Inam land of Panch Peer Dargah and that the same was granted to his forefathers for rendering religious services. However, the record reveals that Special Civil Suit No. 23/1967 was filed before the learned Civil Judge, Senior Division, Nanded, by the Marathwada Waqf Board, Aurangabad, against the deceased Madhav Shivram, wherein possession of the suit land was sought. In the said suit, Madhav Shivram had taken a specific defence that the suit property was his private property and not Inam land. Though the said suit was dismissed for want of jurisdiction, the defence taken therein is relevant for considering the conduct and pleadings of the plaintiffs.

31. Thus, it prima facie appears that the plaintiff is advancing mutually destructive pleas. Such contradictory stands disentitle the plaintiff from seeking discretionary relief of temporary injunction. Moreover, in the present suit, the evidence of the plaintiff has already been closed and the matter is pending for recording of evidence of the defendants. The disputes raised by both the parties regarding title, nature of the land, entitlement to Khidmat, Mutawalliship, and possession are mixed questions of law and fact, which can be adjudicated only after full-fledged trial.

32. Considering the above facts and circumstances, the plaintiffs have failed to establish a prima facie case. The balance of convenience does not lie in favour of the plaintiffs, nor is any irreparable loss shown to be caused if the temporary injunction is refused. Hence, the application for temporary injunction deserves to be rejected. Accordingly, the plaintiffs have failed to make out a case for grant of temporary injunction.

33. After considering all the above aspects, I am of the view that the plaintiffs are not entitled to the relief of temporary injunction. Hence, I answer Points No. 1 to 3 collectively in the negative and proceed to pass the following order :

ORDER

- 01.** The application for temporary injunction at Exh.59 is rejected accordingly.
- 02.** cost in cause.

Place :- Himayatnagar
Date : 14.02.2026

(Z. Z. Quadri)
C.J.J.D., Himayatnagar.

CERTIFICATE

I affirm that, the contents of this P.D.F. file order are same word to word, as per the original order.	
Name of the Stenographer	N.K.Hingmire
Court Name	Court of CJJD & JMFC, Tq. Himayatnagar. Dist. Nanded
Judgment signed by the Presiding Officer on	14.02.2026
Judgment/Order uploaded on	18.02.2026