

MHOS010034022023 	Presented on :	24.11.2023
	Registered on:	24.11.2023
	Decided on :	17.07.2026
	Duration :	02Y 07M 23D

IN THE COURT OF DISTRICT JUDGE, OSMANABAD.

(Presided over by Shri. R. K. Khomane)

Misc. Civil Appeal No.63 of 2023**Exh. :**

1 Shrikant Shashikant Pathak
Age 35 Years, Occ. Agriculture/Service
R/o. Tuljapur, Tq. Tuljapur,
Dist. Osmanabad

2 Umakant Shashikant Pathak
Age 33 Years, Occ. Agriculture
R/o. Tuljapur, Tq. Tuljapur,
Dist. Osmanabad

APPELLANTS
(Original Defendant no.2
and 3 / plaintiff in
counter claim)

VERSUS

1 Suryakant Digambar Pathak
Age 67 Years, Occ. Retire and Agriculture
R/o. Tuljapur, Tq. Tuljapur,
Dist. Osmanabad
A/p. House No.1164650, Near Zillha
Parishad Sidco, New Nanded, Tq. and
Dist. Nanded.

Respondent no.1
(Original
Plaintiff/defendant
no.1 in counter
claim)

2 Anil Digambar Pathak
Age 79 Years, Occ. Prist,
R/o.Samata Colony, Behind Lord Maruti
temple, Osmanabad,
Tq. and Dist. Osmanabad

3 Gopal Digambar Pathak
Age 71 Years, Occ. Prist,
R/o.1/14/731, Gargi Face, Wannike
Nagar, Nanded, Tq. And Dist. Nanded.

4 Ambadas Digambar Pathak
Age 69 Years, Occ. Prist,
R/o.R.C.601, Sun Universe, Near Nawale

Bridge, Nare, Pune.

- 5 Sulochana Shankarrao Kulkarni
Age 76 Years, Occ. Household
R/o. Near Ram Mandir, Neharu Chowk,
Osmanabad, Tq. and Dist. Osmanabad
- 6 Mandakini Sudhakar Joshi (Died)
His Legal Heirs;
- 6/1 Sunil Sudhakarrrao Joshi
Age 48 Years, Occ. Private Service
R/o. Hudo Wasahat, Latur,
Tq. and Dist. Latur
- 6/2 Dhananjay Sudhakarrrao Joshi
Age 45 Years, Occ. Private Service
R/o. Hudo Wasahat, Latur,
Tq. and Dist. Latur
- 6/3 Shital Prakashrao Kulkarni
Age 42 Years, Occ. Household
R/o. Hudo Wasahat, Latur,
Tq. and Dist. Latur
- 7 Vaishali Chandrakant Shirsikar
Age 69 Years, Occ. Household
R/o. Near Alange Hospital, Main Road,
Omerga, Tq. and Dist. Omerga
- 8 Ujwala Diliprao Gawaskar
Age 63 Years, Occ. Household
R/o. Renuka Niwas, Gayatri Nagar,
Pimpal Gawhan Road, Beed,
Tq. and Dist. Beed.
- Respondent** (Original
defendants /
defendants in counter
claim)

Shri. R.S. Kulkarni, Adv. for the appellants
Shri. A.J. Deshpande, Adv. the respondent

J U D G M E N T

(Delivered on this 17th day of July 2026)

1] The present appeal is directed against the order dated
13.10.2023 passed below Exhibit 38 in Regular Civil Suit No. 01
of 2023 by the learned Joint Civil Judge, Junior Division, Tuljapur,

whereby the application for temporary injunction filed by the original defendant Nos. 2 and 3, who are the plaintiffs in the counterclaim, came to be rejected (hereinafter referred to as the "impugned order"). For the sake of convenience, the parties are hereinafter referred to by their original status before the Trial Court.

2] In brief, the case of the plaintiff is that he is the brother of defendant Nos.1 and 4 to 10. Defendant Nos.2 and 3 are the sons of defendant No.1, whereas defendant Nos.8/1 to 8/3 are the legal heirs of deceased defendant No.8. The plaintiff instituted this suit seeking partition and separate possession of his alleged share in agricultural lands bearing Block Nos.80 and 81 situated at Village Bhatambra, Taluka Tuljapur, District Osmanabad, and House Property No.196/3 situated at Tuljapur in City Survey No.1460, admeasuring 122.20 Sq. Mt. (hereinafter referred to as the "suit lands" and the "suit house", respectively).

