

MHNS230005182020



ORDER BELOW EXH. 5
(Application for temporary injunction)

This is an application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. This is suit for declaration, partition and permanent injunction.

02. Description of suit properties :-

Sr. no.	Property number	Ad-measuring area	Village
1.	Gat no. 530	0H 10 -12 R out of total area 0H 40 -50 R	Gonde Dumala Tal-Igatpuri, Dist-Nashik.
2.	House no. 196	364 Sq.ft.	

Aforementioned properties are herein after referred as 'suit properties'.

03. Plaintiffs case in short :

Deceased Dashrath Jadhav was husband of plaintiff no.1 and father of plaintiff nos.2 to 4 and defendant. Suit properties were ancestral properties of deceased Dashrath. After demise of deceased Dashrath, names of plaintiffs and the defendant were mutated in the revenue records of suit properties. Income from suit properties is the only source of income to plaintiffs. Defendant played fraud upon plaintiffs and got relinquishment deed executed under the pretext of deleting name of deceased Dashrath from revenue records. In October 2019 defendant and his wife assaulted plaintiff no.1 and

drove her out of the house. In September 2019 plaintiff procured revenue record of suit properties and discovered that their names have been deleted on the basis of illegal relinquishment deed.

04. Defendant on the basis of his name in revenue records of suit properties can alienate the same. If the defendant create third party interest in suit properties, plaintiffs will be deprived of their share in suit properties. Hence, prayed for temporary injunction to restrain the defendant from alienating or creating third party interest in suit properties.

05. Defence in short :-

Defendant filed written statement vide Exh.13 and resisted the contents of the suit and application for temporary injunction. Relationship between plaintiffs and the defendant is admitted. On 02/12/2011 plaintiffs relinquished their share in suit properties in favour of the defendant, his uncle and grand mother by executing relinquishment deed. On the basis of registered relinquishment deed, plaintiffs name have been deleted from revenue records. After the marriage of plaintiff no.2 to 4, they have good source of income from their husband's properties. Defendant and his wife never assaulted plaintiff no. 1. Plaintiffs have no right in suit properties. Hence, prayed for rejection of application.

06. Heard Ld. Advocates for both sides.

Argument by Ld. Advocate Shri.A.C.Shaikh for plaintiffs :-

Ld. Advocate for plaintiffs submitted that plaintiffs being wife and daughters of deceased Dashrath Jadhav, they have right and interest in suit properties. Plaintiffs names were also mutated after

demise of deceased Dashrath Jadhav. This shows existence of plaintiffs right in suit properties. The defendant played fraud upon plaintiffs and illegally got relinquishment deed executed in his favour. On the basis of illegal relinquishment deed plaintiffs names are deleted from revenue record. The defendant on the strength of his name in the revenue record of suit properties, can alienate the same. It will be deprive plaintiffs of their right in suit properties. Hence, prayed for temporary injunction to restrain the defendant from alienating suit properties.

Argument by Ld. Advocate Shri.R.G.Waje for the defendant

07. Per contra, Ld. Advocate for the defendant submitted that, prima facie case does not lie in plaintiffs favour, as plaintiffs have themselves executed registered relinquishment deed. They have no right and interest in suit properties after execution of relinquishment deed. Plaintiffs cannot plead fraud on the ground of illiteracy as, plaintiff no. 2 to 4 are literate. They were aware of nature of document being relinquishment deed at the time of its execution. No irreparable loss would be caused to plaintiffs if injunction is not granted. Balance of convenience tilts in favour of the defendant as registered document of relinquishment deed is in his favour. Hence, prayed for rejection of application.

08. On hearing the plaintiff, following points arise for my determination and I have recorded my findings thereupon as follows:-

Sr. No.	Points for determination	Findings
1	Whether plaintiffs prove prima-facie case in their favour ?	Yes.

2	Whether plaintiffs will suffer irreparable loss if injunction is not granted ?	Yes.
3	Whether balance of convenience tilts in favour of plaintiffs?	Yes.
4	Whether plaintiffs entitled for the relief of temporary injunction as prayed ?	Partly Yes
5	What Order ?	Application is partly allowed.

REASONS

As to point No.1 to 3 :-

09. To substantiate contentions in the application plaintiffs relied upon 7/12 extract of Gat no.530, 8-A extract of Gat no.530, tax assessment extract of house no.196, death certificate of Dashrath Jadhav, mutation entry extract M.E.no.3168 and M.E.no.3226. 7/12 extract of Gat no.530 shows name of the defendant in land holders column. Tax assessment extract of house no.196 reflects name of plaintiff no.1 in land holders column. Relinquishment deed no.3732/2011 filed by the defendant is a registered document. On perusal of relinquishment deed it shows that plaintiffs along with other persons have relinquished their share in Gat no.530 in favour of the defendant and other persons. House no.196 is not subject matter of relinquishment deed no.3732/2011.

10. On perusal of mutation entry no.3168 it is clearly shows that Gat no.530 was in the name of deceased Dashrath Jadhav on his demise names of plaintiffs and the defendant were mutated. It is settled principle of law that mini trial should not be conducted while deciding application for temporary injunction. In the present case

plaintiffs challenged execution of relinquishment deed no.3732/2011. Plaintiffs names from revenue records of Gat no.530 have been deleted on the basis of relinquishment deed no.3732/2011. The execution of relinquishment deed is prime question in the present suit which can be adjudicated only on the trial. In such circumstances, if plaintiffs right is not protected till the conclusion of trial, it will be certainly caused hardship and irreparable loss to plaintiffs. Therefore, I answer to points nos.1 to 3 in the *affirmative*.

As to point no.4 :

(Entitlement of temporary injunction)

11. Plaintiffs have sought temporary injunction to restrain the defendant from creating third party interest in Gat no.530 and house no.196. The tax assessment extract of house no.196 filed at Exh.3/2 reflects plaintiff no.1 as sole owner of house no.196, therefore, the apprehension of plaintiffs that the defendant will alienate house no.196 is unreasonable. Hence, no injunction in regard to house no.196 can be granted.

12. Gat no.530 is in the name of the defendant and other person. Plaintiffs apprehension of further alienation of Gat no.530 needs to be protected by grant of temporary injunction. Plaintiffs have proved entitlement to the relief of temporary injunction in regard to suit property Gat no. 530. Accordingly, I answer to point No.4 *partly* in the *affirmative*.

As to point no.5 :-

14. In view of reasons discussed above, I am inclined to partly allow the application. In answer to point No. 5, I pass following order

ORDER

- 1) The application **Exh.5** is partly allowed.
- 2) Defendant or anyone claiming through him is temporarily restrained from alienating, creating third party interest, creating charge, mortgage over suit property gat no.530 in any manner whatsoever till final disposal of the suit.
- 3) No order as costs.

Date – 09/10/2021

Sd/-
(R. N. Khan)
Jt. Civil Judge Jr. Division,
Igatpuri.