

MHOS010013062024	Presented on :	10.06.2024
	Registered on:	10.06.2024
	Decided on :	09.06.2026
	Duration :	02Y 00M 01D

IN THE COURT OF DISTRICT JUDGE-4, OSMANABAD.

(Presided over by Shri. Rajesh K. Khomane)

Misc. Civil Appeal No. 25 of 2024Exh. : _____

Jaywant Balasaheb Jadhav
Age - 39 Yrs. Occ.- Agriculture
R/o.Chilwadi, Tq. & Dist. Osmanabad.

APPELLANT
(Original plaintiff)

V E R S U S

Yeshwant Balasaheb Jadhav
Age- 46 Yrs. Occ.- Agriculture
R/o.Chilwadi, Tq. & Dist. Osmanabad.

Respondent
(Original defendant)

Shri. A.N.Deshmukh Adv. for the appellant
Shri. B.M.Mendhekar Adv. the respondent

J U D G M E N T(Delivered on this 9th day of June 2026)

This appeal has been preferred by the original plaintiff challenging the legality and correctness of the order dated 04.05.2024 passed by the learned Joint Civil Judge, Junior Division, Osmanabad, whereby the plaintiff's application for temporary injunction (Exhibit-5) under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, filed in Regular Civil Suit No.

677 of 2023, came to be rejected.(For the sake of convenience, the parties are hereinafter referred to as the "plaintiff" and the "defendant" as they were arrayed before the Trial Court.)

2] Briefly stated, the case of the plaintiff is that, The plaintiff is a resident of Village Chilwadi, Taluka and District Osmanabad (Dharashiv). The defendant is the real brother of the plaintiff. However, both are residing separately. The suit property comprises agricultural land admeasuring 2 Hectares and 47 Gunthas bearing Block No. 10, situated at Village Chilwadi, Taluka and District Osmanabad (Dharashiv) (hereinafter referred to as the "suit property"). According to the plaintiff, the suit property is ancestral property and was recorded in the name of his father in the revenue records. The plaintiff's father was suffering from kidney and liver ailments and was required to undergo medical treatment. Accordingly, he received treatment at Mumbai and Terna Hospital. The plaintiff was taking care of and maintaining his father and mother and was looking after all their needs. On the other hand, the defendant neglected and avoided looking after his parents.

3] Being satisfied with the services and care rendered by the plaintiff, the father of the parties executed a registered Gift Deed dated 07.01.2023 in favour of the plaintiff in respect of the suit property. Pursuant to the said Gift Deed, the name of the plaintiff was mutated in the revenue records vide Mutation Entry No. 2435 dated 30.06.2023. Thus, the plaintiff became the owner

of the suit property and has been in exclusive possession thereof since the execution of the Gift Deed. It is further the case of the plaintiff that his father had obtained a loan of approximately Rs.25,00,000/- on the suit property for cultivation of grapes, and the said loan liability is still outstanding. The plaintiff has been cultivating and managing the suit property and remains in peaceful possession thereof. However, on 14.08.2023, when the plaintiff visited the suit property for agricultural operations, the defendant obstructed his possession and threatened him with dispossession. Apprehending interference by the defendant in his peaceful possession and enjoyment of the suit property, the plaintiff instituted the present suit seeking a declaration of his ownership over the suit property and a decree of perpetual injunction restraining the defendant from interfering with his possession. Pending the suit, the plaintiff also filed an application at Exhibit-5 seeking temporary injunction restraining the defendant from causing obstruction or interference with the plaintiff's possession and enjoyment of the suit property during the pendency of the proceedings.

