

R.C.S No..62/2023  
Yashvant Vrs. Komal+3  
Exh.05

MHNG100012222023



**ORDER BELOW EXH. 05 IN RCS.NO.62 OF 2023**

1. The plaintiff has filed suit for declaration and permanent injunction. Wherein the plaintiff has filed application u/o 39 Rule 1 and 3 r.w. section 151 of Civil Procedure Code.

**Brief facts of the plaintiff case:**

2. It is the averment of the plaintiff that initially the suit property was owned by the husband of defendant No.03 namely Damodar Harishchandra Mande. The original survey number of suit property was 165 admeasuring area 10.44 H.R. The husband of defendant No.03 had partitioned survey No.165. As per this partition land Survey No.165 admeasuring area 10.44 H.R. was distributed by demarcating boundary of northern and southern side. From the eastern side portion of Survey No.165/01 admeasuring area 5.22 H.R. came in the share of the husband of defendant No.03 namely Damoder Harishchandra Mande. So also, the portion of western side of survey No.165/02 admeasuring area 5.22 H.R. came in the share of defendant No.03. Accordingly, mutation entry No.1338 came to be entered on 13/09/2011 in the revenue record. The defendant No.03 demarcated Northern-Southern side boundary in Survey No.165/02 and 0.81 H.R. land situated from the western side sold to the Kamalkishor Narayandas

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Rathi by executing registered sale deed bearing registration no.736/2012 on dated 28/03/2012 for the consideration of Rs.2,40,000/-. Thereafter, defendant No.03 sold out 2.21 H.R. land from the same survey number by demarcating boundary towards northern and southern side and from the western side portion sold to the Kamalkishor Narayandas Rathi by executing register sale deed bearing registration No.737 on dated 28/03/2012 for the consideration of amount of Rs.6,50,000/-. Accordingly, defendant No.03 sold out 3.02 H.R. land to the Kamalkishor Rathi out of 5.22 H.R. land situated in Survey No.165/02. So remaining 2.20 H.R. land remained with defendant No.03 as per 7/12 extract.

**3.** It is further contended that the Kamalkishor Narayandas Rathi demarcating Northern and Southern boundary in Survey No.165/03 from the Western side portion 1.40 H.R. land sold to Ramesh Dadaji Bansod on 26/10/2015 by executing registered sale deed bearing registration No. 3444/2015. Thereafter, Kamalkishor Narayandas Rathi admeasuring 0.81 H.R. land situated in Survey No.165/03 and 0.81 H.R. land situated in Survey No.165/04 sold to the plaintiff on dated 26/10/2015 by executing registered sale deed bearing registration No. 3345/2015. This is the suit property as more particularly comprised in para-No.2 of the plaint. (Hereinafter referred as suit property). Accordingly, the name of plaintiff entered in the mutation entry and since that the plaintiff is in continuous possession over the suit property. The defendant Nos. 01 to 03 have fully acquainted with the same facts.

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4. Thereafter, it is contended that the sisters of the husband of defendant No.03 namely Indubai Fakira Narnavre, Tara Rambhau Kharabe, Vacchala Nilkanth Sarokar and Vandana Turshiram Turale have filed suit against their mother Vithabai Harishandra Mande and others for the sake of partition. This suit decreed on dated 17/02/2020. In that suit the present plaintiff and Kamalkishor Narayandas Rathi had not added as a party. Moreover, the suit property bearing Survey No.165/03 admeasuring area 0.81 H.R. and the suit property situated in Survey No.165/04 admeasuring area 0.81 H.R. not added as a suit properties in that suit. Therefore, the preliminary decree passed by the Court in the R.C.S No.105/2015 is not binding on the part of plaintiff. As per the decree passed in R.C.S. No.105/2015 for the actual partition the precept of decree forwarded to the Collector. Accordingly, the suit property has been given in the share of defendant Nos. 01 to 03. Now, defendant Nos. 01 to 03 illegally sold out the suit property to the defendant No.04 Kirti Shamrao Vimalkar on dated 21/04/2023 by executing register sale deed bearing registration No. 1258 for the consideration of Rs.13,20,000/-. Therefore, there is a prima-facie case in favor of plaintiff and thereby it is required to restrain to defendant Nos. 01 to 04 from creating third party interest in the suit property till the conclusion of the trial. Hence prayed to grand the application.

