

ORDER BELOW Exh.22  
CNR No. MHPU10-000018-2021

1 R.C.S. No. 04/2021  
Sou. Pratibha Chandrakant Barathe  
-Vs-  
Chandrakant Ganpat Barathe and others



ORDER BELOW Exh.22  
(Passed on dated:- 08/07/2022)

1. The present application is filed for seeking interim relief of injunction vide Order 39 Rule 1 of Code of Civil Procedure. Herein it is prayed that, the defendant No.2 and 3 be temporarily restrained from giving pension and all other post retirement and benefits funds to defendant No.4 till the final disposal of the suit.

2. The brief facts of the plaintiff case are as under -

The suit is filed for declaration and temporary injunction. Plaintiff is the legally wedded wife of the defendant No.1. Due to mental and physical harassment at the hands of the defendant No.1, the plaintiff used to live with her two daughters separately. The defendant No.1 never made arrangements for maintenance of the plaintiff and her two daughters. The plaintiff is drawing specific amount of maintenance from the defendant No.1 as per the orders passed by the concerned court in this regard.

3. The defendant No.1 is employee of defendant No.4. The amount of maintenance of plaintiff was deducted from the salary of defendant No.4. The defendant No.2 is sister of the defendant No.1 and the defendant No.3 is son of defendant No.2. It is submitted that the defendant No.1 is mentally ill person. He is suffering from Epilepsy.

The defendant No.2 and 3 misguided the defendant No.1 and compelled him to insert their names in his service book. The plaintiff has no idea as to why her name is deleted from service book of the defendant No.1. This nomination was changed on the instigation of the defendant No.2 and 3. Actually being legally wedded wife of the defendant No.1, the plaintiff has right to this nomination. Therefore, the plaintiff prayed for issuing temporary injunction in her favour and she also prayed that the defendant No.2 and 3 be temporarily restrained from giving pension and all other post retirement funds to defendant No.4 till the final disposal of the suit.

4. There are total four defendants. The defendant No.1 is husband of the plaintiff. The defendant No.2 and 3 are close relatives of the defendant No.1 i.e. the defendant No.2 is sister and the defendant No.3 is son of defendant No.2. Whereas the defendant No.4 is nothing but the Pimpri Chinchwad Municipal Corporation. The defendant No.1 to 3 filed their written statement and say at Exh.31. It is contended that, the plaintiff was not living with the defendant No.1. She was not taking care of him. Hence, the defendant No.2 was looking after him. The defendant No.1 started living with the defendant No.2. It is also contended that the defendant No.2 and 3 are unnecessarily dragged in this litigation. They have no concern with this matter. Moreover, the defendant No.1 has sole right to appoint his nominees. The plaintiff cannot dispute the appointed nominees. Ultimately, they have prayed for rejection of this application.

5. The defendant No.4 filed their written statement and say at Exh.17. It is admitted on their behalf that, the amount of maintenance to the extent of Rs.3000/- is transferred to the plaintiff from salary of the defendant No.1 every month. It is further contended that on page No.87 of service book of the defendant No.1, the names of the plaintiff and daughter Sonali were entered as nominees of the defendant No.1. But, it is not signed by the competent officer. On the contrary, on page No.89 and 91 of the service book of the defendant No.1, names of the defendant No.2 and 3 alongwith one Poonam Balu Salve are entered as nominees of the defendant No.1. This entry is duly signed by the competent officer. However, the date of entry is not mentioned on it. As per their contentions, the defendant No.1 has right to determine his nominees. At the end, they have prayed for rejection of this application.

6. Heard both the sides at length. Considering the pleadings, documents filed on record and rival submission of the parties, following points arise for determination. The points are as mentioned below with reasons to follow -

<u>Sr. No.</u>	<u>Points for Determination</u>	<u>Findings</u>
1.	Whether plaintiff has proved <i>prima facie</i> case?	No.
2.	Whether balance of convenience lies in favour of plaintiff ?	No.