4] The defendant has filed his say below Exh.17 and resisted the application. The defendant has admitted the relationship between the parties and has admitted that he is the real brother of the plaintiff. However, he has denied the allegations that the plaintiff alone was looking after their parents. According to the defendant, both the plaintiff and the defendant

were taking care of and maintaining their parents. It is the contention of the defendant that the plaintiff has taken undue advantage of the fact that their father was suffering from kidney-related ailments and other diseases. According to him, the plaintiff managed to obtain a Gift Deed in his favour by misrepresenting facts and exercising undue influence over their father. The defendant has specifically contended that the alleged registered Gift Deed dated 07.01.2023 is a false, fabricated and invalid document and is not binding upon his rights. The defendant has further contended that the suit property is ancestral property of the family and that he has a right, title and interest therein as a co-owner. According to him, merely on the basis of the alleged Gift Deed, the plaintiff cannot claim exclusive ownership and possession over the suit property. The defendant has also contended that an injunction cannot be granted against a co-owner in respect of joint or ancestral property. On these grounds, he has opposed the application for temporary injunction and prayed for its rejection.

5] On merits, after hearing both sides and considering the documents placed on record, the learned Trial Judge observed that the suit property is ancestral property. The learned Trial Judge further observed that the plaintiff failed to establish that his father was the exclusive owner of the suit property. Therefore, the defendant, being a co-owner of the suit property, could not be restrained by an order of injunction. Accordingly, the learned Trial Court held that the plaintiff had failed to establish a prima facie

case. It further held that the balance of convenience did not tilt in favour of the plaintiff and that no irreparable loss would be caused to him if the injunction was refused. Consequently, the learned Trial Court rejected the plaintiff's application for temporary injunction.

6] Being aggrieved and dissatisfied with the said order passed by the learned Trial Court, the plaintiff has preferred the present appeal. It is contended on behalf of the plaintiff that the learned Trial Court failed to consider the fact that a loan of approximately Rs.25,00,000/- is outstanding against the suit property and that the plaintiff is liable to repay the said loan amount. It is further contended that the Gift Deed dated 07.01.2023 is a registered document and the same has not been challenged before any competent court. According to the plaintiff, the learned Trial Court has misapplied the settled principles of law while deciding the application for temporary injunction and has erroneously rejected the same.

7] On the submissions made by both the parties, following points arise for my determination and my findings thereon for the reasons given below.

Sr. No.	Points	Findings
1)	Whether the plaintiff has prima-facie case ?	No.
2)	Whether the balance of convenience lies in favour of the plaintiff ?	No.

3)	Whether the plaintiff would suffer irreparable loss if temporary injunction application is not granted ?	:	No.
4)	Whether interference is required in the impugned order ?	:	No.
5)	What order ?	:	Appeal is dismissed.

REASONS

As to point nos. 1 to 3 :

8] All the points under consideration are interconnected and, therefore, are taken up together for determination. There is no dispute that the plaintiff and the defendant are real brothers. It is also an admitted position that the suit property is ancestral property. The principal controversy revolves around the plaintiff's claim that he has become the exclusive owner of the suit property by virtue of a registered Gift Deed dated 07.01.2023 executed by his father in his favour. On the other hand, the defendant contends that the suit property is ancestral property and that he has an independent right and interest therein as a coparcener and co-owner. In this context, it is pertinent to note that the defendant has already instituted Regular Civil Suit No.136 of 2023 seeking partition and separate possession in respect of the suit property. The said suit is admittedly pending adjudication before the competent Court. Therefore, the question regarding the exact nature and extent of the respective shares and interests of the parties in the suit property has not yet attained finality.

Consequently, the defendant's claim regarding his share in the suit property remains to be finally adjudicated.