**Brief facts of the case of defendant Nos.01 to 04 .**

05. After due service of summons defendants appeared and filed their written statement at **Exh.19** and denied the claim

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prayed by plaintiff. It is contended that the father of the husband of defendant No.03 namely Harishchandra Mande had owned field property at Bela and Salai village. In the year 1986 Harishchandra was died and thereby his three sons, five daughters and his wife became successor and owner of this field owned by Harishchandra. After the death of Harishchandra his sons namely Bhaurao, Damodar and Rupchand partitioned the field property among them separately and entries thereof effected in 7/12 extract. Accordingly, as per the share of the husband of defendant No.03 received Gut No.165 admeasuring area 10.44 H.R. and same was entered in his name in the revenue record of the field property. Therefore, till the death of the husband of defendant No.03 he was cultivating field properties and after his demise his legal heir's defendant No.03 was cultivating over the whole said land. It is further contended that the husband of defendant No.03 addicted with liquor and having immoral habits. Therefore, to fulfill such addiction and bad habits he started to mortgage and sale field properties and forcefully tried to obtain signature on documents. Therefore, defendant No.03 had sought separate share in the field property. Therefore, out of Gut No.165 bearing admeasuring area 10.44 H.R. She received 5.22 H.R. field on her name in Survey No.165/02 and same was mutated in the revenue record. However, there was no measurement effected in respect of the field property. Therefore, defendant No.03 was cultivating entire field property. Now as per the order/decreed passed by Court on dated 17/03/2020 all the transactions declare to be illegal and thereby nobody having right over the field property situated in Gut

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No.165. As the defendant No.03 was in dire need of money and thereby she borrows Rs.2,00,000/- from defendant No.04 and for the sake of security she executed nominal sale deed of the field property bearing Gut No.165/04. Therefore, the defendant No.04 is having exclusive cultivating possession thereon and thereby the plaintiff does not have right to interfere in the transaction effected between defendant No.03 and defendant No.04. Hence prayed to reject the application.

06. Perused the application, say Exh.19 and documents on record filed by the defendant, heard learned advocate for both sides. Following points arisen for my determination, I recorded findings thereon with reason stated below.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether plaintiff has prima-facie case in his favor?	In affirmative
2.	Whether balance of convenience also lies in favor of plaintiff?	In affirmative
3.	Whether plaintiff would suffer irreparable loss, if temporary injunction is not granted in his favor ?	In affirmative
4.	What order?	As per final order

### **REASONS**

07. In order to support of his application, the plaintiff relied upon following document's along with **Exh.04.**

- D-1 True copy of mutation entry.
- D-2 Xerox copy of sale deed.
- D-3 True copy of mutation entry.

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- D-4 True copy of sale deed.
- D-5 True copy of mutation entry.
- D-6 Xerox copy of consent deed.
- D-7 Xerox copy of sale deed.
- D-8 Xerox copy of sale deed.
- D-9 Xerox copy of sale deed.
- D-10 True copy of mutation entry.
- D-11 True copy of mutation entry.
- D-12 True copy of 7/12 extract of Gut No.165/03.
- D-13 True copy of 7/12 extract of Gut No.165/04.
- D-14 True copy of Namuna 8A.
- D-15 True copy of Map.
- D-16 Xerox copy Judgment of RCS.No.105/2015.
- D-17 Xerox copy of Tahsildar Order.
- D-18 True copy of 7/12 extract of Gut No.165/04.
- D-19 Online copy of 7/12 extract of Gut No.165/04.
- D-20 Online copy of mutation entry.
- D-21 Xerox copy of sale deed.
- D-22 Online copy of 7/12 extract Gut No.165/04.

**On the other hand, defendants also produced document's along with list at Exh.18A.**

- D-1 Xerox copy of complainant filed to the D.S.P.Nagpur.
- D-2 Xerox copy of statement of Sunita Kaikale.
- D-3 Xerox copy of statement of Lata Maroti Mule.
- D-4 Xerox copy of Summons issued from District and session Court,Nagpur in Civil M.A.No.745/2023.
- D-5 Xerox copy of letter issued to the D.S.P.Nagpur.

