


MHND260008872020 	<b><u>ORDER BELOW EXH.24</u></b> <b><u>Mayadevi + 2 Vs. Sandesh</u></b> <b><u>REGULAR CIVIL SUIT</u></b> <b><u>NO.66/2020</u></b>
---	--

This is application under Order-XXXIX, Rule-1 and 2 of The Civil Procedure Code for grant of temporary injunction by original defendants no. 1 to 3 in their counter-claim. Application is supported with affidavit.

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

Counter plaintiff are owner and possessor of agricultural land gut no. 108 to the extent of 0H 80R land which is more particularly described in claim clause of the plaint situated at village Yelegaon Tq. Ardhapur Dist. Nanded. Counter plaintiff submitted that, defendants father Tukaram Dhonduji Jadhav was the original owner of suit property. He was amputated and died on 22/07/2018 and on the basis of agreement to sale dtd. 09.04.2018 on 100/- Rs. Stamp Paper. Deceased Tukaram Jadhav agree to sale suit property i.e. 0.40 R land for 5,00,000/- Rs. And accepted Rs. 1,00,000/- and also agree to accept remaining amount on sale deed. Said document is notarized on 12.04.2018 and Tukaram Jadhav delivered possession on the same date since then counter plaintiff are in possession of the suit property.

3. Counter plaintiff went to police station on 03/12/2021 and submitted application against wife of plaintiff who came on field and try to dispossess the plaintiff no. 2 from the field.

4. The defendant i.e. original defendant to get mutation of his name in revenue record. However, if legal heirs of Tukaram desires to take possession of plaintiff no. 2 over 0.40 R land and plaintiff will think of it. Hence, they prayed for injunction.

5. Defendant filed his w.s. below Exh. 26 and reply below Exh. 28 and opposed the application on the ground that, the original plaintiffs father have purchase the 0.80R land from one Yashodabai Kapate for valuable consideration and thereafter, original plaintiff along with his brothers and sisters got heirship certificate from the court. He is in possession of suit property. Hence, he prayed for rejection of this 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 :-

<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 ?	No.

- |   |                                     |
|---|-------------------------------------|
| 2. Whether balance of convenience lies in favour of the plaintiff ?                           | <b>No.</b>                          |
| 3. Whether the plaintiff will suffer irreparable loss if temporary injunction is not granted? | <b>No.</b>                          |
| 4. What order ?   | <b>The application is rejected.</b> |

**REASONS**

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

7. Heard ld. Advocate Shri. Gigani for counter plaintiff. He submitted that, counter plaintiff is owner of the suit property i.e. 0.40R land which is standing in the name of father of plaintiff as per 7/12 extract even death certificate of deceased Tukaram who died on 22/07/2018 is filed on record. He further argued that, father of plaintiff enter into agreement and accepted Rs. 1,00,000/-. However, sale deed was to be executed but he died. Hence, sale deed could not be executed. Deceased Tukaram put them in possession of suit property. Hence, he prayed for allowing of application.

8. Ld. Advocate Shri. M.P. Kokre for original plaintiff submitted that, Plaintiff is in possession of suit property and he is owner of the suit property. On 7/12 extract name of plaintiff father appearing and plaintiff is cultivating the land. His father was old age person and defendant made false and fabricated documents. No actual

possession was given to the original defendants. Original defendants are grabbing the valuable property. Hence, this application be rejected.

9. 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.

10. 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.

11. 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.

12. As both parties are claiming to be in possession of suit property. Original defendants have not filed any 7/12 extract or crop entries which shows there 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 original plaintiff is 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 original defendants 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 original plaintiff will suffer irreparable loss which can not be compensated in terms of money. Per contra, if injunction is granted then original defendant will not suffer any irreparable loss. They 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 negative.

**ISSUE NO. 4 :-**

14. In view of above discussion I have recorded my findings in the negative consequently, following order:-

**:: ORDER ::**

1. The application (Exh.24) is hereby rejected.
2. Costs in main cause.
3. 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