



ORDER BELOW EXH.5 IN R.C.S. NO.10/2023

1) This is an application filed by plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 seeking an order of Interim Injunction restraining defendants from creating 3rd party interest and from disturbing the possession of plaintiff upon the suit property described herein-below.

Description of Suit Property:-

2) Property bearing Gat no.171/6/B admeasuring about 8.20R along with house property bearing no.Z20021873071 constructed there upon situated at village Shrivardhan, Tal. Shrivardhan, Dist. Raigad which is bounded as under :-

Towards East	: Property of Kherade
Towards West	: Road
Towards South	: Property of Anant Karnekar
Towards North	: Property of Ganpat Kherade

Case of Plaintiff:-

3) Defendant no.4 is the mother of plaintiff and defendants no.1 to 3. Plaintiff is the brother of defendants no.1 to 3. Deceased Laxmibai Bhiku Jamdare is the mother-in-law of defendant no.4 and grandmother of suit parties.

4) On 05/03/1955, deceased Laxmibai purchased the suit property by way of registered sale deed bearing no.188/1955. After the said purchase, the name of deceased Laxmibai got

mutated in the revenue record of suit property. By way of said sale deed, Laxmbai became the lawful owner of the suit property.

5) Deceased Gajanan Bhiku Malusure is the sole son of deceased Laxmibai. Gajanan Malusure predeceased Laxmibai in the year 1982. Laxmibai expired intestate in the year 1989.

6) It is the contention of plaintiff that, after the death of Laxmibai, though defendant no.4, being merely the daughter-in-law of deceased Laxmibai, had no right to inherit the suit property absolutely, her name came to be exclusively mutated in the revenue record after the death of Laxmibai by way of Mutation Entry No.16033.

7) It is the further contention of plaintiff that, in the year 2022, defendant no.4 executed a registered gift deed bearing no.367/2022 in favor of defendants no.1 to 3 who are the sisters of plaintiff.

8) It is the further contention of plaintiff that, defendant no.4 was never the exclusive owner of the suit property and therefore had no authority to gift the entire property in favor of defendants no.1 to 3. According to plaintiff, said gift deed is void and liable to be declared as illegal.

9) It is the further contention of plaintiff that, he has been residing in the said house since childhood and the suit property continuous to be his permanent residential address. The suit property continuous to remain his ancestral residence and he never surrendered his possession thereof.

10) It is the further contention of plaintiff that, defendants no.1 to 3 are attempting to dispossess him and his family out of the suit property and are also likely to alienate the same on the strength of Gift Deed. Hence, plaintiff filed present application. Present application is supported by affidavit.

Case of Defendants no.1 to 3

11) Defendants no.1 to 3 filed Say at Exh.21 & Exyh.48. Defendants no.1 to 3 admitted the said relation. They further admitted that, deceased Laxmibai purchased the suit property in the year 1955.

12) It is the contention of defendants no.1 to 3 that, after the death of Laxmibai, name of defendant no.4 was duly mutated in the revenue record and defendant no.4 remained in lawful possession without any objection. Thereafter, defendant no.4 executed a registered Gift deed in favor of defendants no.1 to 3 out of her free consent.

13) It is the further contention of defendants no.1 to 3 that, in pursuant of the said Gift deed, name of defendants no.1 to 3 have been mutated in revenue records. Defendants no.1 to 3 are now lawful owners and possessors of suit property.

14) It is the contention of defendants no.1 to 3 that, plaintiff and his family are residing at Khapoli for several years and they are no in possession of suit property. They are nowhere concern with the suit property. Plaintiff has filed present suit to harass the defendants. Defendants no.1 to 3 prayed to reject the application.

