

MHND180010242024 	Reg. Civil Suit No. 88/2024 Shiwanna -Vs- Md.Alimoddin & Ors. Exh. No. 05
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IN THE COURT OF CIVIL JUDGE (JR.DN.) KINWAT

Regular Civil Suit No.88/2024

Plaintiff:- Shiwanna Narsimlu Kalgotuwar

-VERSUS-

Defendants:- Md. Alimoddin Md. Saifoddin +01

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Advocate for the Plaintiff : Mr. S. B. Darwande
Advocate for the defendants : Mr. T. H. Qureshi
.....

ORDER BELOW EXH.5

(Passed on 08.05.2025)

The plaintiff has filed this application under Order 39 Rule 1 and 2 of Code of Civil Procedure for grant of temporary injunction restraining the defendants or anybody on their behalf from causing interference or obstruction to the possession of plaintiff over suit land. The application is strongly opposed by defendants.

2. The land bearing survey no. 9, which Gut No.7 admeasuring 00 H, 28 R, situated at village Kothari (Chi), Tq. Kinwat, Dist. Nanded, is the subject matter of this suit which is more particularly described in para no.1 of the plaint and here-in-after referred to as "suit land".

3. It is the case of plaintiff that, on 15-3-1976 the Govt issued patta certificate of suit land in favour of his father Narsimlu Kolgutwar. After demise of father of plaintiff suit land came to be

mutated in the name of plaintiff vide mutation entry no. 1335 as his sole heir. This, since 1976 the plaintiff's father and thereafter plaintiff is in peaceful possession of suit land. The suit land is occupancy-2 category non-transferrable land. The plaintiff has not transferred the suit land to anybody by any mode of transfer.

4. On 02/04/2024, defendants alongwith 10 to 20 persons illegally entered in suit land by breaking wire fencing and cement poll erected around the suit land and uprooted the board displaying the name of plaintiff. They threatened the plaintiff with his life if he obstructs to them. Thereafter, again on 10/06/2024 defendants came on suit land and threatened the plaintiff to give up the suit land otherwise he would lose his life. Therefore, plaintiff lodged report at police station Kinwat but no action has been taken against the defendants, instead plaintiff was suggested to approach civil court. Hence, plaintiff has constrained to institute this suit and prayed for temporary injunction through this application till final disposal of the suit.

5. The defendants by filing pursis Exh. 19 stated that the written statement filed by them at Exh.16 be treated as their say to this application. The defendants in their written statement contended that, the suit land is the barren land and not suitable for cultivation. Therefore, plaintiff's developed layout of residential plots on the suit land and sold to various people for consideration. The said plots are recorded in the record of Grampanchayat Kothari in the names of purchasers. Plaintiff has not arrayed those plots holders as necessary parties in this suit. The plaintiff has also not valued the suit as per the market value of plots. The defendants

stood attesting witness to the said sale transactions of plots. The plaintiff asked the defendants to support him in denying sell transactions, to which defendants refused. Therefore, the plaintiff has instituted this false suit with intent to dispossess the purchaser of plots. The plaintiff is not in possession of suit land. Finally, they prayed to reject this application.

6. Heard Mr. S.B. Darwande learned advocate for plaintiff & Mr. T. H. Qureshi learned advocate for defendants. Perused the application, plaint, written statement and documents submitted by both the parties.

7. Considering the rival submissions of the parties and for deciding the application for temporary injunction following points arise for my determination. I have recorded my findings thereon alongwith reasons thereof as follows;

Sr. No.	Points for determination	Findings
1.	Whether the plaintiffs have prima facie case?	No
2.	Whether the balance of convenience is in favour of plaintiffs?	No
3.	Whether the plaintiffs would suffer irreparable loss if temporary injunction is refused?	No
4.	What Order?	Application rejected.

