

MHNG140003572023

Regular Civil Suit NO. 28/2024
Gaurav VS Raju & Others

ORDER PASSED BELOW EXH.05
(PASSED ON 12th March 2026)

The plaintiff has filed this application under Order 39 Rule 1 of Code of Civil Procedure, 1908.

2) The suit property is an agricultural land. It is the contention of the plaintiff that, the suit property is an ancestral property of the plaintiff and defendants. The grandfather of the plaintiff namely Shankar Gaigawali had purchased the suit property. The Shankar Gaigawali died intestate in the year 1997 leaving behind widow namely Laxmi and children Dharmpal, Shankar, Shevantabai, Mayabai, Vimalabai, Kamlabai. The Laxmi died in the year 2021 and the Dharmpal who is father of the plaintiff died in the year 2017, the Kamalabai died in the year 2003.

3) The plaintiff further contented that in the year 2022 Shevantabai with Mayabai and in the year 2023 sons of deceased

Kamlabai namely Surendra Naresh Zhodape and Pravin Naresh Zhodape have executed relinquishment deed in respect of their share in the suit field. In the year 2023 Vimlabai and brother of the plaintiff namely Mukesh relinquished their share by way registered relinquishment deed.

4) In the year 2023 whenever the plaintiff came on the suit property the defendants No.2 to 4 prevented him by saying suit property is an ancestral one and belong to them. The plaintiff requested the defendants for the partition of the suit property but did not pay heed on the bona fide demand of the plaintiff. Therefore the plaintiff filed the suit for the partition, declaration and permanent injunction. By the present application the plaintiff prayed to restrain the defendant temporarily from creating obstruction in the possession of the plaintiff over the suit property.

5) The defendant No.2 to 4 did not file their written statement and say. The defendant No. 1 has filed their say and strongly opposed the application with submission that,during the life time of his father Shankar Gaigawali defendant No.1 was assisting him in cultivation of the suit property. After the death of his father entire suit property came in possession of the defendant No.1 and he is cultivating the same.

6) The Shevantabai, Mayabai, Surendra Naresh Zhodape and Pravin Naresh Zhodape relinquished their share in the suit property by registered relinquishment deed. The mother of the defendant No.1 Laxmi executed will deed and bequeathed her share in the suit property in favour of the defendant No.1 The Vimlabai and Mukesh are also ready and willing to relinquish their share in the suit property. The relinquishment deed got executed by the plaintiff from the Vimlabai and Mukesh is illegal and bogus. The plaintiff is not having share in the suit property. The defendant No.1 is in continuous possession and cultivation of the suit property. The defendant No.1 prayed for the rejection of the application.

7) On the rival contention of both parties following points arise for my determination to which I have recorded my reasoned findings :-

No.	<u>POINTS</u>	<u>FINDINGS</u>
01)	Whether prima facie case exists in favour of the plaintiffs ?	In the Negative
02)	Whether the balance of convenience lies in favour of the plaintiffs ?	In the Negative

03)	Whether the plaintiffs would suffer the irreparable loss, if the temporary injunction as prayed by the plaintiffs is not granted?	In the Negative
04)	What order?	As per final order

REASONS

As to Point Nos. 1 to 3:-

8) As these points are inter connected and looking to the contentions of the plaintiffs and defendants for the purpose of convenience and brevity, these points required to be discussed together.

9) Perused written notes of argument filed by learned Advocate for the plaintiff Mr. P. P. Pandhare and heard his submission, heard learned advocate Mr. M. D. Paliwal for the defendant No. 2 to 4

10) The plaintiff has filed copy of gift deed , copy of 7/12 extract and mutation of the suit property, copy of death certificate of Shankar Gaigawali, copy of death certificate of Laxmi Gaigawali, copy of death certificate of Dharpal Gaigawali, copy of death certificate of Kamlabai Zhodape, copies of relinquishment deed executed in favour

of plaintiff and defendant No. 1 , copy of F.I.R., No documents filed by the defendants in support of their contention.

