



Dnyaneshwar Baburao Bangar

Vs.

Dattatray Dhondiba alias

Dhondibhau Bangar

ORDER BELOW EXH. 5

The plaintiffs have filed the application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 to restrain the defendant No. 1 causing obstruction by creating or allowing any road through the suit property till final decision of the suit.

Case of plaintiffs in short is as follows:

2. The present suit is instituted for present permanent injunction and partition. The subject-matter of the suit is block No. 493 admeasuring 00 H 89 R out of which land admeasuring 00 H 47 R situated at Khadaki, Tal. Ambegaon and Dist. Pune boundaries and measurement specifically described in the Para No. 1 of the present application. ("suit property")

3. The above mentioned properties are the ancestral properties of plaintiffs and defendant Nos. 1 to 4. The said properties are not partitioned yet. No division by metes and bounds has taken place, and the 7/12 extract records their names jointly as co-parceners by inheritance. Defendant Nos. 5 and 6 appear in the record only by virtue of purchase, but their purchased lands have not been separately measured or demarcated. The Plaintiffs and Defendant Nos. 1 to 4 are in joint possession of 00 H 47 R in the suit property.

4. Late Manabai Baburao Bangar sold 00 H 21 R from the suit property to Defendant No. 5 through a registered sale deed bearing No. 1836/2002 dated 19/09/2002. Pursuant to the said sale deed, an entry was

made in the revenue records in the name of Defendant No.5 for 00 H 42 R. Subsequently, Defendant No.5 sold 00 H 21 R out of the said 00 H 42 R to Defendant No.6 through a registered sale deed bearing No. 2316/2016 dated 18/06/2016. Accordingly, an entry for 00 H 21 R was made in the name of Defendant No.6. Defendant Nos.5 and 6 are the children of Plaintiff No.2. Although Defendant Nos.5 and 6 have purchased lands, the said lands have not been measured or separated by metes and bounds and have not been brought into their exclusive possession. The properties purchased under the said sale deeds are not the subject matter of the present suit.

5. Plaintiffs and Defendant Nos.1 to 4 are in joint possession and enjoyment of suit property. However, Defendant No.1, illegally and in collusion with the shareholders of block No. 494, and without any lawful right, title, or authority and without any proper measurement, is attempting to construct a permanent road through the middle of the suit property with the intention of causing loss and injury to the Plaintiffs and other Defendants. Defendant No.1 has already initiated preparations for such construction by taking support from the shareholders of block No.494. When the Plaintiffs questioned Defendant No.1 regarding this, Defendant No.1 abused and threatened them. Thereafter, as the conduct of Defendant No.1 became prejudicial to the interests of the Plaintiffs and the joint family, the Plaintiffs demanded separation of their share from Defendant No. 1 on 01/10/2025. Defendant No. 1 expressly refused and threatened that the portion required for the road would be imposed upon the Plaintiffs' share.

6. Defendant No.1, being a local village leader, intends to construct a road through the middle of the suit property unlawfully, without any partition and by force. Such action would infringe the legal rights of the Plaintiffs and cause irreparable injury. The Plaintiffs had approached the village authorities as well as Manchar Police Station for redressal, but no action was taken. Hence,

the Plaintiffs were compelled to file the present suit as well as present application.

7. On the other hand, the defendant Nos.1 to 4 filed the reply and submitted that the application is false and frivolous. There is no cause of action to file present application. The plaintiffs have filed present suit for partition and permanent injunction. In this application plaintiffs are claiming injunction against defendant Nos.1 to 4 who are co-owners, seeking prohibitory relief against them. However, in law, no injunction can be granted against co-owners or co-sharers. Therefore, the Plaintiff's injunction application is liable to be rejected.

8. In fact, in respect of suit property, the names of the Plaintiffs and Defendant Nos.1 to 4 are recorded jointly in the 7/12 extract. However, after the death of Manabai around the year 2005, a family meeting was held between the Plaintiff and Defendant No.1, and in that family meeting, the suit property was given to the Plaintiff only for the purpose of use and enjoyment. Since the names of the Defendants appear in the 7/12 extract, the suit property is the joint property of the Plaintiffs and Defendant Nos.1 to 4. Therefore, the Plaintiff cannot claim ownership over any specific portion of the land. In fact, the Gram Panchayat, Khadki, has already proposed a road through block No.493 of the suit property. Plaintiff Nos.1 and 2 are in possession of the area from where the road is proposed, and fearing that their area will be reduced, the Plaintiffs have filed the present suit and injunction application against these Defendants.

