

**: ORDER BELOW EXH. 5 IN R. C. S. NO. 01/2019 :**  
**(CNR No. MHRG13-000003-2019)**

By this application, the plaintiffs have prayed for the temporary injunction restraining the defendant no.1 from raising construction on the of the plaintiffs land property bearing old S. No. 132/9/B and new S. No.132/9/2 admeasuring 0H.45 R situated at Nanore, Tal. Mangaon, Dist. Raigad, (Hereinafter referred to as 'Suit House') till the disposal of the suit.

**2. The factual matrix of plaintiffs' case is as under :-**

It is the case of plaintiffs that they are absolute owner and possessor of suit property. Plaintiffs averred that the suit property was purchased by their deceased father Tukaram Dhondiba Pawar on 11/12/1986 by way of registered sale deed no. 437/1986. Plaintiffs were put in possession of the suit property since the date of execution of registered sale deed. After the death of Tukaram Dhondiba Pawar name of plaintiffs were recorded to the revenue record of the suit property. Plaintiffs averred that since 1986 they are in possession of the suit property. In spite of this, defendant no.1 i.e. Municipal Council, Mangaon started the construction of public garden in the suit property. Defendant no.2 has no concern with the suit property. But on 07/09/1998 he executed registered gift deed 1474/1998 in favor of defendant no.1. On the basis of the said illegal gift

deed, defendant no.1 is claiming their ownership and possession over the suit property. On 31/05/2018, plaintiffs filed an application to Municipal Council for restraining the construction, accordingly the construction was stopped. Again on 20/12/2018 defendant no.1 started the construction of public garden in the suit property and tried to disturb the peaceful possession of plaintiffs over the suit property.

3. Plaintiff averred that they are the absolute owners and possessors of suit property. Defendant no.1 have no legal right, title and interest over the suit property. Hence, prayed for temporary injunction restraining defendant no.1 from further construction in suit property.

4. Defendant no.1 appeared on service of summons and filed say vide Exh.19. They denied in toto the entire averment of plaintiffs and submitted that defendant no.2 has executed the gift deed of the suit property in their favor and they are become the absolute owner of the suit property. Since, then they are in possession of the suit property. They further submitted that they are having peaceful possession over the suit property. The suit of plaintiffs is false and bogus and not filed within limitation. Plaintiffs have not come before the court with clean hands. The possession and ownership of the suit property lies with defendant no.1. They lastly prayed for rejection of the instant application.

5. The execution of gift deed no. 1474/1998 dated 07/09/1998 is admitted.

6. Following points arose for determination and I have recorded my findings with reasons to be followed thereon :

SR.NO.	POINTS	FINDINGS
1.	Whether plaintiffs prove prima-facie case lies in their favor?	..Yes
2.	In whose favor the balance of convenience lies?	..Plaintiffs
3.	Whether plaintiffs would be put to irreparable loss, if injunction is not granted?	..Yes
4.	What order ?	..As per final order

**: REASONS :**

7. I have heard learned counsel for plaintiffs and learned counsel for defendant no.1.

8. **AS TO POINT NOS. 1 TO 3 :-**

As point nos.1 to 3 are interlinked with each other I prefer to discuss it under one common caption. Learned advocate for plaintiffs submitted in consonance to his plaint and application. He submitted that documents filed on record at Exh.4 clearly reveal that plaintiffs are absolute owners and possessors of suit property. He further

submitted prima-facie case and balance of convenience lies in favor of plaintiffs and an irreparable loss would be caused to the plaintiffs which could not be compensated in terms of money and accordingly prayed to allow the instant application.

9. Per Contra learned advocate for defendant no.1 submitted that plaintiffs have filed instant application with ulterior motive just to harass defendant no.4 and instant application is not maintainable. He submitted in consonance to his reply at Exh.19. In order to substantiate his submissions he invited my attention towards documents filed by defendants to show their bonafides. He submitted that the documents filed by plaintiffs are false and bogus. He lastly submitted that the defendant no.1 is absolute owner and possessor of suit property. Hence, he prayed for rejection of instant application.

10. It is canon of settled legal principle that power to grant injunction is extra ordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as the matter of right or course. The grant of injunction is at the discretion must be exercised in favor of the party only if the Court is satisfied that, unless the other party is restrained by an order of injunction, irreparable loss or damage would be caused to that party. The court grants such relief on the principle of *ex debito*

*justitiae* i.e. to meet the ends of justice.

11. Reverting back to the hub of the matter, the factum of ownership and possession over the suit property is the real bone of contention between parties inter se in dispute. Plaintiffs have filed on 7/12 extract of suit property, sale deed no.437/1986. On the perusal of registered sale deed no. 437/1986, it prima-facie shows that the father of the plaintiff has purchased suit property. From the 7/12 extract of suit property filed on record, it is apparent that plaintiffs' name are entered in the 7/12 extract of suit property. Per contra, defendant no.1 relied upon the gift deed no. 1474/1998 dated 7/9/1998. But no documentary evidence is produced on record to show that defendant no.2 was the owner of the suit property. Nothing is brought on record under which capacity; defendant no.2 has executed the gift deed of the suit property in favor of defendant no.1.

12. Upon weighing the documents, I am of the view that the claim of the plaintiffs stands on a much higher footing than that of the defendant no.1. Another important aspect which needs to be discussed here is that, plaintiffs have come up in possession with suit property by way of registered sale deeds, on the contrary, the defendant no.1 claimed to be in possession by way of registered gift deed dated 7/9/1998. But no any justified reason has been given by defendant no.1 as to why their name is not recorded to

the revenue record of the suit property till today. In my view, the stand taken by plaintiffs is bonafide and the documents filed by them speak volumes about their ownership and possession. The documents filed by the defendants cannot be considered at this juncture. The factum of possession and ownership with regards to story put forward by defendant no.1 appears to be moonshine.

13. Suit property stands in the name of plaintiffs as is apparent from 7/12 extract of S. No. 132/9/2 filed by plaintiffs. If defendant no.1 continued the construction, plaintiffs will suffer irreparable loss. In view of the registered sale deed of the suit property in plaintiff's favor the prima facie case lies in plaintiff's favor. It is necessary to protect plaintiff's title in the suit property. Accordingly, I answer point nos. 1 to 3 **affirmative**.

14. On comparing the hardship which would be caused to parties, the plaintiffs would suffer more hardship as suit property is in their ownership and possession presently. In the present matter, it transpires from documents filed on record that plaintiffs are in ownership and possession of suit property. Hence, I accordingly answer point Nos.1 to 3. In the result I am inclined to pass the following order :

**: O R D E R :**

1. Application at Exh.5 is hereby allowed.

2. Defendant No.1 is temporarily restrained from constructing public garden or making any changes in the suit property (more particularly described in Para 1 of the plaint) until disposal of the suit.
3. Parties to bear their own costs.

Place : Mangaon,  
Date : 01.07.2019

(A. C. Rokade)  
Civil Judge, Junior Division,  
Mangaon, Dist. Raigad.

**: CERTIFICATE :**

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

Name of Steno : Shri. B. T. Deshmukh, Stenographer (L. G.)

Court Name : Smt. A. C. Rokade, C.J.J.D., Mangaon, Dist. Raigad.

Date : 01.07.2019

Order signed by presiding officer on : 01.07.2019

Order uploaded on : 01.07.2019