**As to Point No.01 :-**

**08.** The plaintiff averred that the defendant No.03 had received her share in the partition effected between herself and her husband. Thereafter, the defendant No.3 had sold suit property to the Kamalkishor Rathi by execution of registered sale deed.

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Thereafter plaintiff has purchased suit property from Kamalkishor Narayandas Rathi. The plaintiff has produced xerox copy of mutation entry along with documents list Exh.04 as **(D-1)** Perused the mutation entry wherein it prima facie appears that this document is contended about the partition effected in between defendant No.3 and her husband. Accordingly, the husband of defendant No.3 namely Damodar Harishchandra Mande received Survey No.165/1 admeasuring 5.22 H.R. land and defendant No.3 Vandana Damodhar Mande received 5.22 H.R. area in Survey No.165/2 Accordingly, mutation entry gets effected in the revenue record. The plaintiff also filed xerox copy of sale deed **(D-2)**. Perused the xerox copy of sale deed it appears that Vandana Damodar Mande had executed registered sale deed of 0.81 H.R. field property situated in Survey No.165/2 in favor of Kamalkishor Narayandas Rathi. The plaintiff filed true copy of mutation entry **(D-3)** No.1563 wherein it is contemplated that the defendant No.03 Vandana Damodar Mande has sold 0.81 H.R. land situated in Survey No.165/02 for the consideration of Rs.2,40,000/- by registered sale deed. Then, the plaintiff has filed xerox copy of sale deed **(D-4)** Perused the copy of sale deed wherein it primafacie reveals that sale deed has executed by defendant No.03 Vandana Damodar Mande in favor of Kamalkishor Narayandas Rathi in respect of feild property admeasuring 2.21 HR. situated in Gut No.165/02. Thereafter, the plaintiff has filed mutation entry **(D-5)** bearing No.1562, wherein it is contended that the Kamalkishor Narayandas Rathi has purchased 2.21 H.R. land situated in Survey No.165/02 for the consideration of Rs.6,50,000/- as per register

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sale deed dated 28/03/2012. It is also enumerated therein that same time defendant No.03 Vandana Damodar Mande did not raised objection for such entry in the revenue record. The plaintiff also produced xerox copy of consent deed **(D-6)** of defendant Nos.02 and 03 which was written on notary's stamp and contemplated that they will not raise objection in future in respect of said transaction.

**09.** Plaintiff further averred that from the consideration amount of said sale deed defendant No.03 had purchased another land. In support of that plaintiff filed xerox copy of sale deed **(D-7)** dated 23/05/2012. Perused the xerox copy of sale deed it appears that defendant No.03 has purchased filed property from Moreshwar Natthuji Katkhede situated in Survey No.142/02 admeasuring 1.62 H.R. area.

**10.** Moreover, the plaintiff has filed xerox copy of sale deed **(D-8)** to executed by Kamalkishor Narayandas Rathi in favour of Ramesh Dadaji Bansod in respect of field property admeasuring 1.40 HR area situated in Gut No.165/03 for the consideration of amount of Rs.11,00,000/-.

**11.** Thereafter, plaintiff filed xerox copy of sale deed **(D-9)** dated 26/10/2015 executed by Kamalkishor Narayandas Rathi in favor of plaintiff for the sake of 0.81 H.R. land situated in Gut No.165/04 and 0.81 H.R. land situated in Gut No.165/03 for the consideration of Rs.12,50,000/-. After going through the sale deed, it appears that Kamalkishor Narayandas Rathi has sold 0.81 H.R. land situated in Gut No.165/04 and 0.81 H.R. land situated in Gut No.165/03 to the plaintiff and executed register sale deed bearing

