

SPECIAL CIVIL SUIT NO. 55 OF 2025.

(CNR No.MHNS290003632025)

Madhav Vitthal Dolas,
v/s.
Jayprakash Vitthal Dolas & Ors.,

ORDER BELOW APPLICATION (EXH. 5)

- 1) This is an application filed by the plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC'). So also, defendants Nos. 1 and 2 have filed their written statement and say (Exh. 15) to the application.
- 2) It is the case of the plaintiff that, he is the owner and lawful possessor of a portion of ancestral agricultural land situated in Village Mhasurli, Taluka Igatpuri, District Nashik (Gat No. 39), admeasuring 0.63 hectares. The property was distributed between the plaintiff and Defendant No. 1 (his brother) through the official Tehsildar's order dated 29/06/2012. The respective shares were separately demarcated, recorded in the land register, and have been in peaceful possession and enjoyment of the respective owners since the partition.
- 3) Defendant No. 1 is the plaintiff's brother, Defendant No. 2 is his wife, and Defendant No. 3 is their son. Despite the close family relationship, disputes have arisen over the plaintiff's lawful

possession.

4) From 2014 onwards, the defendants allegedly trespassed onto the plaintiff's property, obstructed him from accessing and cultivating it, threatened him, and interfered with registration and surveying of his land. Defendants are said to have used intimidation and abusive language, and Defendant No. 2 allegedly threatened to initiate false proceedings against the plaintiff.

5) The plaintiff lodged complaints with the Superintendent of Police (Rural), Nashik, and the Special Inspector General of Police to seek protection and prevent obstruction. Legal notices were also served to the defendants on 21/01/2025, but the defendants allegedly continued to harass and threaten the plaintiff.

6) The plaintiff further contends that due to the repeated interference, threats, and illegal entry by the defendants, he is unable to peacefully enjoy, cultivate, or transfer his property. The acts of the defendants are ongoing and likely to cause irreparable loss, making immediate protection necessary.

7) The plaintiff seeks temporary injunction restraining the defendants, their agents, or relatives from entering, obstructing, or interfering with the plaintiff's possession of the property till final disposal of the suit.

8) Defendants Nos.1 and 2 filed their Written Statement and Say (Exh. 15) and denied all allegations of the plaintiff in his application and resisted the same. The defendants contend that the

plaintiff's application for a temporary injunction is neither genuine nor maintainable in law. All allegations in the plaintiff's application, except those expressly admitted, are denied.

9) The defendants claim that the agricultural land in Village Mhasurli, Gat No. 39, has not been legally distributed between the plaintiff and Defendant No. 1. By virtue of oral partition by their father, Defendant No. 1 has been in peaceful possession of his portion of the property for many years. He has cultivated the land, maintained crops year-round, and constructed a permanent house (Property No. 123, Gram Panchayat records).

10) Further, the defendants assert that the plaintiff, who resides outside the village due to education and government employment, has no actual knowledge of or involvement in the land. The plaintiff allegedly seeks to divide, occupy, and sell the property illegally, using false revenue records, fabricated survey documents, and fraudulent Panchnama.

11) The defendants maintain that they have been in lawful, peaceful, and continuous possession of the suit property, improving its fertility and maintaining it for cultivation. No act of the defendants has obstructed or interfered with the plaintiff's rights.

12) The defendants allege that the plaintiff has filed the injunction application out of self-interest and greed, to harass the defendants, and to unlawfully gain control of the fertile portion of the land. Hence, in such circumstance he prayed for rejection of the application.

13) Heard rival parties at length. Perused Application (Exh.5), Say (Exh.15) and documents filed by the plaintiff as well as defendants.

14) Following points arises for the consideration and my findings on them are as follows for the reasons stated below :-

<u>POINTS</u>	<u>FINDINGS</u>
(1) Whether the plaintiff proves <i>prima-facie</i> case to show his entitlement to relief of temporary injunction during pendency of the suit?	.. No.
(2) Whether the plaintiff proves that balance of convenience lies in his favour ?	.. No.
(3) Whether the plaintiff proves that he would suffer an irreparable loss which cannot be compensated in terms of money if the relief of temporary injunction is not granted in his favour ?	.. No.
(4) What order ?	.. As per final order.

