

MHNS130000252020



R.C.S NO. 02/2020

Yogeshwar Vs. Shantaram

ORDER BELOW EXH.20

In the suit for partition and perpetual injunction plaintiff has filed present application for temporary injunction vide Order 39 Rule 1 and 2 of the Code of Civil Procedure.

02) It is the case of the plaintiff that plaintiff is brother of defendant nos.1 to 3. They are having joint ownership and possession over the property of 2H 00R out of 2H 34 R agricultural land Gut no.799, situated at Kokangaon, Tal-Niphad, Dist-Nasik (hereinafter referred as the '**suit property**'). The suit property is bounded as,

towards East- Block No.801, 800
towards West- Block No.787, 786
towards South- Kokangaon-Sakore Road and
towards North- Block No.798

03) The plaintiff further submit that Shri. Shriram Balvant More the father of plaintiff and defendant no.1 to 3 died in the year 2002 and their mother died in the year 2004. Suit property is the ancestral property. After demise of their father, their names as legal heirs of deceased Shriram Balvant More came on records of rights vide Mutation entry no.1420. The plaintiffs further submit that suit property is not partitioned between them and hence, present suit is instituted for partition and perpetual injunction.

04) The plaintiff further submits that plaintiff had moved temporary injunction application below Exh.5 restraining defendants from alienation of suit property in any manner. Thereafter, plaintiff prayed to keep Exh.5 along with Exh.1 when defendant no.1 assured in writing that he will not change nature of suit property without consent of plaintiff, defendant no.2 and 3. Defendant no.1 has started work of construction over

suit property during pendency of suit without partition. Plaintiff sent notice to defendant no.1 in that regard, however, defendant no.1 did not stop the said work of construction. Therefore, by way of present application he has prayed for temporary injunction till final disposal of the suit restraining defendant no.1, his agent, workers from doing work of construction over suit property.

05) The defendant no.1 has resisted the application at Exh.22. He has denied all the contentions of the application except relations. As per his contention, plaintiff has mentioned wrong description of suit property and necessary parties to suit are not added. Defendant no.1 has specifically denied the contentions that he has given written undertaking that plaintiff would not transfer or change the nature of the property without consent of the plaintiff and defendant no.2 and 3. It is submitted that during pendency of the suit, on 09.10.2024 plaintiff got relinquish deed no. 3576/2024 executed and registered in his favor by the defendant no.2 and thereby defendant no.2 has relinquished her undivided share in favor of plaintiff. Accordingly, that entry is reflected on 7/12 extract of suit property. When defendant no.1 objected to the said entry, it was agreed and decided between the plaintiff and defendant no.1 that defendant no.3 would relinquish her undivided share in favor of the defendant no.1. Accordingly, defendant no.1 got relinquish deed no. 4296/2024 executed and registered in his favor by the defendant no.3 and thereby defendant no.3 has relinquished her undivided share to defendant no.1. Accordingly, that entry no.5081 is reflected on 7/12 extract of suit property. Thereafter, plaintiff objected the said entry and referred Appeal no.324/2025 to Sub-divisional officer, Niphad. Appeal of which is pending.

06) It is further submitted that, the house where defendant no.1 is living with his family is in very poor condition. It may collapse at any time

and thereby would cause loss of life as well. Since, defendant no.1 and his family are in dire need of house, defendant no.1 has started the construction of house in the common area of his and other co-sharers adjacent to Sakore-Kokangaon road and construction has come up to the plinth level. The defendant no.1 has incurred a huge amount of expenditure till today It is further submitted that the common area in which work of construction of house is going on, is not the subject matter of the suit and thus, application is not tenable. Hence, he prayed to reject the application.

07) Perused the applications, say and documents filed on record. Heard learned advocate Shri. S.J.Bhosale for the plaintiffs and learned advocate Shri. T.B. Gaikwad for the defendant no.1. Following points arise for determination. I recorded my findings and reasons against them as follows:-

<u>Sr .No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiff has made out prima facie case?	No
2)	Whether balance of convenience lies in favor of the plaintiff?	No
3)	Whether the plaintiff will suffer irreparable loss if the temporary injunction as prayed is not granted?	No
4)	What order?	Application is rejected.

:: REASONS ::

AS TO POINT NOS.1 TO 3 :-

08) Learned advocate Shri. S.J. Bhosale appearing on behalf of plaintiff submitted that the suit property is ancestral property. In absence of partition of suit property, defendant no.1 is constructing the house over it.

He further argued that this suit is for partition and thus unless and until share of the parties are decided defendant no.1 cannot do any act in respect of suit property. To avoid future complexity defendant no.1 is required to be restrained by way of temporary injunction from constructing house over suit property till final decision of the suit. To support his submissions, he has filed citation of Hon'ble Bombay High Court in the matter *M/s Himax Developers Pvt.Ltd Vs. Shri Jagannath Yashwant DFeshmukh, 2017(7) ALL MR 627*. Plaintiff has also filed copy of notice dtd.14/05/2025, acknowledgment dtd.20/05/2025, photographs of construction and copy of entry no.5051 dtd.06/12/2024.