9. Defendant No.1 is a respected citizen at the village level, and if the road passes through the land, it will benefit everyone for ingress and egress. However, the Plaintiffs are unwilling for the same. As these Defendants are not in possession of the suit property, no loss will be caused to Defendant Nos.1 to 4 if the road is constructed. The Plaintiffs have filed the present suit and

injunction application only to harass these Defendants. The Plaintiff's intention is neither fair nor bona fide. The contents of paragraphs 5 and 6 of the Plaint are false. Defendant No. 1 has never made any such statements. The Plaintiffs must prove these allegations. Defendant No. 1 does not hold any position in the Gram Panchayat, Khadki, but the Plaintiffs cannot tolerate the good social reputation of Defendant No.1.

10. Since the possession and enjoyment of the suit property had already been separated earlier, the Plaintiff's injunction application is liable to be dismissed. If any portion of the land goes for the road, the Plaintiffs must bear it; Defendant No. 1 has nothing to do with it. Prima facie, the case is in favour of the Defendants, and the balance of convenience tilts towards them. If the injunction is granted, these Defendants will suffer irreparable loss, whereas the Plaintiffs will not suffer any loss. Hence they prayed to reject the application.

11. Heard the learned advocate for the plaintiffs Shri. A. P. Pokharkar. He submitted that it is not disputed that the properties are ancestral properties. The defendant Nos.5 and 6 are the owners of respective property by the sale deed and plaintiffs have no claim against them. By the family arrangement, suit property is given to plaintiffs only. The suit property is not partitioned yet. Now the defendant No.1 is creating a third party interest in it by creating and allowing a road through the suit property. Also he contended that the plaintiffs are having a prima-facie case. The balance of convenience is in their favour. They will suffer irreparable loss, if the injunction is not granted. Therefore he prayed for grant of a temporary injunction.

12. Heard the learned advocate for the defendant Shrimati. S. D. Adasare. She submitted that the plaintiffs have instituted the present suit for partition and separate possession. There is no any cause of action to file the

present application. The suit property is partitioned in the family meeting. Remaining she submitted as per her application and finally she stated that if the application is allowed then the defendant Nos.1 to 4 will suffer irreparable loss. Hence she prayed to reject the application.

13. I consider the following points for determination and record findings thereon with reasons mentioned as under : -

Sr. No.	Points	Findings
1.	Whether the plaintiffs have made out prima-facie case to grant temporary injunction ?	Yes.
2.	Whether the plaintiffs prove that the balance of convenience lies in their favor ?	Yes.
3.	Whether the plaintiffs prove that they will suffer irreparable loss if a temporary injunction is not granted ?	Yes.
4.	What order ?	Application is allowed.

REASONS

14. In support of averments, plaintiffs have produced the digital copy of 7/12 extract of block No.493. The defendant Nos.1 to 4 have not filed any documents.

AS TO POINT NOS. 1 TO 3:-

15. Point Nos. 1 to 3 are interlinked to each other. Therefore, they are discussed together to avoid repetitions.

16. The plaintiffs have filed present applications under Order XXXIX Rule 1 of the Code which provides as follows:

Cases in which temporary injunction may be granted -

Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

17. It is well settled that the Court is required to consider three ingredients while deciding an application of temporary injunction namely the existence of prima-facie case, irreparable loss and balance of convenience. There are well settled rules which govern the exercise of power of granting temporary injunction. It is, therefore, obvious that the power under rules 1 and 2 of order XXXIX of the Code cannot be mechanically exercised unless the existence of three ingredients are established.

18. Perused the applications, reply thereon and documents filed on record.

19. The present suit is for partition and permanent injunction. The Plaintiffs rely upon the digital 7/12 extract of Block No. 493. The Defendants do not dispute that the names of the Plaintiffs and Defendant Nos. 1 to 4 stand recorded jointly in the revenue records. There is also no dispute that the suit property forms part of ancestral property inherited through the common ancestor. The Defendants admit that no formal partition deed has ever been executed or registered. Thus, prima facie, the suit property is joint and unpartitioned.

20. The Defendants seek to defeat the injunction on the ground that a family meeting occurred after the death of Manabai and that, by such understanding, the Plaintiffs alone were permitted to use and enjoy the suit property. However, such a claim, even if assumed to be true, does not amount to partition by metes and bounds. The Defendants have not placed before the Court any memorandum, writing, Panchanama, survey sketch, or independent witness affidavits to support the alleged family arrangement or separation of possession. The Court cannot presume a legal partition merely on oral assertions when documentary records continue to show joint ownership. Therefore, at this stage, the Court holds that the Defendants have failed to prima facie prove any prior partition.