Documents filed by Plaintiff:-

15) In support of his claim, plaintiff has filed the following documents:

a)	Gift Deed bearing no.367/2022 (Exh.4/1).
b)	7/12 extract of suit property (Exh.4/2).
c)	Sale deed of Laxmibai (Exh.4/3).
d)	Mutation Entry no.16033 (Exh.4/4).
e)	Order of Tahsildar dated 27/09/2022 (Exh.4/5).
f)	Mutation Entry no.22016 (Exh.4/6).
g)	Letter dated 06/12/2022 issued by MSEB to plaintiff (Exh.4/7)
h)	Document Concerning Nagarparishad Shrivardhan (Exh.4/8)
i)	Complaint dated 11/11/2022 filed by Wife of plaintiff with Shrivardhan Police Station (Exh.4/9)
j)	Letter dated 21/12/2022 issued by Nagarparishad Shrivardhan to Plaintiff (Exh.4/10)
k)	Letter dated 22/12/2022 issued by Shrivardhan Police Station to Wife of Plaintiff (Exh.4/11)
l)	Letter dated 08/11/2022 issued by defendant no.3 to Plaintiff (Exh.4/12)
m)	Medical documents of Wife of plaintiff (Exh.4/13 & 14)
n)	Mutation Entry no.6413 (Exh.55/1)
o)	Adhar Cards of Plaintiff Family Members (Exh.55/2)
p)	Ration Card of Plaintiff (Exh.55/3)
q)	RTI reply dated 30/01/2023 issued MSEB (Exh.55/4)
r)	Rax Receipts of Suit House (Exh.55/5)
s)	Medical Document of defendant no.4 (Exh.55/6)
t)	School Leaving and Birth Certificate of Plaintiff's children (Exh.55/7)

u)	7/12 Extract of Gat no.320/8, 194/5, 279/2, 279/5, 279/7, 279/8, 286/6 & 320/6 (Exh.55/8)
v)	Medical Document of Plaintiff (Exh.55/9)
w)	Bank Documents of Defendant no.4 (Exh.55/10)

Documents filed by Defendants no.1 to 3:-

16) In support of his claim defendant has filed the following document:

a)	Adhar Cards of Defendants (Exh.42/1)
b)	7/12 Extract of Suit Porperty (Exh.42/2 & Exh.60/1)
c)	Mutation Entry No.22016 (Exh.42/3)
d)	Gift Deed no.367/22 (Exh.42/4)
e)	Assessment Extract of House (Exh.42/5)
f)	Mutation Entry no.7872 (Exh.60/2)
g)	Mutation Entry no.12781 (Exh.60/3)
h)	Mutation Entry no.16033 (Exh.60/4)
i)	Mutation Entry no.16566 (Exh.60/5)
j)	Mutation Entry no.22016 (Exh.60/6)

Arguments:-

17) Heard both sides.

18) Advocate for plaintiff Mr.Thakare argued that, suit property is ancestral and plaintiff is having undivided share in it. Plaintiff is having possession upon suit property since birth. On basis of illegal Gift deed, defendants no.1 to 3 are attempting to dispossess the plaintiff and further attempting to alienate the suit property. Being joint owner and possessor, prima facie case exist in favor of plaintiff. Balance of

convenience also lies in favor of plaintiff. If defendants no.1 to 3 will succeed in said illegal acts, being joint owner of the suit property, plaintiff will suffer irreparable loss as he will be deprived from using his own property. He further argued that, the act of defendant is illegal and defendant deserves to be restrained by an order of injunction. On the above reasons, he prayed to allow the application. Advocate for plaintiff also filed written notes of arguments at Exh.56 & Exh.57.

19) Per contra advocate for defendants no.1 to 3 Mr.Sapate argued that, defendants no.1 to 3 are the lawful owner and possessor of suit property. Plaintiff and his family are residing at Khapoli. Plaintiff is neither having any kind of possession nor he is having any interest concerning suit property. Thus, plaintiff failed to establish prima facie case in his favor. He further argued that, defendants are lawful owner of suit property. Their names are appearing upon the revenue record of suit property. Balance of convenience lies in their favor. If injunction is granted, defendants no.1 to 3 will suffer irreparable loss. On the above reasons, they prayed to reject the application

Points For Determination:-

20) Considering the rival contentions, following points arise for my determination, findings on those points for the reasons mentioned thereunder are as follows:

Sr.no	Points	Findings
1.	Whether plaintiff has established Prima-Facie Case in his favor?	Partly Affirmative

2.	In whose favor Balance of Convenience lies?	Partly in favor of plaintiff
3.	Whether Plaintiff will suffer irreparable injury, if injunction as prayed in not granted in his favor?	Partly Affirmative
4.	Whether plaintiff is entitled for the relief of temporary Injunction as Prayed?	Application is Partly Allowed as per final Order

Undisputed Facts:-

21) To start with the uncontroverted facts. Considering the material before the court, following are the undisputed proposition.

a)	Description of Suit Property.
b)	Laxmibai Purchased Suit Property in the year 1955.
c)	Mutation of Name of Defendant no.4 in the revenue record after the death of Laxmibai.
d)	Execution of Gift Deed.