REASONS

AS TO POINTS NOS. 1 TO 4 :-

15) Perused documents filed by the plaintiff below list (Exh. 3) specifically 7/12 extract of the suit property, Village Map, Notice, Partition dated 29-06-2022, MR No. 52, Measurement application and other documents, notices, Panchanama, statement recorded by

measurement officer of plaintiff, MR No. 39/2023 dated 18.01.2023, copies of applications filed by the plaintiff with Police Superintendent, Rural dated 22/11/222 and Police Commissioner application dated 30/3/23, Valuation of Gat No. 39 etc. Per contra, the defendants filed documents i.e. 7/12 extracts of Gat No. 39, Gat No. 128, 160, 170, Sale deed No. 35, copy of Mutation entry Nos. 639, 559, house Tax receipt dated 2021-22, Electricity Bill dated 14/04/25, crop insurance receipt etc.

16) The plaintiff has filed an application for a temporary injunction seeking to restrain the defendants from entering, occupying, or interfering with the plaintiff's claimed property situated in Village Mhasurli, Gat No. 39, Taluka Igatpuri, District Nashik. The plaintiff alleges that the defendants have been unlawfully obstructing him from enjoying and managing the property, despite an earlier partition of the ancestral land.

17) The Advocate for the plaintiff argued that, the property in Gat No. 39 was distributed by the Tehsildar, Igatpuri, vide order dated 29/06/2012, granting him a share of 0.63 hectares. The defendants have allegedly entered his property illegally, obstructed boundary markings, and prevented him from enjoying and cultivating the land. Despite sending legal notices to the defendants, they continue to threaten and harass him, causing fear and preventing the plaintiff from transferring or enjoying the property. The plaintiff asserts that the acts of the defendants constitute irreparable harm and loss, necessitating immediate relief by way of injunction.

18) Advocate for the defendant submitted that, the suit property has not been formally distributed, and the plaintiff's claims rely on allegedly false and fabricated documents. Defendant No. 1 has been in peaceful, open, and continuous possession of his portion of the property based on oral partition by their father and has cultivated, maintained, and improved the land for several years. Defendant No. 1 has also constructed a permanent house on the property (Property No. 123, Gram Panchayat records) and has actively managed the land. The plaintiff resides outside the village due to work and education, has no direct knowledge of the day-to-day possession, and has allegedly filed the injunction application to harass the defendants and gain unlawful control over the fertile portion of the land. The defendants deny obstructing or interfering with any lawful rights of the plaintiff.

19) On perusal of application and say and documents on record, it is prima-facie clear that, the entire Gat No. 39 including the suit property has been partitioned between the plaintiff and defendants and the other co-parceners as per order of Tehsildar dated 29/06/2012. Though, the plaintiff relies upon the order of the Tehsildar dated 29/06/2012, the said partition only reflected in revenue record. The actual partition by meets and bounds prima facie seems not yet taken place. Even, the plaintiff has applied for measurement of the land, which itself indicates that physical demarcation and exclusive possession of specific portions is yet to be finalized.

20) The documents on record further prima-facie show that both the plaintiff and defendants are cultivating the suit property and in joint possession. There is no convenience material to establish that the defendants have unlawful dispossessed the plaintiff or obstructed his lawful enjoyment of any specific demarcated portion of land.

21) It is a settled principle of law that a temporary injunction cannot be granted against a co-possessor of joint property, unless exclusive possession and illegal interference are clearly established. In the present case, the plaintiff has failed to prima facie prove exclusive possession or any illegal act on the part of the defendants.

22) Therefore, considering the joint nature of the possession, the absence of partition by meets and bounds, and the plaintiff has failed to establish a prima-facie case, balance of convenience, or irreparable loss. Granting an injunction in just circumstance would unjustly restraining the lawful use and cultivation of the suit property by the defendants.

23) In view of the above discussion, it is clear that the suit property is in still joint possession of the parties and the actual partition by meets and bounds has not yet taken place. The plaintiff has not established exclusive possession or any unlawful interference by the defendants. Since an injunction cannot be granted against a co-possessor the plaintiff has failed to satisfy the essential requirements for grant of temporary injunction. Hence, I answer my findings on Point Nos. 1 to 3 in the negative and in answer to Point

No. 4, I pass the following order.

ORDER

- (1) The Application (Exh.5) is rejected.
- (2) Costs in cause.

Date : 08.01.2026.

(Yashshree Marulkar)
Civil Judge Senior Division,
Igatpuri.

CERTIFICATE

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

Name of Stenographer : N. S. Sabale,

Court : Civil Judge, Sr. Division, Igatpuri,

Date of Judgment/ order : 08.01.2026

Order Signed by the
Presiding Officer On : 12.01.2026

Order Uploaded on :12.01.2026