

MHNG080018562022



RCS No.88/2022

Balchandra Vs. Shobha & ors.

ORDER (BELOW EXH.5)

(Passed on 09.01.2026)

The plaintiff has filed this application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (here-in-after referred as 'C.P.C.' for the sake of convenience) for grant of temporary injunction against the defendants.

2] The brief facts of the plaintiff's case are as under :

The plaintiff has filed this suit against the defendants for declaration and permanent injunction. It is contended that he is exclusive owner and in possession of agricultural land bearing Survey No.135/1/A admeasuring 2.87 HR, situated at Mouza Khopdi, PH No.49, Tah. Mouda, Dist. Nagpur (here-in-after referred as "suit property" for the sake of convenience). He received suit property by virtue of registered Gift-deed dated 18.08.2018 and since then he is in possession of the same. He and his mother used to cultivate suit property. His mother Vimlabai died on 18.02.2021, who got suit property from her mother Laxmibai Hinge in family partition. As such his mother became absolute and exclusive owner of the suit property. After executing registered Gift-deed in favour of the plaintiff by his mother, he became exclusive owner of the suit property. The defendants with ill intention trying to disturb his possession over the suit property by dispossessing his workers. The defendants have no right, title and interest in the suit property. He was cultivating the suit property,

however, the defendants burnt his crops and therefore, he lodged report against them on 26.07.2021 in Kanhan Police Station and offence came to be registered against them. One Kamlabai prepared forged Will of the suit property. Therefore, defendant No.1 filed Spl.C.S.No.554/1987 wherein compromise took place and said land divided into two parts. On 22.06.2022 he visited the suit property, but suddenly the defendants abused and threatened him to kill and they burnt his crops, which was standing in the suit property. Hence, he lodged report against them in Kanhan Police Station and offence came to be registered against them. Suit property is the only source of income to maintain his family. Last year he faced heavy loss due to act of the defendants. There is prima facie case in favour of the plaintiff. The balance of convenience also lies in his favour. If the temporary injunction is granted, no prejudice would be caused to the defendants. On the contrary, if the temporary injunction is not granted, he will suffer irreparable loss which cannot be compensated in terms of money. Hence, the application.

3] Defendants No.1 and 2 have filed their reply at Exh.14 and denied all adverse allegations leveled against them by the plaintiff. It is contended that the mother of plaintiff and the defendants were joint and the plaintiff was residing separately with his entire family at Kanhan. They were taking care of Late Vimlabai and the plaintiff had taken his mother for pregnancy in the year 2018 and thereafter the plaintiff stated that there was abortion and never allowed to return Late Vimlabai to village Khopdi. Vimlabai was badly disturbed due to death of daughter Mitali Prakash Ghonmode in the year 2017 and the death of Prakash Ghonmode in the year 2011. There was set back due to death of son Gangadhar Shyamrao Shelke in the year 2017 and she was not having stable mind and was not understanding what she was doing and

in such state of mind the Gift-deed was executed by the plaintiff in his favour by taking undue advantage of his mother's condition. The plaintiff was never in possession of the suit property since beginning and never cultivated the suit property. The defendants were taking care of Vimlabai and they were cultivating the suit property. Even, they have paid water taxes of the suit property. Vimlabai expired on 18.02.2021 and since then the plaintiff started giving trouble. Even Vimlabai was not knowing about Gift-deed dated 18.08.2018. Therefore, said gift deed is null and void. It was desire of Vimlabai to distribute the suit property equally among all legal heirs. But, the plaintiff played game by fraudulently executing Gift-deed in his favour. There is no question of disturbing possession of the plaintiff as the plaintiff was never in possession of the suit property. They are in possession of the suit property. If, the injunction is granted against them, they will suffer irreparable injury. There is no prima facie case in favour of the plaintiff and no balance of convenience lies in favour of plaintiff. Hence, prayed to reject the application with costs.

4] Following points arise for my determination and I have recorded my findings thereon for the reasons stated below.

Sr. No.	POINTS	FINDINGS
1	Whether the plaintiff is having prima facie case in her favour ?	...No.
2	Whether the balance of convenience lies in favour of the plaintiff ?	...No.
3	Whether the plaintiff will suffer irreparable loss if the temporary injunction is not granted ?	...No.
4	What order ?	...Application is rejected.

REASONS

AS TO POINTS NO.1 to 3 :-

5] All these points are interrelated with each other, hence, I am discussing them together in order to avoid repetition.

6] Heard, the learned Advocates for both sides. They have submitted as per the contents of the application and reply.

7] It is the contention of the plaintiff that he became owner of the suit property by virtue of Gift-deed dated 18.08.2018, which was executed by his mother in his favour and since then he is in possession of the suit property. However, the plaintiff in order to demonstrate his physical possession over the suit property never produced any prima facie evidence on record. The plaintiff contended that on 26.07.2021 and 22.06.2022 the defendants burnt his crops, which was standing in the suit property, however he never pleaded exactly which kinds of crop were standing in the suit property. Said version of the plaintiff appears to be vague in nature. No doubt as per Gift-deed dated 18.08.2018, his mother Vimlabai executed registered Gift-deed in his favour, but he has not filed any document on record to prima facie show his physical possession over the suit property.

8] On the contrary, the defendants are claiming that they are in cultivating possession of the suit property and the plaintiff has fraudulently executed Gift-deed of suit property in his favour by taking undue advantage of condition of his mother. The defendants, in support of their contentions, have filed affidavits of some persons, water tax receipts and photographs along with list Exh.15, which prima facie

show that the defendants are paying water taxes of the suit property. Therefore, it can be prima facie said that the defendants are in physical possession of the suit property.

9] In the light of aforesaid discussion, I am of the view that the plaintiff has failed to make out prima facie case. The balance of convenience not lies in favour of the plaintiff and he will not suffer irreparable loss, if the application is rejected. On the contrary, if the application is allowed, defendants will suffer irreparable loss, which cannot be compensated in terms of money as they are prima facie appears to be in physical possession of the suit property. Hence, I answer points No.1 to 3 in the negative and in answer to point No.4, I pass following order.

ORDER

1. Application (Exh.5) is rejected.
2. Costs in main cause.

(Order dictated and pronounced in open Court.)

Date : 09.01.2026

(R.R. Sherekar)
Joint Civil Judge Junior Division,
Kamptee, Dist. Nagpur

ENDORSEMENT

Case argued on	:	09.01.2026
Order dictated on	:	09.01.2026
Transcription ready on	:	09.01.2026
Order checked and signed on	:	09.01.2026

CERTIFICATE

I affirm that the contents of this P.D.F. File are same word to word as per original order.

Name of Steno :- **Sau. P.A.Nirmal**