11) It is well settled that while deciding an application for temporary injunction, It is necessary to consider three cardinal principles, namely whether the plaintiff have made out a prima facie case, whether the balance of convenience lies in favour of the plaintiff, and whether the plaintiff would suffer irreparable loss or injury if the injunction is refused. Unless these three requirements are satisfied, the relief of temporary injunction cannot be granted.

12) The relation between the plaintiff and defendants are not disputed. The plaintiff and the defendants are the legal heirs of deceased Shankar Gaigawali. The plaintiff is grandson and defendant No. 1 is the son of deceased Shankar Gaigawali. Defendant No. 2 is mother and defendant No. 3 and 4 are sisters of plaintiff. It is also not disputed that the suit property is an ancestral property of the plaintiff and defendants. The Shankar Gaigawali was the original owner of the suit property.

13) It is admitted to both parties that daughter of Shankar Gaigawali namely Shevantabai and Mayabai have execute relinquishment deed in favour of defendant No. 1 and said deed is

duly registered in the office of Sub-Registrar, Parseoni. It is further admitted by both the parties that son of Kamlabai namely Surendra Pravin Zhodape and Pravin Naresh Zhodape have executed relinquishment deed in favour of defendant No. 1. The defendant No. 1 has disputed the relinquishment deed executed by Vimlabai who is a daughter of deceased Shankar Gaigawali and Mukesh who is brother of plaintiff. But it is not the contention of defendant No. 1 that the same deed has been disputed or challenged by the Vimalabai and Mukesh by filing any case or proceeding before any authority. Neither Vimalabai and Mukesh are parties in this suit nor any documents filed on record to show that the relinquishment deed executed by them is illegal and bogus. Therefore at this stage of the suit it cannot be considered that relinquishment deed executed on favor of plaintiff by Vimalabai and Mukesh is illegal and bogus.

14) It is the contention of the plaintiff that in the year 2023 whenever the plaintiff visited the suit property that time defendant tried to objected and stoped him by saying that suit property is an ancestral property therefore the suit property belongs to defendant No. 2 to 4. It is not the contention of the plaintiff that he is in possession of sole suit property or any specific portion of the suit property. On the contrary the defendant No. 1 contended that he is in

possession of entire suit property and cultivating the same. Therefore, the possession over the suit property is the disputed fact.

15) Both plaintiff and defendant No. 1 claiming their possession over the suit property on the basis of registered relinquishment deed executed in their favour. In this situation it is necessary to see is any document on record to show the possession over the suit property. The 7/12 extract is on record. On perusal of this document it reveals that the plaintiff and defendant No. 1 to 4 are joint possessor of the suit property, the names of other co-sharer has been deleted. The validity of relinquishment deeds executed in favour of the plaintiff and defendant No. 1 can be decide after full fledge of the trail. Prima-facie it appears that plaintiff and defendant are co-sharer in the suit property they have right and interest in the suit property.

16) Both plaintiff and defendants claiming their right in the suit property as a Co-sharer. Both are contended that they are in possession of the suit property. However, the plaintiff has not specifically disclosed that as to which portion of the suit property is in possession. On the contrary the defendant No. 1 contended that he is in possession of entire suit property but the document 7/12 extract shows that plaintiff and defendants are in joint possession of suit

property. It is settled principle of law that one co-share cannot ordinarily seek injunction against another co-sharer in respect of the joint property unless exclusive possession of the specific portion is prima-facie established. In present case such exclusive possession over the suit property by the plaintiff has not been established. Therefore, the plaintiff has failed to establish prima-facie case, balance of convenience in his favour. As the plaintiff failed to show prime-face possession in respect of the specific portion over the suit property no irreparable loss will be caused if injunction not granted against the defendant. In view of the rival contention of both the parties and documents on record. I answer for point No. 1 to 3 in negative and for point No.4 pass following order.

ORDER

1. Application Exh.05 is hereby rejected .

Parseoni
Dated :- 12.03.2026

(G.O. Wankhade)
Civil Judge Junior Division,
Parseoni

CERTIFICATE

I affirm that the contents of this P.D.F. file of order are word to word correct, as per original order.

Name of Stenographer-A.B.Tamgadge