-Vs-

Chandrakant Ganpat Barathe and others

3. Whether irreparable loss will be caused to the plaintiff, if temporary injunction is refused ? No.
4. What order ? Application is rejected.

### REASONS

#### AS TO POINT NO.1 to 3:-

7. Heard detailed arguments of both the sides. It is argued by the plaintiff that the defendant No.2 and 3 be temporarily restrained from giving pension and all other funds to defendant No.4 post retirement till the final disposal of the suit. It is also argued that the defendant No.1 has deliberately entered names of the defendant No.2 and 3 as his nominees to avoid the legal right of the plaintiff. On the contrary, the defendant No.2 and 3 argued that they have never asked the defendant No.1 to declare them as his nominees. The defendant No.2 is looking after the defendant No.1 because the plaintiff does not live with him. Therefore, they have prayed for rejection of this application. The defendant No.4 argued that they are unnecessarily dragged in this litigation. Hence, they prayed for rejection of the application.

8. It is alleged that the defendant No.1 is suffering from Epilepsy. To support his allegation, photocopies of some documents are filed on record. The defendant No.2 is sister of defendant No.1 and the

-Vs-

**Chandrakant Ganpat Barathe and others**

defendant No.3 is son of the defendant No.2. The plaintiff is legally wedded wife of defendant No.1. Two daughters were born out of this wedlock. It is the gist of the dispute between the plaintiff and defendant Nos.1 to 3 that the defendant No.2 and 3 took disadvantage of the mental illness of the defendant No.1 and thereby got their names entered in his service book as his nominees. Because of this, the plaintiff is going to suffer and she will not be entitled to the post retirement benefits of the defendant No.1.

9. It is the contention of the defendant No.2 and 3 that they have not adopted any wrongful means to become nominees of the defendant No.1. On perusal of the documents on record, it transpired that there is no *prima-facie* documentary proof available on record as to the alleged mental illness, epilepsy of the defendant No.1. There is no *prima-facie* proof on record which can suggest that the defendant No.2 and 3 adopted certain wrongful practices or means to get their names entered in the service record of the defendant No.1 as his nominees. To state in brief, this allegation is devoid of any primary proof. In such situation, it cannot be concluded that the plaintiff has proved the *prima-facie* case. As stated by the defendant No.4 that the defendant No.1 has right to nominate any person of his choice, it is true that the defendant No.1 can choose his nominees. *Prima-facie*, it cannot be held that the defendant No.1 has not nominated the defendant No.2 and 3 out of his free consent. At this stage, there is no reason to deprive the

ORDER BELOW Exh.22  
CNR No. MHPU10-000018-2021

6 R.C.S. No. 04/2021  
Sou. Pratibha Chandrakant Barathe  
-Vs-

**Chandrakant Ganpat Barathe and others**

defendant No.1 from any post retirement benefit like pension, gratuity, provident fund, leave benefit etc. Off course, these are the primary observations and plaintiff is at liberty to lead substantial evidence in this regard during trial. But, at this point of time, it cannot be held that if the plaintiff is not granted the relief of temporary injunction as prayed, he will suffer irreparable loss because balance of convenience lies in his favour. Accordingly, I answer point Nos.1 to 3 in negative. and in answer point no. 4, I proceed to pass following order-

**ORDER**

Application Exh.22 is rejected.

Dated: 08/07/2022.

(Smt. S. P. Kulkarni)  
Civil Judge Junior Division  
P.C.M.C. Court, Akurdi, Pune.

**ORDER BELOW Exh.22**  
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**7 R.C.S. No. 04/2021**  
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**CERTIFICATE**

“I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of Stenographer :- B.C. Karnikar(Grade III)

Court Name :- Smt. S. P. Kulkarni  
(J.M.F.C.) Civil and Criminal Court (P.C.M.C.),  
Akurdi, Pune.

Date :- 08/07/2022

Order signed by  
presiding officer on :- 08/07/2022

Order uploaded on :- 18/07/2022