

**ORDER BELOW EXH.05**

(Passed on 09.08.2023)

Plaintiffs have moved present application to restrain the defendants from disturbing the plaintiff's possession over the suit property as described in prayer clause.

2. **Facts of the application are summarized as under :-**

Plaintiffs submitted that, plaintiffs and defendants are relative of each other. Plaintiff no.1 is widow of Chandrashekhar Suresh Bhoyar, and plaintiff no.2 is son of Chandrashekhar Suresh Bhoyar. Chandrashekhar Suresh Bhoyar was son of defendant no.1. Chandrashekhar was died on 23/04/2021. The plaintiffs and defendants having ancestral agricultural properties at Mouza – Nakshi, Taluka. Bhiwapur, Distt. Nagpur having Survey No.234/2, area 1.70 H.R., Survey No. 234/4 area 1.71 and Survey no.68 area 1.07. Plaintiffs further submitted that, Defendant No. 1 to 4 and their father had divided the above agricultural lands among themselves. Out of them survey no. 234/2 came to the share of defendant no. 1 and Survey no. 234/4 came to the share of defendant no. 4. Survey No. 68 was allotted to defendants Nos. 1 to 4 and their father. The name of defendants were also mutated in revenue record. So the Survey no.234/2 area 1.70 (Hereinafter it is referred as to the 'suit property'.) is mutated in the name of Defendant no.1. Plaintiffs further submitted that, the suit property is the ancestral property of her deceased husband and she has right in the suit property. After the death of plaintiff no.1 husband, defendant no.1 had executed a gift deed of suit property in favour of defendant no.2. This fact was came to know the plaintiff no.1 when she received copies from Registrar Office, Bhiwapur. Plaintiffs further

submitted that, they having equal share in the suit property though defendant no.1 has executed a gift deed in favour of defendant no.2 . Plaintiff having fear that defendant no.2 will dispose of the suit property. Hence, plaintiffs prayed for temporary injunction to restrain defendant no.2 and his agent from alienating the suit property to third person.

3. Defendants appeared and filed their written statement and reply to this application at Exh.10 and 11. Defendants admitted the relationship with the plaintiff, but they denied that plaintiff came to know about the gift deed in June-2021. Defendants denied all adverse allegations against them. Defendants further submitted that, the suit property was received by defendant no.1 in family partition. So the suit property is self acquired property of defendant no.1. So he has every right to dispose of. Therefore, defendant no.1 had executed the gift deed in favour of defendant no.2 is legal. Defendants further submitted that, plaintiffs have no prima facie case and as well as balance of convenience in their favour. Hence, they prayed to reject the application.

4. Learned Advocate of plaintiffs submitted that, plaintiffs and defendants are relative of each other. The suit property is ancestral property. The plaintiffs are being the legal heir of Chndrashekhar who is son of defendant no.1 is having equal share in the suit property. the suit property is in the name of defendant no.1. Defendant no.1 had executed a registered gift deed in favour of defendant no.2. so the defendant no.2 is trying to alienating the suit property. the document and pleading of the plaintiff is established the prima facie case and if the injunction is not granted the defendant no.2 will alienate the suit property due which irreparable loss was caused. Hence, he prayed for allowed the application.

5. The learned counsel for defendants submitted that, the suit property is self acquired property of defendant no.1 so he has every right to disposed so he executed gift deed in favour of defendant no.2. Plaintiff have no prima facie case. Hence he prayed for reject the application.

6. I consider the following points for my determination and record my findings thereon with reasons mentioned as under :-

Sr. No	POINTS	FINDINGS
1]	Whether plaintiffs have established prima facie case in their favour?	Yes.
2]	Whether balance of convenience lies in plaintiffs favour?	Yes.
3]	Whether plaintiffs will suffer irreparable loss, if temporary injunction is not granted?	Yes.
4]	What order?	Application is allowed.

### REASONS

#### As to Point No.1 :-

7. Read the plaint and written statement. Perused the documents on record. Heard both the learned advocates.

8. Considering the arguments of both the learned advocates and perusal of document it appears to me that, the present suit is filed by plaintiffs for declaration and permanent injunction against defendants. The relationship of plaintiffs and defendants are admitted. According to the plaintiffs, the suit property was received by defendant

no.1 in family partition. Defendants also admitted that, the suit property was received by defendant no.1 in his family partition. Therefore, it is admitted fact that, suit property was received by defendant no.1 from his ancestral property. As perusal of the documents on record, it appears that, plaintiffs have filed on record 7/12 extract of the suit property. On perusal it appears that, the suit property is in the name of defendant no.2. Plaintiffs have also filed on record registered gift deed which is executed by defendant no.1 in favour of defendant no.2. So also plaintiffs have also filed on record letter of Talathi of Mouza Nakshi regarding plaintiffs took objection for mutation entry in the name of defendant no.2. Therefore, as perusal of this above admitted fact and documents, it appears that, defendant no.1 had executed a gift deed in favour of defendant no.2.

9. From the contention of both the side, it appears that the suit property is an ancestral property and the plaintiffs are also having their respective share in that property, however, defendant trying to alienate the suit property. In such circumstances, the apprehension of the plaintiffs that, in view of gift deed, if the defendant no.2 will alienate the suit property their right to have the shares in the suit property may be taken away. Therefore, it is necessary at this juncture, to restrain the defendants from alienating the suit property to their person. Thus, in view of the admitted fact and from the documents available on the record. The plaintiffs have prima facie established the case in their favour to show that they have the shares in the suit property. Hence, plaintiffs have proved their case prima facie. Accordingly, I answered point Nos.1 in the affirmative.

**As to Point No.2 and 3 :-**

10. Considering the principle of preponderance of probabilities the facts mentioned in the plaint, it appears that, plaintiff has prima facie case. Therefore, at this stage, if application is not allowed, it will cause huge loss to the plaintiff's. While no inconvenience would cause to the defendants. Hence, if application is allowed no prejudice would cause to the defendants. The balance of convenience lies in favour of plaintiff's. Accordingly, I answered point Nos.2 and 3 in the affirmative.

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

11. Considering the answers of point Nos.1 to 3, I pass the following order :-

**ORDER**

1]	Application Exh.5 is allowed.
2]	Defendant no.2, his agent, servant or any other person acting on his behalf is hereby temporarily restrained from creating any third party interest over the suit property i.e. Survey No.234/2 situated at Mouza Nakshi till disposal of the suit.
3]	Cost in cause.

Bhiwapur.  
Date: 09/08/2023

( S. J. Lad )  
Civil Judge Junior Division,  
Bhiwapur.

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