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registration No.3445-2015. Then, plaintiff filed true copy of mutation entry Nos.2947 and 3588 (**D-10 and D-11**) wherein contended that as per the mutation entry Kamalkishor Narayandas Rathi sold 0.81 H.R. each situated in Gut No.165/04 and Gat No.165/3 to the Yashvant Dadaji Bansod. Plaintiff also filed xerox copy of 7/12 extract of Survey No.165/03 (**D-12**) wherein name of the plaintiff Yashvant Dadaji Bansod shown as a possessor of 0.81 H.R. area situated in Survey No.165/03. Then, plaintiff filed 7/12 extract with (**D-13**) wherein name of the Kamalkishor Narayandas Rathi shown to be canceled and name of Yashvant Dadaji Bansod has entered as a possessor of 0.81H.R. area situated in Survey No.165/04. Plaintiff also filed Namuna 8A (**D-14**) wherein it is shown that the Yashvant Dadaji Bansod has owned 0.81 H.R. in Survey No.165/03 and 0.81 H.R. land in Survey No.165/04. The plaintiff filed Map (**D16**) issued by secretary Taluka, Umred wherein Survey No.165 has been shown. Then the plaintiff has filed Xerox copy of the judgment passed in R.C.S. No.105/2015 (**D-16**). I gone through the para No.5 of this judgement. In description clause Gut No.165/2 admeasuring area 2.20 H.R. have been enshrined but the property situated in Gutt No.165/3 and 165/4 have not been described. Moreover, in that suit the present plaintiff and earlier predecessor in owner of the suit property not added as party.

**12.** On the other hand, defendant Nos 1 to 4 contended that the suit property was exclusively owned by deceased Harishchandra (Father in law of defendant No.03). After the death of Harishchandra his legal heir including defendant No.03 and her

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husband were cultivating all the field properties owned by Harishchandra. There was no partition effected among the legal heirs of Harishchandra. As the husband of defendant No.03 addicted with liquor and bad habits he used to borrow money and in the exchange of that he executed mortgage deed in respect of field properties. Therefore, by taking disadvantages of these document these persons attempted to grab the land of her husband and also thy threaten to kill her husband and her sons. Therefore, she had field complaint against those people. Defendant field xerox copy of the complaint (D1). Perused the complaint it appears that this is complaint was field by defendant No.3 against Kamalkishor narayandas Rathi and others alleging to correct the revenue record of Gut No.165/1&165/2 and take the action against non-applicant. Defendant also produced the xerox copy of statement of Damodhar Harishchandra Mande dated 12/03/2013. Perused the same statement wherein he has objected to mutation effected the in the revenue record. The defendant also filed the xerox copies of the statement of the witnesses namely Sunita And Lata (D-3 and D-4). Perused same statement wherein, contended that defendant No.3 is cultivating 26 Acre land since demise of her husband. After going through these documents it has not cleared that whether the registered sale deed executed by defendant 3 in favor of the Kamalkishor Rathi had been challenged or not. So also sale deed executed by Kamal Kishor Narayandas Rathi has canceled by the defendant no.3 by filing suit or in same suit bearing RCS. No. 105/2015. In that suit name of the Kamakishor Narayandas Rathi and present plaintiff had not added as party.

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13. On this point learned advocate for plaintiff submitted that the decree and order passed by Court in RCS. No.105/2015 is not binding on the part of plaintiff as the plaintiff was not being party and the suit property was not added as a suit property in RCS. No.105/2015. Learned advocate for the plaintiff relied on the authority of Hon'ble Supreme Court in Makers Development Service Private Ltd. Vrs. Visvesvaraya industrial research and development centra Civil Appeal No. 9709 and 9710 of 2911 decided on 14/11/2011. Hon'ble Court held that ,

*while passing order Court is required to consider three basic principles that is prima facie case balance of convenience and inconvenience and irreparable lose and injury so also Court while granting injunction must also take into consideration the conduct of the parties.*

In present case in hand the defendant No.03 had executed register sale deed in favor of Kamalkishor Narayandas Rathi and thereafter, the present plaintiff has purchased suit property from Kamalkishor Narayandas Rathi. The Kamalkishor Narayandas Rathi was not party in RCS. No.105/2015. The defendant No.03 did not filed suit for the cancellation of said sale deeds. The present plaintiff has purchased suit property from Kamalkishor Narayandas Rathi and thereby, he is prima facie appears to be bonafide purchaser. The plaintiff is in possession of the suit property since he purchased suit property from Kamalkishor Narayandas Rathi. Hence, so far as three principle are concern the observation held by the Hon'ble Court in above authority with due respect at this juncture applicable to case in hand.