9) On the other hand, ld. Advocate Shri. T. B Gaikwad appearing for the defendant no.1 argued that, suit along with Exh.5 is instituted in the year 2020. Defendant no.1 appeared and filed his W.S and denied description of the property, Plaintiff stated on Exh.5 that, it be proceed and continued along with Exh.1. Thereafter, issues are framed. He further argued that he specifically denied the description of suit property mentioned in the plaint and pleaded about non-joinder of necessary parties in W.S. There are other co-sharers and occupants in 34R of the suit property. However, plaintiff has not pleaded or mentioned about the actual position of 34R including those co-sharers/occupants in the plaint. Oral partition between parties had already taken place between the parties and thus they are in possession of the same. As per oral partition, out of total 1H.34 R land, towards west side of block No.799 1H17R is given to plaintiff and towards East side 1H.17R land of said block and house is given to defendant No.1.

10) He further argued that, the occupants of 34R and its description is not the subject matter of the suit. Also, area of construction does not fall within the area of subject matter of this suit. That area is in the

possession of the defendant no.1 as per the oral partition. Defendant No.1. was and is in dire need of the house as he and his family is living in poor condition house which can be collapsed at any time. Plaintiff has filed suit but not proceeding further since long under such circumstances defendant cannot wait until some loss is caused to him. Defendant no.1 has filed Entry no.5051, 5081 of 6D and photographs of his existing poor condition house.

11) Relief of injunction is discretionary and equitable relief. As per the provisions of Order 39 Rule 1 and 2 of the Code of Civil Procedure for granting interim relief of injunction, there must be existence of a prima facie case as pleaded, necessitating protection of the plaintiff's right by issue of a temporary injunction. When the need of protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's right, the balance of convenience tilting in favor of the plaintiff and there must be clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. It is also pertinent to note that in addition to the above requirements the discretion for granting equitable relief of injunction requires to be exercised only when the plaintiff's conduct is free from blame and he approached the Court with clean hands.

12) On perusal of record it appears that suit is instituted on 07/01/2020 along with Exh.5 of application for temporary injunction. Notice of T.I was issued vide order below Exh.5 passed on 08.01.2020. Defendant appeared on 12.10.2021 and defendant no.1 filed his W.S denying description of property vide Exh.17. Thereafter, on 22.11.2023 plaintiff prayed to proceed and continue Exh.5 application along with Exh.1. Accordingly, on 21.10.2024 my ld. Predecessor framed issues below Ex.18. Since then, i.e., from 22.11.2024 matter was pending for plaintiff's

evidence. Roznama shows that plaintiff and his advocate remained absent on every date so fixed since the matter is transferred to this court till 15.07.2025.

13) Prima facie on the basis of documents available on record, it can also be seen that there is joint ownership and possession of both parties over the suit property. 7/12 extract of Block no.799 (suit property) shows the joint names of plaintiff and defendant no.1 to 3. It also shows names of other co-sharers who are not added in the suit. Fact of construction is not denied by the defendant no.1. Further, Entry No.5051 of 6D filed by defendant no.1 clearly shows that defendant no.2 has relinquished her share. She has executed and registered relinquish deed no.3576 in favor of the plaintiff. Further, plaintiff has also admitted settlement talk regarding relinquish deed to be executed by defendant no.3 in favor of defendant no.1 when defendant no.1 has objected the said entry. The said relinquish deed is executed on.09.10.2024. Plaintiff has admitted the content of entry no.5051 and 5081, however, kept mum on settlement talk between him and defendant no.1, both the relinquish deeds, appeal preferred by him against those entries etc. Thus, prima facie it appears that plaintiff has suppressed material facts.

14) Further, photographs filed by defendant no.1 prima facie shows the poor condition of his existing house. Prima facie it appears that condition of house in which defendant no.1 and his family is living is such that it may collapse at any time and may cause loss or injury to his person or person of his family or property. Thus, dire need of house for safe residence cannot be ignored. It is pertinent to note that, suit is pending for plaintiff's evidence since long, however he did not file his evidence affidavit till today. It prima facie shows the conduct of the plaintiff delaying the proceeding. So also, Equitable relief of Injunction cannot be granted to

plaintiff guilty of inequitable conduct. No interim injunction can be granted in favour a party concealing from court some material facts.

15) Record shows that suit is pending for plaintiff's evidence since 22.11.2024. Meanwhile, admittedly defendant no.2 has relinquished her share by executing relinquish deed no.3576 in favor of the plaintiff. Admittedly, as per settlement talk between plaintiff and defendant no.1, defendant no.3 executed relinquish deed in favor of defendant no.1. All these events are of 2024, however till today plaintiff neither applied for amendment of change in circumstances nor lead his evidence. And thus, it will be inequitable conduct on the part of the party who seeks the relief of interim injunction after much delay and the grant of the interim injunction would not be proper. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed other person to deal with the property exclusively, ordinarily would not be entitled to an order of injunction.

16) I have also carefully gone through the ruling cited and found it not applicable to present case. It is pertinent to note that plaintiff has failed to establish prima facie case as pleaded. Therefore, balance of convenience not lies particularly in favor of the plaintiff. If the temporary injunction is granted the defendant will suffer irreparable loss. Accordingly, I answer point nos.1 to 3 in the negative. Application is liable to be rejected. Hence, in answer to point No.4 I pass following order.

ORDER

- 1) The application Exh.20 stands rejected.
- 2) Costs in main cause.

Place: Pimpalgaon(B).
Date: 04/03/2026.

sd/-xxx
(V. W. Khendad)
2nd Jt. Civil Judge, J.D.,
Pimpalgaon (B), Nashik.