

**ORDER BELOW EXH.85**  
**(Passed on 26.11.2024)**

The applicant/Orig. defendant no. 2 has preferred present application under Order XXXIX Rule 1 and 2 Code of Civil Procedure [in short C.P.C.] sought temporary injunction against the plaintiff, thereby directing him to vacate possession of House no. 1, as well as restraining the plaintiff from obstructing the defendant's possession of said property.

2. It is submitted that the suit is instituted for partition and separate possession. The suit property is House no. 1, situated at Killarpura, Ward no. 1, Mouje Patan Savangi. That property was transferred by the deceased father of the Plaintiff and Defendant, namely Manohar Ingole, in favor of his wife, who is Defendant no. 1 in the present matter.

3. It is also submitted that Defendant no. 1 is deceased; therefore, her name was deleted from the suit. On 8th August 2024, Defendant no. 2 was out of station, and the house property was locked. At that time, the Plaintiff illegally broke the lock and took possession forcefully. When Defendant no. 2 asked the Plaintiff to vacate the possession, the Plaintiff issued threats.

4. Prior to that on 6th November 2020, Defendant no. 1 executed a Will Deed in favor of Defendant no. 2. Hence, Defendant no. 2 is the owner and possessor of that property. Since the Plaintiff illegally took possession, Defendant no. 2 is seeking direction against the Plaintiff to vacate the property, as well as restraining him from interfering with Defendant no. 2's possession of the suit property.

5. The application is strongly objected to by the Plaintiff via Say at Exhibit 88. It is specifically denied that the Plaintiff took illegal possession as claimed by the Applicant. The Plaintiff contends that the suit property is ancestral property of the Plaintiff and Defendant. The Plaintiffs have an undivided share in it. There is a presumption of constructive possession of the suit property in favor of the Plaintiff. The Will Deed of the father, Manohar Ingole, is itself illegal and inoperative. Defendant no. 1 had no right to bequeath the suit property in favor of Defendant no. 2. Therefore, that Will Deed itself is null and void.

6. The Plaintiff specifically denies that he never took care of his parents. On the contrary, he submits that he spent a huge amount on their treatment, as well as for maintenance of the house property. The present application is filed on the basis of false submissions. On that basis, it is prayed to reject the application.

7. In view of the rival contentions of the parties, the following points arose for my consideration, and I, record my findings thereon for the reasons thereto are as:-

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether there is a <i>prima-facie</i> case in favour of the defendant no. 2?	... No
2) Whether the balance of convenience lies in favour of the defendant no. 2?	... <b>No</b>
3) Whether defendant no. 2 will suffer irreparable loss if a temporary injunction is not granted?	... <b>No</b>

4) What order?

**The application is  
rejected.**

### **REASONS**

#### **As to Point no.1 to 3:-**

8. Heard both sides. Perused the record. At the outset, though the present application is moved by defendant no. 1 under order Order XXXIX Rule 1 and 2 r/w 151 of C.P.C.

9. On perusal of Order 39, Rule 1 (a) of C. P.C., the plaintiff, as well as the defendant, is entitled to maintain the application for a temporary injunction, where the property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree. However, such a right is not available to the defendant under Order 39 Rules 1(b) and 1(c)

10. While considering the facts of the present matter it remains that defendant no. 2 neither filed counter-claim in the present matter. Defendant no. 1 by merely filing the present application sought a temporary injunction to restrain the plaintiff from obstructing possession and recovery of possession of the suit property.

11. The claim of defendant no. 1 does not come under Order 39 Rule 1 (a) which is available to the defendant for protection of suit property. The claim in the present application will come under Order 39 Rule 1 (b) and (c) however, it is not available to the defendant especially when there is no counter-claim.

12. So far as Sec. 151 is concern as there is a specific provision available under the C.P.C to file counter-claim and sought relief under Order XXXIX Rule 1 of C.P.C. Hence, inherent power cannot be used to grant a relief for which express provision is available in the C.P.C. On the above point, I am fortified by the law laid in *Rattu Vs. Mala and Another*, *Sivakami Achi Vs. Narayana Chettiar*, *B. F. Varghese Vs. Joseph Thomas*. Hence in view of the above discussion fact remain that defendant no. 1 is not legally entitled to the relief as sought.

13. Even on considering the contention of applicant on merit fact remain that, defendant no. 2 is seeking only possession of the property and injunction, but there is no submission that in any way the Plaintiff is trying to damage the suit property. On the contrary, the Plaintiff is presenting the case that he is joint owners and possessors of the suit property. To adjudicate the issue about the possession and ownership of the suit property, as well as the validity of the Will Deed, a complete trial is necessary.

14. Now, the matter is fixed for defense evidence. In such circumstances, it is expected from the Defendant to bring that fact on record and lead evidence without undue delay so that the matter can be decided on its merits. But the claim sought by the Defendant/Applicant in the present matter is beyond the scope of Order 39, Rule 1, sub-rule (a). The present application itself is found without merit. Hence, I pass the following order: Application stands rejected. Hence, the finding of **points no. 1 to 3** are recorded as **negative**.

**As to Point no.4:-**

15. In view of finding points no. 1 to 3, the application is found devoid of merit, therefore cannot be allowed. Accordingly, I pass the following order

**ORDER**

The application is rejected.

Saoner  
Date: 26.11.2024

(Santosh R. Bharad)  
**Civil Judge Junior Division,**  
Saoner