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14. Therefore, learned advocate for plaintiff also relied upon the authority of **Hon'ble Orisa High Court, in Banka Bihari Mohapatra Vrs. Gitagovinda W.P(c)No.188314 of 2012.** Hon'ble Court held that,

*The averment of the petition does not correspond to the description of the petitions. As per provision law petitioner should seek relief within ambit of the pleadings and any relief beyond pleadings is not entertainable.*

15. The learned advocate for the plaintiff relied on the authority of **Bombay High Court in Balkrishna Daulati Bansode Vrs. Taher Mohamad Sutar W.P.No.507 of 1998 decided on 27/03/2001.** Wherein Hon'ble Court held that,

*oral evidence cannot be substitute for documentary evidence. Oral admission has to contents of documents is excluded u/s 22 of evidence act.*

The learned advocate for plaintiff Keeping his reliance upon above authorities submitted that the plaintiff is the Bonafide purchaser of the suit property. The sale deed executed by Kamalkishor Narayandas Rathi in favor of plaintiff has not been challenged by the defendant No.03 and the plaintiff is in cultivating possession of the suit property. So far as present case in hand is concern at this juncture it can not be concluded who has legaly purchased the suit property it can only be decided at the conclusion of the trial. Therefore, the observation held by the Hon'ble Court in the aforesaid authority with due respect at this juncture not applicable to the case in hand.

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**16.** On the other hand, learned advocate for the defendant submitted that the plaintiff has preferred appeal before the appellate Court. Therefore, the plaintiff ought to have sought same relief before the Appellate Court and he has no right to file the suit before this Court. After going through the entire discussion made herein above it prima-facie reveals that plaintiff is the Bonafide purchaser of the suit property on the basis of the registered sale deed as discussed supra. It also reveals that on the basis of the registered sale deed and mutation entry the plaintiff is in possession of the suit property. So also said registered sale deed has not been canceled and same are in existence and name of the plaintiff has entered in the mutation entry as discussed supra. The plaintiff and the earlier predecessor in owner of the suit property were also not added as party in R.C.S. No.105/2015. Though the learned advocate for the defendant has submitted that the appeal is preferred against the Judgment in R.C.S. No.105/2015. However, in that suit present plaintiff and suit property was not added as a party and subject matter of the suit property as discussed in above para. Hence in view of entire discussion maid herein above it appears that plaintiff has prima facie case. Hence, I answer to point No.1 in Affirmative.

**As to point Nos.02 and 03.**

**17.** As these points are interlink to each other hence to avoid repetition I took them together for discussion. This Court has already held that the plaintiff is having prima-facie case, as it prima-facie appears that plaintiff is the bonafide purchaser of the suit properties. Therefore, at this stage balance of convenience also

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lies in favor of the plaintiff. It has brought on record that defendant No.3 has sold suit property to defendant No.4 by executing nominal sale deed. Hence, it appears that if defendant Nos.1 to 4 not restrain from creating third party interest till the conclusion of the trial it will cause irreparable loss on the part of the plaintiff. Hence I answer to point Nos.2 and 3 in Affirmatives and to answer to point No.04 pass following order.

**ORDER**

1. The application below Exh.05 is allowed.
2. The defendant Nos.1 to 04 and anyone on their behalf are hereby restrained from creating third party interest in the suit property admeasuring area 0.81 H.R. situated in Survey No.165/03 and admeasuring area 0.81 H.R. situated in Survey No.165/04 till the conclusion of the trial.
3. Cost in cause parties to take note.

(R.S. Mankar)  
2<sup>nd</sup> Jt. Civil Judge Jr. Division  
Umred

Date :- 14/01/2025

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**CERTIFICATE**

I affirm that the contents of this P.D.F file Judgment/ Order are same word to word as per the original order.

Name of Court :- Jt. Civil Judge (Jr.Dn.) and  
J.M.F.C., Umred, Dist. Nagpur.

Presiding Officer :- R. S. Mankar

Judgment uploaded by :- S.B.Ghardinkar(StenographerL.G.)

Date of Judgment/Order :- 10.01.2025

Judgment/Order signed :- 14.01.2025  
by the presiding officer on