

MHPU120003262022



R.C.S. NO. 68/2022
Vijay Shankar Padval
Vs.
Ravindra Ramchandra
Padval

ORDER BELOW EXH. 107
(Dated : 01.04.2026)

This is an application filed by plaintiff under order 39 Rule 1 and 2 of Civil Procedure Code against defendant No. 1 to 5 seeking temporary injunction. The say of defendant No. 1 to 4 is received at Exh. 112 and say of defendant No. 5 is received at Exh. 120.

Plaintiffs application in short :-

2. Present suit is filed by plaintiff seeking partition possession and injunction. According to plaintiff, defendant number 1 to 10 and plaintiffs are the co-owners for suit properties, as the said of suit properties are ancestral properties of which partition has not taken place.

3. According to plaintiff, the ancestor of plaintiff Mr. Shankar Nagoji Padwal died on 27/11/1990, yet by impersonating him on 28/04/2006 of suit property survey number 15/2/B, (old survey number 15/2/2)registered sale deed was executed by the brothers of Mr Shankar namely Dinkar and Ramchandra in favour of defendant No. 11 Mr Ashok Gupte. Said sale deed it bears, signature of present defendant No. 5. Therefore, the defendants are aware of the fraud committed by them. Thereby the said sale deed being bogus and not binding on these plaintiffs being the heirs of Mr. Shankar Padwal. When these plaintiffs came to the

knowledge of the fraud impersonation of deceased, Shankar and also when they requested for partition, the defendant No. 1 to 5 have denied the same to this plaintiff on one or the other accounts. Hence they were constrained to file the present suit.

4. During pendency of the suit, defendant No. 1 to 5 on 4/5/2022 gave undertaking that they will not transfer the suit property to any third-party yet defendant No. 2, 3 and 5 without consent of these plaintiffs have transferred possession of some portion of land from suit property Gat No. 47/1/B to a third-party person. In the month of March 2026, defendant No. 5, made illegal soil excavation in suit property Sr. No 8, Gat No. 38/3 and have received monetary gains. Thereby decreasing the suit property value. Defendants are also on the verge of erecting construction over the suit properties. As the partition yet to take place, if any construction is erected, then it will be difficult for plaintiff to receive their portion of land in future.

5. The defendants have not challenged the relationship with the plaintiff. They have also admitted the nature of suit properties. Therefore, in such situation, if the defendant No. 1 to 5 are not temporarily injuncted from disturbing the nature of suit property, irreparable loss will cause to this plaintiff. Plaintiff has prima facie case. Hence prayed for allowing the present application and injunct Defendant No. 1 to 5 from creating any third-party interest over the suit property also without consent of plaintiffs not to deal with soil, standing trees, bamboo in any whatsoever manner.

Defendant No. 1 to 4, say in short :-

6. According to defendant No. 1 to 4, the present application is baseless without any substantial evidence. Plaintiffs have sought relief against defendant No. 11 regarding the controversial sale deed being not binding on them yet during pendency of suit, they have made out of Court settlement with defendant No. 11. Against this defendant No. 11, present defendant No. 1 to 4 have also filed counter claim and have sought injunction. Post argument of said temporary injunction application, this present application is moved by the plaintiffs to aid defendant No. 11.

7. Defendant No. 1 to 3 are residing at different places due jobs and services, other than the one where suit properties are situated. Hence, the allegation made by plaintiff that defendants have handed over possession to a third-party is false vexatious. Also, the allegation has to soil excavation is against defendant No. 5 only. These defendants have no concern with that.

8. Defendants are co-owners of the suit property along with these plaintiffs in such situation. Injunction cannot be granted against them. As for the allegation of erection of construction over the suit property, the same is also baseless and without any substance. These defendants have already given undertaking that they will not create any third-party interest over the suit property yet the same prayer is sought again by this plaintiff. The allegations made in the application are general and vague. Therefore, the present application needs to be rejected.

Defendant number 5 say in short :-

9. According to defendant No. 5, the present application is nothing but abuse of process of law. This plaintiff had earlier made an application for temporary injunction against defendant at Exh. 5 to which the defendant No. 1, 2 and 5 gave undertaking that they will not create any third-party interest. Hence the said application was made along with the suit.

10. Later, on this plaintiff again made an application at Exh. 37 seeking injunction against the defendants stating that they have started digging holes for construction over the suit property and thereby changing the nature of suit, property, said application after hearing, both sides came to be rejected from the then presiding officer.

11. Now through this application, plaintiff is reiterating her entire case as well as contentions of Exh. 5 and Exh. 37 application. The present suit being of partition and injunction along with prayer of possession. Plaintiff should have added the sisters of Mr Shankar, Mr Dinkar and Mr. Ramchandra but they have conveniently left out. Hence the present suit is hit by non-joinder of necessary parties. currently summer is traditional tillage season defendant No. 5 was doing levelling work in the suit property. Suit properties are agricultural lands. They need to be maintained only then crops can be taken and income can be derived. The allegation of soil excavation is baseless, defendant No. 5 has not done any such act. The application deserves no consideration, same be rejected.