3] According to the plaintiff, the suit lands and the suit house are ancestral joint Hindu family properties inherited from their common ancestor. Though the family continued to enjoy the properties jointly, no partition was ever effected by metes and bounds. It is contended that their father, Digambar Pathak, being the Karta and Manager of the joint Hindu family, never executed any partition deed nor partitioned the suit properties during his lifetime. Consequently, all the parties continue to have an undivided share therein. The plaintiff further contends that although the suit house stood in the name of defendant No.1, the

said entry was only nominal and did not confer exclusive ownership upon him. Taking undue advantage of the revenue and municipal records, defendant No.1 allegedly executed a false and bogus gift deed in favour of defendant Nos.2 and 3. On the basis of the said gift deed, defendant Nos.2 and 3 got their names mutated in the Property Card as well as in the records of the Municipal Council.

4] It is further the case of the plaintiff that their father, Digambar Pathak, had originally constructed a house consisting of about 30 khans on the suit property. Thereafter, defendant Nos.2 and 3 approached the Municipal Council seeking permission to demolish the existing structure and to undertake fresh construction over the suit house. The plaintiff submitted objections before the concerned Municipal Council authorities; however, despite such objections, permission was granted in favour of defendant Nos.2 and 3. According to the plaintiff, defendant Nos.1 to 3 are attempting to demolish the existing structure and raise new construction over the suit house. Such construction would materially alter the nature and character of the suit property and adversely affect the plaintiff's undivided rights therein. It is contended that if the defendants are permitted to proceed with the construction or to alienate the suit properties in favour of third parties, the plaintiff would suffer irreparable loss and injury, which cannot be adequately compensated in terms of money. On these averments, the plaintiff instituted suit for partition and separate possession.

5] Defendant Nos.2 and 3 resisted the suit of the plaintiff by filing written statement along with counter claim and thereby sought declaration of their ownership over the suit house. By filing an application below Exh.38, they sought temporary injunction restraining the original plaintiff from creating obstruction in their peaceful possession over the suit house. According to them, the suit house is the exclusive property of defendant No.1. It is contended that the suit house stood exclusively in the name of their father - defendant No.1, who, being its absolute owner, executed a registered Gift Deed bearing Registration No.1114 of 2018 dated 28.03.2018 in favour of defendant Nos.2 and 3. On the strength of the said Gift Deed, defendant Nos.2 and 3 claim to have become the absolute owners of the suit house. Consequently, they sought a declaration of their ownership and a decree of permanent injunction through the counterclaim.

6] The defendant nos.2 and 3 further contended that the father of the plaintiff and their father, defendant Nos.1 and 4 to 10, namely Digambar Nana Pathak, had effected partition of the ancestral properties by executing a written partition deed dated 28.06.1987. The said partition deed was scribed by Ratnakar Ramchandra Kulkarni and was executed in the presence of witnesses. It is their case that the sisters of the plaintiff and defendant No.1, namely defendant Nos.4 to 7, relinquished their rights in the ancestral properties, and the partition was accepted by all the concerned parties, including the plaintiff. Pursuant to the said partition, corresponding mutation entries were effected

in the revenue records. According to the defendant nos.2 and 3, under the said partition, the suit house fell to the exclusive share of defendant No.1. Thereafter, the suit house came to be recorded in the name of defendant No.1 in the records of the Municipal Council on 08.12.1992 as its exclusive owner. In view of such exclusive ownership, defendant No.1 validly executed the registered Gift Deed dated 28.03.2018 in their favour, pursuant to which the municipal and property records were also mutated in their names.

7] It is further contended by defendant no.2 and 3 that the existing structure standing on the suit house had become old and dilapidated. Therefore, they applied to the Municipal Council for permission to demolish the old structure and undertake fresh construction. The Municipal Council, after considering their application, granted the requisite building permission on 14.05.2023. Thereafter, they demolished the old structure and purchased construction material for raising a new building on the suit property. According to the defendant nos.2 and 3, despite having no right, title or interest in the suit house, the plaintiff has been creating obstruction in their peaceful possession and in the construction activity undertaken pursuant to the permission granted by the Municipal Council. It is, therefore, contended that the plaintiff has no locus standi to interfere with their lawful possession or with the construction being carried out by them. So, by filing an application below Exh.38, they sought temporary injunction restraining the original plaintiff, from causing obstruction in their peaceful possession over the suit house.

8] On merits, the learned Trial Judge, upon considering the pleadings, the evidence adduced by both parties, and the submissions advanced on their behalf, concluded that Defendant Nos. 2 and 3 had failed to establish a prima facie case, that the balance of convenience lay in their favour, or that they would suffer irreparable loss and injury if the relief sought was refused. The learned Trial Court observed that the alleged partition deed relied upon by the defendants was an unregistered document. It further noted that the said partition deed also recorded the relinquishment of the shares of Defendant Nos. 7 to 10, which, in its opinion, required due proof. The Trial Court further observed that, in respect of Block No. 80, the name of Defendant No. 1 continued to be reflected as the Manager of the Hindu Joint Family. It, therefore, held that, prima facie, it could not be concluded that all the joint family properties had been partitioned and allotted exclusively to the respective parties, particularly when the revenue entries indicated the continuance of the joint family status. The learned Trial Court further observed that, if construction of the suit house were permitted during the pendency of the suit, the nature and character of the suit property would undergo a material change, which could not be adequately compensated in terms of money. Nevertheless, it held that Defendant Nos. 2 and 3 had failed to establish a prima facie case, that the balance of convenience was in their favour, or that they would suffer irreparable loss and injury if the injunction was refused. Accordingly, the application for temporary injunction came to be rejected.

