



**COMMON ORDER BELOW EXH.23 & EXH.50 IN R.C.S.
NO.10/2023**

1) This is an application filed by defendants no.1 to 3 under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 seeking an order of interim injunction restraining plaintiff from creating 3rd party interest and from disturbing their possession 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 Defendants no.1 to 3:-

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 and possessor 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 died intestate in the year 1989.

6) 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 became the lawful owner and possessor of suit property without any objection. Thereafter, defendant no.4 executed a registered Gift deed out of her free consent and transferred suit property in favor of defendants no.1 to 3.

7) 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.

8) It is the further contention of defendants no.1 to 3 that, plaintiff and his family are nowhere concern with the suit property. They are having no right, title or interest upon the suit property. Plaintiff and his family are residing at Khapoli. Such being the circumstances, plaintiff by taking advantage of his relation with defendants are trying to grab the suit property. In order to grab the suit property, plaintiff is attempting to dispossess defendants no.1 to 3 out of the suit property.

Plaintiff is also attempting to create 3rd party interest in the suit property on basis of his relation with defendants. Hence, defendants no.1 to 3 filed present application. Present application is supported by affidavit.

Case of Plaintiff:-

9) Plaintiff filed Say at Exh.32. Plaintiff admitted the said relation. Plaintiff further admitted that, deceased Laxmibai purchased the suit property in the year 1955. Plaintiff further admitted that, Laxmibai died intestate.

10) 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.

11) It is the further contention of plaintiff that, in the year 2022, on basis of alleged mutation, 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.

12) 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.

13) 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 to remain his ancestral residence and he never surrendered his possession thereof.

14) It is the further contention of plaintiff that, defendants no.1 to 3 are residing at their respective matrimonial house. They are not in possession of suit property. On the above reasons, plaintiff prayed to reject the application.

Documents filed by Defendants no.1 to 3:-

15) 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)

Documents filed by Plaintiff:-

16) 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)

Arguments:-

17) Heard both Advocates.

18) 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 is having no right, title or interest upon the suit property. Plaintiff is residing at Khopoli. On basis of relation between suit parties, plaintiff is trying to grab the suit property by attempting to dispossess the defendants no.1 to 3 and further attempting to alienate the suit property. Being lawful owner and possessor, prima facie case exist in favor of defendants no.1 to 3. Balance of convenience also lies in favor of defendants no.1 to 3. If plaintiff will succeed in said illegal acts, being lawful owner and possessor of the suit property, defendants no.1 to 3 will suffer irreparable loss as they will be deprive from using their own property. He further argued that, the act of plaintiff is illegal and plaintiff deserves to be restrained by an order of injunction. On the above reasons, he prayed to allow the application.

19) Per contra advocate for plaintiff Mr.Thakare argued that, the gift deed relied by defendants no.1 to 3 is illegal. Defendant no.4 was having no authority to transfer the suit property by way of Gift deed. Suit property is ancestral and plaintiff is having undivided share in it. Gift deed itself having recital that, suit property is ancestral. Plaintiff is having possession upon suit property since birth. Defendants no.1 to 3 are not having Prima Facie case in their favor. Being possessor of suit property, balance of convenience also lies in favor of plaintiff. If plaintiff is restrained by an order of injunction, plaintiff will suffer irreparable loss as he will be deprive from using his own property. On the above reasons, he prayed to allow the

application. Advocate for plaintiff also filed written notes of arguments at Exh.56 & Exh.57.

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 defendants no.1 to 3 have established Prima-Facie Case in their favor?	No
2.	Whether Balance of Convenience lies in favour of defendants no.1 to 3 ?	No
3.	Whether defendants no.1 to 3 will suffer irreparable injury, if injunction as prayed in not granted in his favor?	No
4.	Whether defendants no.1 to 3 are entitled for the relief of temporary Injunction as Prayed?	Application is rejected 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 a serious issue requiring protection till disposal of the suit.

23) In the present suit, defendants no.1 to 3 claims title upon the suit property on basis of said Gift deed. Their names have also been entered in the revenue record of suit property. However, plaintiff has challenged the legality and validity of the said Gift deed. According to plaintiff, after the death of Laxmibai, defendant no.4 being merely daughter-in-law of Laxmibai, had no legal authority to execute the Gift deed in favor of defendants no.1 to 3. It is worth to note that, the Gift deed itself contains recital describing the suit property as ancestral property. Though such recital is not conclusive, it raises a serious triable issue regarding the nature of the suit property and competence of defendant no.4 to execute the said Gift deed. Thus, the very foundation of title claimed by defendants no.1 to 3 is under challenge.

24) So far as possession is concerned, defendants no.1 to 3 have relied upon the mutation entries, 7/12 extract and assessment records standing in their names. However, such entries are neither documents of title nor conclusive proof of possession. On the other hand, plaintiff has produced the ration card, Adhar Card, School Records, House Tax Receipts and letter dated 08/11/2022 to show his connection with the house property. Admittedly, no crop entries or any other independent evidence regarding actual cultivation or physical possession have been produced by either party. Therefore, the question of

actual possession cannot be conclusively determined at this interim stage and required adjudication after recording of evidence. In such situation, defendants no.1 to 3 have not established a Prima Facie Case entitling them to the interim relief. Accordingly, Point no.1 is answered in negative.

As to Points no.2 and 3:-

25) Defendants no.1 to 3 have prayed for restraining the plaintiff from disturbing their possession and creating 3rd party interest in the suit property. However, in view of the serious dispute regarding title and possession, grant of such relief would virtually amount to deciding the disputed issues at the interim stage.

26) Further, defendants no.1 to 3 have not placed any prima facie material on record to show that, the plaintiff is attempting to alienate or create 3rd party interest in the suit property. It is worth to note that, plaintiff is not claiming title under any registered conveyance in his favor. On the contrary, registered Gift deed and revenue record presently stand in the names of defendants no.1 to 3. Therefore, prima facie there is nothing on record to indicate that the plaintiff presently has the legal authority or ability to transfer or create any 3rd party interest in the suit property. Mere apprehension without supporting material, is not sufficient to grant an injunction. Hence, balance of convenience and irreparable loss are not in favor of defendants no.1 to 3. Accordingly, Points no.2 and 3 are answered in negative.

As to Point no.4:-

27) In view of the findings recorded above, the defendants no.1 to 3 are not entitled to an interim injunction as prayed. As such, in answer to point no. 4 following order is passed.

ORDER

a)	Application is Rejected
d)	Application is disposed off accordingly.

Shrivardhan.

(S.K.Shaikh)

Date : 15/07/2026

Civil Judge Jr. Dn., Shrivardhan.