12. Heard advocate Smt. More for plaintiff and advocate Mr. Roman for defendant No. 1 to 4 and advocate Mr. Kondhalkar for defendant No. 5. Perused the record and documents pressed into Service for present application. following points arise for my determination along with my findings and reasons:-

S.No.	POINTS	FINDINGS
1	Does the plaintiff prove that they have Prima facie case ?	In The Negative.
2	Does the plaintiff prove that balance of convenience is in their favour ?	In The Negative.
3	Does the plaintiff prove that irreparable loss will cause to them as compared to defendant if temporary injunction is denied?	In The Negative.
4	What order ?	Application is rejected.

REASONING

Point No. 1 to 3 :-

13. All three points are interlinked and evidence for them is same. Hence they are taken for consideration at once. For granting temporary injunction in favour of plaintiff, plaintiff has to prove that she has prima facie case that means there is a right existing in her favour to which these defendants are causing obstruction and thereby balance of convenience is in her favour and if her right is not protected, then irreparable loss will cause to her.

14. In present case at hand, the relationship of plaintiffs and defendants are admitted. Also, the nature of suit properties being ancestral is admitted. The names of plaintiffs as well as

defendants are reflected on 7/12 extract of suit properties, thereby making plaintiffs and defendant co-owners. In such situation to grant an injunction, it should not result in loss any once right, but for enjoyment of all. Further it is equitable and discretionary relief.

15. Ongoing through the record, indeed, at Exh. 5 temporary injunction application made by the plaintiff, the defendant No. 1 to 5 have given undertaking that they will not create any third-party interest over the suit property. Hence the application was made along with suit.

16. At Exh. 37, this plaintiff filed another temporary injunction application against defendant No. 1 to 5 stating that they are illegally raising construction over the suit property and also that they have transferred some portion of suit property to third-party. Even now Now this plaintiff through present application is stating that defendant No. 2, 3 and 4 have illegally transferred a portion of suit land to a third-party as to this there is no substantial evidence given. Further, the said issue has already been dealt in Exh. 37 application order. Till date, the circumstances have not changed. Same is the issue with the present case contention that defendant No. 1 to 5 are on the verge of raising construction over the suit property. This issue has also been dealt in Exh. 37 application. Since then till date, there is no change of circumstances or any other evidence on record to support the case of illegal construction as alleged by plaintiff.

17. Now coming to the bone of contention of the present application, i.e. in the month of March 2026, defendant No. 5's activity of illegal soil excavation from suit property i.e., Gat No. 38/3. To support this contention, plaintiffs placed on record, photographs of before and after with regard to position over suit property. On going through those photographs, there is no GPS tagging hence it is difficult to state that it is of Gat No. 38/3 only.

18. Further, no evidence on record as to in which part of Gat No. 38/3 and to what extent defendant No. 5 did soil excavation. Also plaintiff claim that defendant No. 5 received monetary gain by selling out the soil, in such situation to whom the said soil is sold, the name of that person or the vehicle used for such act, its driver name or affidavit is also not on record.

19. From the application itself, it is clear that Plaintiff is yet to make a formal complaint of illegal excavation to Tahsildar, Bhore for the same. In absence of any Panchanama by government officer with regard to illegal excavation. At this point, it is difficult to determine and hold defendant No. 5 accountable for the same.

20. In addition to this, as the defendants are co-owners of the suit property injunction, resulting in ouster that will be against their rights and interest cannot be passed as it is settled law that injunction cannot be passed against the true owners. The same principle applies to plaintiff as well.

21. Defendant No. 1 to 5 have already given undertaking that they will not create any third-party interest with regard to

property. Hence, the present application prayer with regard to same holds no water. As for the other contention of construction and transfer of possession of one of the suit properties to a third party. Those issues are already dealt under Exh. 37 and no new change of circumstances brought on record or a supporting fresh evidence for the same.

22. The plaintiffs advocate while making oral argument submitted that to treat the present application prayer as status-quo for the present suit properties. At this point based on the contention of plaintiff, the exact position over the suit property cannot be gouged. Hence it is difficult to make any assumption as to the same and grant any status quo. Therefore, with above reasoning, I see no Prima facie case to the plaintiff, balance of (in)convenience is not in favour of plaintiffs and thereby no irreparable loss to the plaintiffs alone, hence I answer Point No. 1 to 3 **in Negative.**

Point No. 4 :-

23. With above reasoning, as to point No. 1 to 3, No prima facie case favouring the plaintiff. Ouster of co-owners cannot be permitted. Therefore, I pass following order.

ORDER

- i) Application at Exh. 107 stands rejected
- ii) Cost in cause.

Date : 01.04.2026

(N.K.Nagargoje)
Civil Judge Jr. Division
Bhor, Dist. Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order is same word for word as per original Order.

Name of Steno	:- P. V. Satpute (Stenographer Grade-III)
Court Name	:- N.K.Nagargoje C.J.J.D Bhor
Date of Order	:- 01/04/2026.
Order signed by the Presiding Officer	02/04/2026. :-
Order Uploaded on	:- 02/04/2026.