9] Being aggrieved by the said order, defendant Nos.2 and 3 have preferred the present appeal. It is contended on their behalf that the learned trial Court failed to appreciate that the suit house stands in their names and had fallen to the share of defendant No.1 in the family partition effected in the year 1992. According to the appellants, pursuant to the said partition, defendant No.1 became the exclusive owner of the suit house and thereafter the property came to be transferred in their names. It is, therefore, submitted that the learned trial Court ignored the material evidence on record and erroneously concluded that they failed to establish the requirements for grant of temporary injunction. Consequently, it is urged that the impugned order rejecting their application is unsustainable in law and liable to be set aside.

10] 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 defendant no.2 and 3/plaintiffs in counter claim have prima-facie case ?	No.
2)	Whether the balance of convenience lies in favour of the defendant no.2 and 3/plaintiffs in counter claim?	No.
3)	Whether the defendant no.2 and 3/plaintiffs in counter claim, will suffer irreparable loss if temporary injunction is not granted ?	No.
4)	Whether interference is required in the impugned order ?	No.
5)	What order?	As per final order.

REASONS

As to point nos. 1 to 3 :

11] Before adverting to the rival contentions, it is necessary to bear in mind the settled principles governing the grant of temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The original defendant no.2 and 3 are seeking an order of temporary injunction is required to establish the coexistence of three essential ingredients, namely, (i) a prima facie case, (ii) balance of convenience, and (iii) likelihood of irreparable loss or injury. It is equally well settled that unless all these three requirements are satisfied, the equitable relief of temporary injunction cannot be granted. Keeping these settled principles in view, the rival contentions deserve consideration.

12] The learned advocate appearing for the appellants-defendant Nos.2 and 3 vehemently submitted that the learned trial Court committed a serious error in granting temporary injunction despite the fact that the suit house exclusively belongs to defendant Nos.2 and 3. It was argued that the joint family properties had already been partitioned under a partition deed executed on 28.06.1987, pursuant to which the suit house had fallen to the share of defendant No.1. Thereafter, defendant No.1 validly executed a registered gift deed dated 28.03.2018 in favour of defendant Nos.2 and 3. It was further submitted that the mutation entries, property card, sanctioned building plan and building permission issued by the Municipal Corporation clearly establish the exclusive ownership and possession of defendant Nos.2 and 3. According to the learned counsel, the learned trial

Court failed to appreciate these material documents and erroneously restrained the defendants from raising construction on their own property, thereby causing them substantial financial loss.

13] On the other hand, the learned counsel appearing for the respondent-plaintiff supported the impugned order. It was submitted that there is no dispute regarding the relationship between the parties. The plaintiff is the real brother of defendant No.1 and the paternal uncle of defendant Nos.2 and 3. It was further submitted that the suit is one for partition and separate possession of admittedly ancestral properties. According to the plaintiff, no partition by metes and bounds has ever taken place and all the suit properties continue to remain joint family properties. The plaintiff disputed the very foundation of the defendants' claim of exclusive ownership and contended that the mutation entries and the subsequent gift deed were obtained illegally and by playing fraud. It was, therefore, submitted that unless the issue regarding the validity and effect of the alleged partition is finally adjudicated after recording evidence, no irreversible change should be permitted in the nature of the suit property.

14] Having considered the rival submissions and carefully examined the material placed on record, this Court finds that the relationship between the parties and the ancestral character of the suit properties are not in dispute. The principal controversy revolves around the question whether the joint family properties

had already been partitioned and whether the suit house had exclusively fallen to the share of defendant No.1. The determination of this issue goes to the root of the matter and substantially affects the rights of both parties.

15] The defendant nos.2 and 3 have primarily relied upon the alleged partition deed dated 28.06.1987. A careful perusal of the said document prima facie reveals that the original owner and common ancestor, namely Digambar Nana Pathak, is not a party thereto. The document also contains recitals regarding relinquishment of the shares of the daughters of Digambar Nana Pathak in the immovable properties. At this stage, it is significant to note that the said document is admittedly unregistered, although it purports to affect valuable rights in immovable properties by recording partition and relinquishment of the shares of female coparceners. The learned counsel for the plaintiff has contended that the document was never intended to operate as a deed of partition but was merely a family arrangement executed for convenience in the management and enjoyment of the family properties. According to him, there was never any intention to bring about complete partition by metes and bounds.