REASONS

8. The plaintiff in support of his contention has filed patta certificate, 9(3)&(4) extract, 7/12 extracts of suit land and the copy of report lodged by him. The defendants, on other hand, relied upon namuna no. 8 extracts, copy of layout map, unregistered sale-deeds

and one registered sale-deed, application made by plaintiff to the Grampanchayat for sanction of layout and permission to sell plots.

Point No.1 to 4 :

9. All these points being interconnect to each other, are discussed together to avoid repetition in discussion. Learned advocate for plaintiff argued that the suit land is non-transferrable land. The defendants in collusion with the office bearer of Grampanchayat have prepared the false documents. The suit property is still in possession of plaintiff. Hence, he prayed to protect the possession of plaintiff by way of temporary injunction. Per contra learned advocate argued that the plaintiff himself has sold the plots to various persons. The plaintiff has suppressed this material fact. Hence, he prayed to reject this application.

10. The perusal of patta certificates and 7/12 extract reveals that the plaintiff's father and thereafter plaintiff is occupant of suit land. It is non-transferrable land. 7/12 extracts further shows that the suit land is barren land. However, the documents filed by defendants shows that, on 07/09/2010 plaintiff made an application to the Grampanchayat for permission to develop layout of residential plots on suit land alongwith the measurement map, Toch map and the layout map. The perusal of layout map further shows that the plaintiff proposed total 20 plots on the suit land. The Grampanchayat by its resolution no. 6 dated 21/09/2010 sanctioned the said layout map and permitted the plaintiff to sale those 20 plots. The documents filed on record further shows that the plaintiff has sold those plots to different persons with possession. Though these sale-deeds are un-registered documents but the namuna 8 in 15 in numbers filed on record shows that the those plots are

recorded in the names of different persons bearing property nos. 2224/1 to 2224/20. The Grampanchayat is a statutory body. Therefore, the extracts of namuna No. 8 issued by the Grampanchayat being the public documents carries presumption as to its genuineness. There is absolutely nothing on record to disbelieve these public documents. It is also not the case of plaintiff that he has initiated any action against Grampanchayat for recording false entry and issuing alleged false Namuna 8 extracts.

11. Further the registered sale-deed bearing registered document no. 3315 of 2024 dated 19/11/2024 shows that one Ayub Khan Chand Khan sold the plot bearing Grampanchayat property no. 2224/8 to one Sapna Chincholkar. Prior to it, plaintiff had sold the said plot to said Ayub Khan Chand Khan on 03/05/2011 by unregistered sale-deed. No doubt the un-registered sale deeds have no evidentiary value but the overall conduct of the plaintiff from these documents coupled with the namuna-8 extracts issued by the Grampanchayat in the holder of those plots clearly shows that those persons are in possession of the plots over the suit land. It means that the plaintiff is not in possession of the entire suit land.

12. The temporary injunction is the equitable relief. Therefore, who seek equity is expected to do equity. From the above discussion and material brought on record it appears that though the suit land is non-transferable, the plaintiff himself has sought the permission to develop layout and to sell plots of suit land. The plaintiff has suppressed this material facts from the court. The plaintiff has not come with the clean hand before court. Furthermore, since plaintiff appears to be not in possession of entire suit land, he is not entitled for temporary injunction. Thus, I find no

prima-facie case and balance of convenience in favour of plaintiff. Since plaintiff is not in possession of entire suit land, he would not suffer any loss in case of refusal of temporary injunction. On other hand, the purchasers of plots including defendant no.2 who are in possession would suffer irreparable loss in case of grant of temporary injunction. Accordingly, the point nos. 1 to 3 are answered in the negative and in sequel, in answer to point no.4, following order is passed;

ORDER

1. Application (Exh.05) is rejected.
2. Cost in main cause.

(Pronounced in open court)

Date-08.05.2025.

(K. G. Mendhe)
Jt. Civil Judge, (Jr. Dn.)
Kinwat

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: S.M.Chitmalwar

Court name : Court of Joint Civil Judge J.D. Kinwat.

Date : 08.05.2025.

Order signed by the

Presiding Officer on : 08.05.2025.

Order uploaded on : 09.05.2025.