9] It is an undisputed fact that the suit property is ancestral property. Despite the said position, the father of the parties executed a registered Gift Deed dated 07.01.2023 purporting to transfer the entire suit property in favour of the plaintiff. On the strength of the said document, the plaintiff claims exclusive ownership and possession over the suit property. At this stage, it becomes necessary to examine whether the father of the parties was legally competent to transfer the entire ancestral property exclusively in favour of one son to the exclusion of the other coparcener. Under the settled principles of Hindu Law, a coparcener acquires an interest in ancestral property by birth. A karta or coparcener cannot ordinarily alienate the entire coparcenary property so as to defeat the existing rights of other coparceners, except in circumstances recognized by law, such as legal necessity, benefit of estate, or with the consent of the concerned coparceners. It is equally well settled that no person can transfer a better title than what he himself possesses. A co-owner or coparcener cannot ordinarily convey rights exceeding his own share or interest in the joint family property. Therefore, when the property is prima facie ancestral in nature and the defendant asserts his status as a coparcener, the validity and legal effect of the Gift Deed in respect of the entire property become matters requiring detailed evidence and adjudication at the trial. At this interlocutory stage, the Court is not expected to record final

findings regarding the validity of the Gift Deed or the exact rights of the parties. Nevertheless, the material on record prima facie indicates that serious questions regarding title and the competency of the donor to transfer the entire ancestral property are involved in the matter. These questions can only be conclusively decided after a full-fledged trial.

10] The plaintiff has contended that he alone was looking after his aged parents and that the defendant neglected them. Even assuming, for the sake of argument, that the plaintiff had taken greater care of the parents, such circumstance by itself cannot extinguish or defeat the proprietary rights which the defendant may otherwise possess in the ancestral property. Rights flowing from coparcenary or co-ownership cannot be denied solely on the ground that one sibling rendered greater service to the parents than the other. The defendant's claim as a co-owner cannot, therefore, be brushed aside at this preliminary stage. It is a settled principle of law that one co-owner is deemed to be in possession on behalf of all co-owners unless there is clear evidence of ouster. Ordinarily, an injunction restraining a co-owner from entering upon or enjoying joint property is not granted unless exclusive possession and ouster are clearly established. In the present case, the plaintiff seeks to restrain the defendant from entering upon and cultivating the suit property. However, when the defendant has raised a substantial claim of co-ownership and has already instituted a suit for partition and separate possession, it cannot be said that the plaintiff has

established an unquestionable and exclusive right over the suit property so as to warrant grant of temporary injunction against the defendant. For grant of temporary injunction, the plaintiff must establish the existence of a prima facie case, balance of convenience in his favour, and likelihood of irreparable injury in the event of refusal of relief. In the present matter, the plaintiff has failed to establish a strong prima facie case of exclusive ownership, particularly when the ancestral nature of the property and the defendant's claim as a coparcener remain undisputed. The balance of convenience also does not lean in favour of the plaintiff, as grant of injunction would virtually deprive the defendant of his claimed right in the ancestral property pending adjudication of the suit. Further, no irreparable loss can be said to be caused to the plaintiff if the injunction is refused, as the rights of the parties can ultimately be worked out in the pending proceedings. In view of the aforesaid discussion, this Court is of the considered opinion that the plaintiff has failed to establish the essential requirements for grant of temporary injunction. Consequently, all the points under consideration are answered in the negative.

As to point No.4 :

11] The learned Trial Court has held that the suit property is ancestral property and that the defendant is one of the co-owners thereof. It has further held that an injunction cannot ordinarily be granted against a co-owner in respect of joint

property. Upon considering the material on record and the reasons assigned by the learned Trial Court, I do not find any illegality, perversity, or infirmity in the impugned order warranting interference by this Court. Therefore, I answer Point No. 4 in the negative.

As to Point No. 5 :

12] In view of the findings recorded on Point Nos. 1 to 4, the appeal is devoid of merits and deserves to be dismissed. Hence, I proceed to pass the following order:

ORDER

1. The appeal is dismissed with costs.
 2. Decree be drawn up accordingly.
- (Dictated and pronounced in open Court)

Date : 09.06.2026

(R. K. Khomane)
District Judge-4
Osmanabad.

CERTIFICATE

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

Name of Stenographer	-	K.PPawekar, Stenographer Grade -III
Court	-	Shri. R. K. Khomane, District Court-5, Osmanabad.
Date	-	09.06.2026
Order signed by the Presiding Officer on	-	09.06.2026
Order uploaded on	-	09.06.2026