

MHOS130007212024

**R.C.S./242/2024**

(Daivshala Anil Dombale Vs. Ramesh Ram Markad)

ORDER BELOW EXH.05

This is an application filed under order XXXIX rule 1 of Code of Civil Procedure restraining the defendant from causing obstruction to the peaceful possession and the enjoyment of the suit property.

02. The plaintiffs case in short is that, the plaintiff is owner and possessor of the land block No.139 admeasuring area 3H-75R land situated at village Songiri, Tq. Bhoom, Dist. Dharashiv (*Hereinafter referred as "suit properties"*). Initially the suit land is owned by plaintiff's father Laxuman Ram Markad. He purchased the suit land from one Bhaskar Bhaurao Markad. The plaintiff's father executed the gift-deed of the suit property in favor of the plaintiff vide registered deed No.438/2024 dated 21.03.2024. The plaintiff applied for mutation of her name to the record of rights of the suit property and is under process. It is contended that, defendant Nos. 1 to 6 having no concern with the suit property trying to obstruct the plaintiff from harvesting the Jowar crops sown by plaintiffs father. Hence, the plaintiff constrained to file suit for perpetual injunction against defendants. Meantime the plaintiff sought for interim relief in her favor.

03. Defendants Nos. 1 to 6 filed the written statement, say at Exh.14 and opposed the suit contending that, suit land is part of ancestral property of defendant Nos. 1 to 6. Defendant Nos. 1, 2

and another brother Laxuman- plaintiffs father are real brothers. Defendants filed a suit for partition bearing R.C.S No.134/2024. The father of defendant No.1 had purchased the suit property from Bhaskar Markad on 04.12.1976 vide registered sale-deed No.1528/1976. The said sale deed was executed in the name of plaintiff's father as he was elder son in the family. The plaintiff's father was not absolute owner of the suit property. The partition amongst plaintiffs father and father of defendant Nos. 1 and 2 is not effected till today. Defendant Nos.1 and 2 having 1/3rd share each in the suit land and they are having possession over their 1/3rd share in the suit land. Despite having knowledge of the same, the plaintiffs father executed the false gift-deed in favor of the plaintiff in order to, deprive the rights of defendant Nos.1 and 2. Hence, defendants prayed for rejection of the application.

04. Considering the rival pleadings of the parties following points arise for my determination, and my findings are recorded with the reasons stated below.

Sr.	Points	Finding
1.	Whether the plaintiff has prima facie case ?	Affirmative.
2.	Whether the plaintiff would suffer an irreparable loss, if injunction is refused?	Affirmative.
3.	Whether the balance of convenience lies in favor of the plaintiff?	Affirmative.
4.	What Order?	As per the final order.

Reasons

Point No.1 to 3:-

05. The learned advocate for plaintiff relied on the copy of gift-deed bearing No.438/2024, certified copy of mutation entry No.320 and copy of 7/12 extract of suit bearing No.139 at Songiri, Tq. Bhoom, Dist. Osmanabad. According to the learned advocate for the plaintiff, the plaintiffs father purchased the suit property from one Bhaskar Markad vide registered sale deed No.1528/1976. The name of plaintiff's father was mutated on the revenue record on the basis of sale deed. The plaintiff's father was the absolute owner of the suit property and executed a gift deed in favor of the present plaintiff. As such plaintiff becomes the absolute owner of the suit property. She is residing at her matrimonial home at village Vanjarwadi, Tq. Bhoom, Dist. Dharashiv. The suit land is at distance of 10 K.M away from her village and by taking disadvantage of this fact, defendants are trying to disturb her lawful possession over the suit land. If defendants are not restrained by way of injunction order an irreparable loss will cause to the plaintiff. Hence, he prayed for interim temporary injunction order in favor of plaintiff.

06. On the other hand, learned advocate for defendant argued that, plaintiffs father was not absolute owner of the suit property. It is further stated that, though the sale deed of the suit property was executed in the name of plaintiffs father, the suit property was purchased out of joint family funds. Hence, the property cannot be said to be the absolute property of plaintiffs father. He further submitted that, the ancestral properties of plaintiffs father and defendant Nos.1 and 2 are not yet partitioned.

Hence, defendants Nos. 1 and 2 filed the suit for partition claiming their 1/3rd share in the ancestral property. Defendants Nos.1 and 2 filed the suit property bearing No.134/2024 for partition and separate possession of their 1/3rd share in the schedule attached with the plaintiff. The subject matter of present suit is also a subject of partition in RCS. No.134/2024. The learned advocate for defendant further argued that, the suit property was purchased in the year 1976 at the time of plaintiffs father was minor and he had no source of income. Therefore prima facie the suit is part of joint family property and hence plaintiffs father cannot alienate the same. In this background, defendants prayed for rejection of the application.

07. It is not in dispute that, the suit property was originally owned by one Bhaskar Markad. It is also not in dispute that, sale deed of the property was executed in the name of plaintiffs father. The mutation entry extract bearing No.320 shows that, the name of the plaintiffs father was mutated to the revenue record of the suit property. Vide the gift-deed the plaintiff has given the suit property in favor of his daughter. Now, the question arises that whether the plaintiffs father has a right to give the property by way of gift deed and whether the property is purchased from the joint funds of the family. Whether the property is joint family property or is separate property of plaintiffs father is of matter of trial. It can be decided after recording of evidence of both the partition. Merely because defendants filed the suit partition against plaintiffs father is not sufficient to infer that the suit property in the present suit is the joint family property.

08. The object of temporary injunction is to preserve the property till the end of the trial. Considering the nature of the suit the property requires to be preserved till the end of trial. In Gujarat Electricity Board, Gandhinagar Vs. Maheshkumar and Co., Ahmedabad (1995(5) SCC 545,) wherein it was held that "Prima facie case" means that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of Plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. Considering the pleading of the parties , I am of the opinion that question arose between the parties needs to be tried. I find that, the prima facie case lies in favor of the plaintiff. The balance convenience and hardship also lies in favor of the plaintiff. If the relief of injunction is not granted in favor of the plaintiff she will not cultivate the suit land and will be deprived of her right of the enjoyment of land. Therefore, Point No.1 to 3 are answered in affirmative.

In the result the following order is passed.

ORDER

1. Application is allowed.
2. Defendants are hereby restrained from causing obstruction to the peaceful possession and the enjoyment of the plaintiff over the suit property till the final disposal of the suit.
3. Cost in cause.

Date : 10.02.2025

(Smt. S. J. Patil)
Jt. Civil Judge Jr. Dn.,
Bhoom.

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	:	Shri. S. S. Hingmire. Stenographer Grade-III
Name of Court	:	Jt. Civil Court Jr. Dn., Bhoom, Tal. Bhoom Dist. Osmanabad.
Order date	:	10.02.2025
Order signed by the Presiding Officer on	:	10.02.2025
Order uploaded on	:	13.02.2025