16] On the other hand, the learned advocate for the appellants submitted that the document itself evidences complete partition and has been acted upon for several years. Whether the document constitutes a partition deed creating or declaring rights in immovable property or is merely a memorandum recording a past family arrangement; whether it required compulsory

registration; and whether it effectively brought about partition of all the joint family properties are questions which necessarily require detailed appreciation of oral and documentary evidence. These disputed questions cannot be conclusively determined at the interlocutory stage while deciding an application for temporary injunction. At this stage, the Court is only required to ascertain whether a substantial triable issue exists. In the opinion of this Court, the nature, legality and effect of the alleged partition deed constitute substantial issues requiring adjudication after a full-fledged trial.

17] The defendant nos.2 and 3 have further relied upon mutation entries, the property card, the gift deed dated 28.03.2018 executed by defendant No.1 in favour of defendant Nos.2 and 3, and the building permission granted by the Municipal Corporation. Undoubtedly, these documents indicate that the revenue records presently stand in the names of the defendants and that municipal authorities have granted permission for construction. However, it is a settled principle of law that mutation entries are maintained primarily for fiscal purposes and neither create nor extinguish title. Such entries merely recognise possession or facilitate collection of revenue and cannot by themselves confer ownership. Consequently, the mutation entries relied upon by the defendants cannot conclusively establish their exclusive title over the suit house, particularly when the very basis of such entries is seriously disputed in the pending partition suit. Similarly, the registered gift deed executed by defendant No.1 in favour of defendant Nos.2

and 3 cannot confer a better title than that possessed by the donor himself. If ultimately it is held that defendant No.1 was not the exclusive owner of the suit house and that the property continued to be joint family property, the validity and legal effect of the gift deed would necessarily depend upon the extent of defendant No.1's own title. Therefore, at this interlocutory stage, the gift deed cannot be treated as conclusive proof of exclusive ownership in favour of defendant Nos.2 and 3.

18] From the pleadings and documents produced by the defendants themselves, it is also evident that the old structure standing on the suit property has already been demolished and substantial new construction has either commenced or is proposed to be undertaken during the pendency of the suit. The learned advocate for the appellants submitted that considerable expenditure has already been incurred towards construction material and statutory permissions and that any restraint would result in financial hardship.

19] Though the expenditure incurred by the defendants cannot be ignored, such consideration cannot outweigh the necessity of preserving the subject matter of litigation until the rights of the parties are finally determined. If substantial construction is permitted to continue during the pendency of the suit and it is ultimately held that the property is liable to be partitioned, the nature and identity of the suit property would stand materially altered. Such alteration would inevitably complicate the final adjudication, give rise to equities based on

subsequent developments, and may result in multiplicity of proceedings. Preservation of the property in its existing condition is, therefore, essential for effective adjudication of the controversy.

20] In the facts of the present case, this Court hold that the defendant nos.2 and 3 failed to prove that they have prima facie case, balance of convenience lies in their favour and they will suffer irreparable loss, if injunction is granted. The learned trial Court has considered the pleadings, documentary evidence and the settled principles governing grant of temporary injunction in their proper perspective. The discretion exercised by the trial Court cannot be said to be arbitrary, capricious or perverse. It is well settled that an appellate Court does not ordinarily interfere with an order granting or refusing temporary injunction unless the discretion has been exercised contrary to settled principles of law or suffers from perversity. No such infirmity is demonstrated in the present case. Accordingly, this Court finds no reason to take a view different from that adopted by the learned trial Court. The findings recorded by the learned trial Court regarding the prima facie case, balance of convenience and irreparable loss are based on proper appreciation of the material available on record and do not warrant appellate interference. Hence, Point Nos.1 to 3 are answered in the negative.

As to point no. 4 :

21] There is no illegality, infirmity, or perversity in the order passed by the learned trial Court warranting interference by

this Court. Consequently, no interference with the impugned order is called for. Accordingly, I answer Point No. 4 in the negative.

As to Point No. 5:

22] In view of the findings recorded on Point Nos. 1 to 4, the appeal is devoid of merit and deserves to be dismissed. Accordingly, I 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 : 17.07.2026

(Rajesh K. Khomane)
District Judge-4
Osmanabad

CERTIFICATE

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

Name of the Stenographer	:	Golhe P.V., Stenographer Gr. I
Name of the Court	:	District Judge- 4 and Addl. Sessions Judge, Osmanabad
Date of Judgment	:	17.07.2026
Judgment signed by the presiding officer	:	17.07.2026
Judgment uploaded on	:	17.07.2026