


MHND260008872020 	<b><u>ORDER BELOW EXH.05</u></b> <b><u>Sandesh Vs. Mayadevi + 2</u></b> <b><u>REGULAR CIVIL SUIT</u></b> <b><u>NO.66/2020</u></b>
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This is application under Order-XXXIX, Rule-1 and 2 of The Civil Procedure Code for grant of temporary injunction. Application is supported with affidavit.

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

Plaintiff is owner and possessor of agricultural land gut no. 108 to the extent of 0H 80R land which is more particularly described in the para no. 1 of the plaint situated at village Yelegaon Tq. Ardhapur Dist. Nanded. Plaintiff submitted that, his father Tukaram Dhonduji Jadhav was the original owner of suit property. He was amputated and died on 22/07/2018.

3. Defendant no. 1 and 2 are sisters and defendant no. 3 is son of defendant no. 2. Plaintiff went to police station on 04/12/2021 and submitted application for removal of encroachment against defendant no. 2 and 3. However, defendant no. 2 and 3 gave a report against plaintiff on 03/12/2021. Defendants are claiming to be owner of suit property i.e. 0.80R land belonging to the father of plaintiff on the basis of vikri Khat (Sauda Chitthi) written on 100/-Rs. Stamp paper on 09/04/2018 which is notarized document.

4. Plaintiff further submitted that, said notarized

document is forged one and on 04/12/2020 the defendant wrongfully entered into the agricultural land gut no. 108 0.80R land. Plaintiff further submitted that, plaintiff is owner of suit property hence, injunction be granted in his favor also balance of convenience lies in his favor. If injunction is not granted then he will suffer irreparable loss.

5. Defendant appeared and file their WS below Exh. 20 and opposed the application on the ground that, the defendant have purchase the 0.80R land from the father of plaintiff on the basis of Sauda Chitthi. They have purchase it for Rs. 5,00,000/- out of which Rs. 1,00,000/- is paid to the father of plaintiff and he gave possession of 0.80R land. They are ready to pay remaining 4,00,000/- but plaintiff did not accepted this.

6. Defendant further averred that, they are in possession of the suit property. If injunction is not granted then they will suffer irreparable loss. Hence, he prayed for granting of injunction against defendants.

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

<u>Sr.No.</u>	<u>P O I N T S</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has made out prima-facie case in his favour ?	<b>Yes.</b>
2.	Whether balance of convenience lies in favour of the plaintiff ?	<b>Yes.</b>

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 ISSUE NO. 1 TO 3 :-**

8. Heard ld. Advocate Shri. M.P.Kokare for plaintiff. He submitted that, plaintiff is owner of the suit property i.e. 0.80R land which is standing in the name of father of plaintiff as per 7/12 extract even he has filed Namuna no. 8, death certificate of father of deceased who died on 22/07/2018, Aadhar card of deceased and of the plaintiff and heirship certificate issued by court along-with copy of vikri Khat and photograph. He further argued that, father of plaintiff could not travel also there is mistake in the name of plaintiff. Hence, he prayed for allowing of application.

9. Ld. Advocate Shri. Gigani for all defendants submitted that, Plaintiff is one of the heir of deceased Tukaram. He has no right, title of possession of the suit property. Other legal heirs are not made party hence, plaintiff did not come with clean hand. I have been put on possession of the suit property by the true owner who is now dead. Hence, my possession is permissible possession. Even I have paid Rs. 1,00,000/- and Rs. 4,00,000/- yet to be paid, if my possession is not protected then I will suffer irreparable loss.

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

11. To grant temporary injunction it is for the plaintiff to establish prima-facie case in his favour. Id. Advocate Shri Kokare for plaintiff submitted that, the plaintiff is owner of suit property since long and he filed present suit for injunction against defendants. As the defendants have encroached upon 0.80R land of the plaintiff. Moreover, suit property is ancestral property. To substantiate this fact he has filed list Exh. 31 document no. 1, one 7/12 extract in which name of plaintiff along-with his brother and sisters is appearing on record. The present suit property is purchased by the deceased Tukaram from one Yashodabai Hiranman Kapate on 01/07/2004 also he purchased another portion on 21/06/2005 from Yashodabai Hiranman Kapate for valuable consideration.

12. There is no will of deceased Tukaram Jadhav on record or any other pleading to that effect. Moreover, it is true that plaintiff is one of the heir of deceased Tukaram. It is also admitted position that, deceased Tukaram was 75 years age and Saudha Chitthi is on 100/- Rs. Stamp paper. However, it is not clear when the defendant came in

possession of suit property after the demise of Tukaram. Both parties are silent on the point of possession from 2018 to till filling of suit. As both parties are claiming to be in possession of suit property. The defendants have not filed any 7/12 extract or crop entries which shows their name and their possession on suit property. At this juncture, prima facie considering the age of deceased Tukaram and his ill-health, the conduct of plaintiff appears to be natural one to me also he has filed copies of 7/12 extract and heirship certificate in which his name is appears on record.

13. The defendant have not filed any affidavit of the neighbouring persons who can say that, the defendant is in possession of the suit property. Considering, the facts and circumstances of the cases and if injunction is not granted at this juncture then the plaintiff will suffer irreparable loss which can not be compensated in terms of money. Per contra, if injunction is granted then defendant will not suffer any irreparable loss. She can filed a suit for recovery of money or suit for specific performance of contract which is available to her. Hence, I answer point no. 1 to 3 in the affirmative.

**ISSUE NO. 4 :-**

14. In view of above discussion I have recorded my findings in the affirmative consequently, 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. 108 0.80 R land of village Yelegaon 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: 16/06/2022.

( 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 Jr. Clerk: A.V. Shahane

Court of : Civil Judge Junior Division, & JMFC, Ardhapur  
Dist. Nanded.

Date of pronouncement of Judgment : 16.06.2022

Judgment signed by the Presiding Officer : 16.06.2022

Judgment uploaded on : 17.06.2022