


MHND260000972021 	<b><u>ORDER BELOW EXH.05</u></b> <b><u>Baba + 1 Vs. Udhav + 2</u></b> <b><u>REGULAR CIVIL SUIT</u></b> <b><u>NO.09/2021</u></b>
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This is application under Order-XXXIX, Rule-1 and 2 of The Civil Procedure Code.

2. **The brief facts of the plaintiff's application is as under : -**

Plaintiff no. 1 is owner and possessor of agricultural land gut no. 16 adm. 1H 37R situated at village Daur bounded as towards East: Road, towards West: village boundry of degaon-Daur, towards south: land of Vyankati Kadam, towards North: land of Taterao Ganoji, (hereinafter referred as suit property).

3. Plaintiff no. 1 by executing gift deed in favour of plaintiff no. 2 give 40R land from gut no. 16 of village Daur vide registered document no. 1625/2020 dated 04.11.2020. Plaintiffs erected a temporary hut (Akhada) and defendants intentionally caused damaged of soyabin crop and also intend to cause damage the banana crop. On 05.12.2020 plaintiff no. 1 gave a report of defendant no. 1 and 2 which is registered N.C. case No. 287/2020 at P.S. Ardhapur.

4. Plaintiff prayed that, defendants are causing damage to the crops and to their possession hence, injunction is necessary to restrained them.

5. Defendant appeared and filed their W.S. vide Exh. 23 and by filing pursis at Exh. 25 adopted the same to the say of Exh. 05 and opposed the claim of plaintiffs. They submitted that, plaintiff is not the exclusive owner as it was only family adjustment. They submitted that, the suit property came in the share of defendant no. 1 and 2 to the extent of 69R and 68R land but it was not taken in revenue entry. They submitted that, suit property is ancestral property and defendant no. 3 is maintaining the plaintiff no. 1 and his wife only in the month of May-2020 the plaintiff no. 2 took the plaintiff no. 1 and made a gift deed in his favour. They further denied rest of the contents of plaintiff and prayed for dismissal of application.

6. Heard, both the sides at length. Following points arise for my determination and I have given my findings thereon for the reasons given below :-

<b><u>Sr.No.</u></b>	<b><u>P O I N T S</u></b>	<b><u>FINDINGS</u></b>
1	Whether the plaintiff has made out prima-facie case in his favour ?	Yes.
2	Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3	Whether the plaintiff will suffer irreparable loss if temporary injunction is not granted?	Yes.
4	What order ?	The application is allowed.

**REASONS**

**AS TO POINT NO. 1 TO 3 :-**

7. All these points are enter-connected to each other. Therefore, they are discussed together to avoid repetition.

To grant Temporary injunction I have been guided by the Hon'ble Apex Court in the Authority of *Gujarat Bottling co. ltd. Vs. Coca Cola co. (1995) 5 SCC 545*. In this Honb'e Apex court has laid down the three fundamental principles in deciding the application for temporary injunction. No doubt to grant a reject the temporary injunction is a discretion of the court.

To grant temporary injunction it is for the plaintiff to establish prima-facie case in his favour. The present suit is for perpetual injunction and declaration of ownership and possession. It is the case of plaintiff that defendant no. 1 and 2 are the grandson of plaintiff no. 1 and nephew of plaintiff no. 2 and defendant no. 3 is son of plaintiff no. 1 and brother of plaintiff no. 2.

8. It is the further case of plaintiff that, the plaintiff no. 1 is owner of suit property and he gifted 40R land from the said property to the plaintiff no. 2 hence, both plaintiffs are the owner of land gut no. 16 of Daur to the extent of 1H 37R land. Further plaintiff submitted that, both the plaintiffs are legal owner and 7/12 extract filed on record along-with Namuna no. 8-A. Plaintiff further filed one complainant given to the P.S. Ardhapur on 05/12/2020 and copy of gift deed. They submitted that, prima-facie case is made out by

them if injunction is not granted then they will be dispossessed by the defendants. Hence, they will suffer irreparable loss. Also balance of convenience lies in their favour. They further submitted that, if injunction is granted then defendants will not suffer any irreparable loss. Hence, they prayed for granting of injunction.

9. Per contra ld. Advocate Shri. Jogdand for defendant submitted that, the plaintiffs are not the exclusive owner of the suit property. It is their ancestral property hence, plaintiffs are not exclusive owners. It was only family arrangement hence, the name of plaintiff no. 1 appeared on the 7/12 extract. Hence, he prayed for rejection of this application.

10. From the record it appears to me that, partition took place between the parties long back and plaintiff no. 1 is the owner of the suit property as appear from 7/12 extract along-with Namuna no. 8-A. This is not a suit for partition. This is a simple suit for injunction and declaration of ownership and possession. The final decision of this suit will take a time till then if defendants are restrained then it will not cause any harm to them. Hence, in the facts and circumstances of the present case this application is deserves to be allowed and defendants be restrained from creating obstruction to the possession of plaintiff or their agents. Hence, point no. 1, 2 and 3 answered in affirmative.

**POINT NO. 4 :-**

11. In view of above discussion I have recorded my

findings in the affirmative hence, following order -

**:: ORDER ::**

1. The application (Exh.05) is allowed .
2. Defendants and anybody claiming through defendants are hereby temporarily restrained from causing any sort of obstruction and interference into the possession of plaintiff over suit property i.e. Gut no. 16 1H 37R land of village Daur till the final disposal of suit without following due process of law.
3. Costs in main cause.
4. Pronounced and dictated in open court.

Date: 27/04/2022.

Sd/-  
( M.D.Birhari )  
Civil Judge Jr. Dn.  
Ardhapur

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.S.Korewar (L.G.Steno)

Court of: Civil Judge Jr. Dn. & J.M.F.C.,Ardhapur, Dist. Nanded.

Date of pronouncement of Judgment : 27/04/2022

Judgment signed by the Presiding Officer : 27/04/2022

Judgment uploaded on : 27/04/2022