As to Point no. 1

22) It is well settled that, while deciding an application under Order 39 Rule 1 & 2 of CPC, the court is not expected to finally adjudicate the rights of the parties. The court is only required to ascertain whether the plaintiff has raised serious triable issue requiring protection till disposal of trail.

23) The registered Sale Deed of Laxmibai prima-facie show that, suit property was purchased by Laxmibai in her individual name. Thus, prima-facie, the property appears to have been her self acquired property.

24) The plaintiff has specifically challenged the competence of defendant no.4 to execute the said Gift deed. Though the defendants no.1 to 3 contended that, defendant no.4 become absolute owner by virtue of mutation, the Gift deed itself describes that the suit property as Ancestral Property. Such recital is not conclusive of the nature of the property, but it certainly give rise to a substantial triable issue regarding the character of suit property and the extent of defendant no.4 authority to execute the Gift deed.

25) It is settle principle of law that, mutation entries neither create any title nor extinguish the same. They are maintained primarily for fiscal purpose. Therefore, the mutation in the name of defendant no.4 after the death of Laxmibai cannot confer exclusive ownership to defendant no.4 upon suit property. Similarly, subsequent mutation in favor of defendants no.1 to 3 on basis of Gift Deed cannot conclusively establish their title.

26) The rival claims regarding inheritance, the validity of Gift deed and legal consequences thereafter, involves disputed question of fact and law which cannot be finally decided without recording evidence. Thus, this court is satisfied that, plaintiff has succeeded in raising substantial and bonafide triable issue.

27) So far as possession is concerned, the plaintiff has relied upon Adhar Card, Ration Card, School records, Tax Receipts and Letter dated 08/11/2022 to establish his possession. These documents indicates the connection of plaintiff with suit

property but do not conclusively prove his present possession, particularly when vide letter dated 11/11/2022, the wife of plaintiff admitted that that, they are residing at Khopoli. On the other hand, defendants no. 1 to 3 have relied upon said Gift deed and revenue records standing in their name. Though such revenue record are not conclusive proof of possession, they are relevant circumstances.

28) Therefore, though the plaintiff has raised a bonafide and substantial question regarding the validity of the gift deed, he has failed to establish his prima facie exclusive possession over the suit property. Consequently, the plaintiff has made out a Prima facie case only to the extent of preservation of suit property and not for protection of his alleged possession. Therefore, point no.1 is answered in partly affirmative.

As to Points no.2 and 3

29) Plaintiff has failed to establish his prima facie possession over the suit property. Therefore, no interim injunction restraining defendants no.1 to 3 from disturbing his alleged possession can be granted. However, the validity of the Gift deed is under challenge and the plaintiff has raised a substantial triable issue. If defendants no.1 to 3 are permitted to alienate or create 3rd party rights in the suit property during the pendency of the suit, it may result in multiplicity of proceedings and cause irreparable loss to the party ultimately found entitled to the property. Therefore, the balance of convenience lies in preserving the suit property by restraining defendants no.1 to 3 from alienating or creating 3rd party rights

therein till disposal of suit. Accordingly, Points no.2 and 3 are answered Partly in the Affirmative.

As to Point no.4

30) In view of the findings recorded above, the plaintiff is not entitled to an interim injunction protecting his alleged possession, as he has failed to establish prima facie possession over the suit property. However, considering that the plaintiff has raised a substantial issue regarding the validity of the Gift deed and to preserve the subject matter of the suit, defendants no.1 to 3 deserves to be restrained from alienating or creating 3rd party interest in the suit property till disposal of suit. As such, in answer to point no. 4 following order is passed.

ORDER

a)	Application is Partly allowed
b)	Prayer restraining defendants no.1 to 3 from disturbing the plaintiff's possession is rejected.
c)	Defendants no.1 to 3 are restrained from alienating or creating 3 rd party interest in the suit property till disposal of suit.
d)	Application is disposed off accordingly.

Shrivardhan.

(S.K.Shaikh)

Date :- 15/07/2026

Civil Judge Jr. Dn., Shrivardhan.