21. The grievance of the Plaintiffs is that Defendant No.1, in collusion with neighbouring landholders of Block No. 494, is attempting to initiate construction of a road right through the middle portion of Block No. 493 without authority, consent, or sanctioned measurement. According to the Plaintiffs, this not only disturbs their joint possession but also prejudices their prospective share in the property. The Plaintiffs have further asserted that Defendant No. 1 has threatened them and expressed intention that the portion

required for the road would be imposed on the Plaintiffs' share. These statements, though disputed, indicate the nature of the conflict between the parties.

22. It is a settled principle of co-ownership law that while one co-owner cannot ordinarily be restrained from using the joint property, no co-owner has the right to unilaterally change the nature, character, or essential attributes of the joint property without the consent of the remaining co-owners. Any act which permanently burdens or encumbers the common property, such as allowing creation of a road, constitutes an act of waste or unilateral alteration. Courts have consistently held that injunction can be granted against a co-owner when (i) the act complained of causes prejudice to the common property, (ii) results in exclusive benefit to one co-owner, or (iii) imposes liabilities on the property before partition. Thus, the objection that injunction cannot be granted against co-owners is not absolute.

23. The Defendants have claimed that the Gram Panchayat has proposed a road. However, they have produced no resolution, sanction order, map, layout approval, government letter, or communication from the Panchayat or any competent authority. It is not the case of the Defendants that the road is legally acquired under any statutory scheme such as land acquisition proceedings, development plans, or internal village schemes. In absence of such documents, the mere assertion that a road is proposed cannot justify unilateral construction upon joint family property.

24. Further, if the public authority itself wishes to construct a road, it is required to follow statutory procedures including obtaining consent, conducting measurement, marking boundaries, and initiating acquisition if necessary. None of these procedures are shown to have been followed. Therefore, at this stage, the proposed road appears to be a private arrangement being encouraged by Defendant No. 1 and not a mandatory public project. A

co-owner cannot take shelter behind an unproved “Gram Panchayat proposal” to justify interference with jointly owned land.

25. The nature of the construction proposed namely, laying down a permanent road is of special significance. Construction of a road is not a temporary or reversible act. It results in permanent change in topography, reduces cultivable area, divides the land physically, and affects valuation and future partition of the land. If the road is allowed to be constructed during pendency of the suit, and if the Plaintiffs ultimately succeed, the damage done would be incapable of being undone. Monetary compensation would not adequately restore the land to its original condition. Hence, the requirement of irreparable loss stands satisfied.

26. The Defendant’s argument that they are not in possession and therefore will not suffer any loss if the road is constructed only strengthens the Plaintiffs’ case. If Defendants Nos.1 to 4 themselves are not cultivating or directly using the land, their insistence on constructing a road through it appears unjustified and raises doubt about their motives. The Plaintiffs, on the other hand, are admittedly in possession of the portion where the road is proposed. Their claim of threatened dispossession or disturbance of possession carries significant weight.

27. As to the balance of convenience, if the injunction is refused, Defendant No.1 may proceed to construct the road, thereby irreversibly altering the property. On the other hand, if the injunction is granted, the Defendants will not suffer any substantial hardship. The construction of the road is not shown to be essential, urgent, or legally mandated. Maintaining the status quo will not prejudice the Defendants’ legal rights as co-owners, nor will it prevent the Panchayat from initiating lawful procedures, if any, in future. Hence, the balance of convenience tilts in favour of the Plaintiffs.

28. Thus, the Plaintiffs have succeeded in proving (i) existence of a prima facie case, (ii) balance of convenience, and (iii) likelihood of irreparable injury. All three conditions for grant of temporary injunction are satisfied. Hence I answer **point Nos. 1 to 3 in affirmative.**

AS TO POINT NO. 4 :-

29. Considering the findings of point Nos.1 to 3. Application deserves to be allowed. Hence the following order is passed.

ORDER

- 1) Application is allowed.
- 2) Defendant No.1 is temporarily restrained from causing any obstruction, creating, constructing, or allowing any road or pathway through suit property, or from altering the nature of the suit property in any manner, until the final disposal of the suit.

Place: Ghodegoan
Date: 28/11/2025

Sd/-
(Sneha Sunil Pulujkar)
2nd Jt. Civil Judge Junior Division,
Ghodegoan, Dist. Pune.

CERTIFICATE

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

Name of the Court : Smt. Sneha Sunil Pulujkar,
2nd Jt. C.J.J.D. and J.M.F.C.,
Ghodegaon, Dist. Pune.

Name of the Steno : J. S. Kaite, Steno Grade - III.

Order date : 28/11/2025.

Order signed by P.O. : 28/11/2025.

Order uploaded on : 28/11/2025.