

MHRG140006452019



ORDER ON APPLICATION FOR TEMPORARY INJUNCTION

(EXH. 18)

1. This order shall dispose of the application at Exhibit 18 filed by the Plaintiffs under Order XXXIX Rules 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 (CPC), seeking a temporary injunction restraining the Defendant Nos. 1 & 2 from raising any unauthorized construction or dumping soil in the suit property, specifically Survey No. 151, Hissa No. 6, situated at Mouje Kalambusare, Taluka Uran, District Raigad, and to maintain status quo during the pendency of the suit.

2. Brief Facts of the Plaintiffs' Case:

According to the Plaintiffs, they have filed the present suit against the Defendants for declaration of their rights, partition, separate possession, and a permanent injunction. It is contended that while the suit is pending before this Court, the Defendant Nos. 1 & 2, without giving any notice to the Plaintiffs or obtaining the prior permission of this Court, commenced unauthorized soil-filling operations on a portion of the suit land, bearing Survey No. 151, Hissa No. 6. On 13.01.2021 at approximately 10:00 AM, the Plaintiffs

visited the site and observed that heavy soil dumping was in progress. They took photos of the activity through a professional photographer of 'Mali Arts Chirle Printing Press and Photography'. When the Plaintiffs requested the JCB operator and contractor on-site to halt the work, they were met with insolence. The Plaintiffs lodged written complaints with the Uran Police Station and the Tahsildar, Uran, on 13.01.2021, but the Defendant Nos. 1 & 2 continued their unauthorized activities. The Plaintiffs allege that if the Defendants proceed to construct a house or structure on the suit land, it will materially alter the nature of the property, cause irreparable harm, and render the final partition suit infructuous.

3. The Defendant No. 1 has resisted the application by filing his say at Exhibit 30. He has denied all the allegations made by the Plaintiffs, calling them false and vexatious. The primary defense raised by Defendant No. 1 is that the suit land Survey No. 151, Hissa No. 6 is not under his ownership or possession. He asserts that the suit property was the self-acquired property of his late father, Mahadev Balaram Patil, who had acquired it as a tenant. He contends that he had previously filed a suit for partition, being Regular Civil Suit No. 285/2012, against Defendant Nos. 2 & 3. In that suit, a compromise decree was drawn in the year 2016, whereby Survey No. 151, Hissa No. 6 was exclusively allotted to the share of Defendant No. 3, Smt. Devayani Mahadev Patil. Therefore, since 2016, Defendant No. 1 has no right, title, or interest in the suit land and has not carried out any dumping or construction on it. He further

argues that since the Plaintiffs did not challenge the compromise decree in RCS No. 285/2012, they cannot claim any right over this specific survey number. Consequently, he prays for the dismissal of the application with costs.

4. On the basis of the pleadings and arguments, the following points arise for my determination:

Sr. No.	Points	Findings
1.	Whether the Plaintiffs have established a prima facie case in their favor?	In the Affirmative
2.	Whether the balance of convenience lies in favor of the Plaintiffs?	In the Affirmative
3.	Whether the Plaintiffs will suffer irreparable injury if the temporary injunction is refused?	In the Affirmative
4.	What order?	As per the final order, for the reasons stated below.

REASONS

AS TO POINT NO-1 TO 4:

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5. To determine if a prima facie case exists, this Court must examine whether there is a serious, triable issue raised by the Plaintiffs that requires full adjudication at the trial. The Plaintiffs have filed this suit for partition and separate possession, claiming their lawful shares in ancestral and joint family properties, which includes Survey No. 151, Hissa No. 6. The Defendant No. 1 has countered this by relying on a compromise decree passed in RCS No. 285/2012, whereunder the suit property was allegedly allotted to Defendant No. 3.

6. Prima facie, it is admitted that the Plaintiffs were not parties to the earlier suit (RCS No. 285/2012) or the subsequent compromise decree. It is a settled position of Hindu Law, particularly post the 2005 Amendment to the Hindu Succession Act, 1956, that daughters have equal coparcenary rights. Since the Plaintiffs claim to be co-owners/co-sharers of the property, any compromise decree entered into exclusively between the brothers (Defendant Nos. 1 & 2) and one sister (Defendant No. 3) in the absence of the present Plaintiffs cannot, at this interim stage, be held as binding upon them to extinguish their undivided interest. This legal position is supported by the Hon'ble Supreme Court in '**Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1**', wherein the Hon'ble Apex Court upheld the retroactive coparcenary rights of daughters. Therefore, the question of whether the suit property is ancestral and whether the earlier compromise decree binds the Plaintiffs is a triable issue.

7. Furthermore, the Plaintiffs have annexed photographs showing active soil excavation and leveling work on the suit property, coupled with police complaints dated 13.01.2021. The Defendant No. 1's defense that he has no interest in the property does not prevent this Court from passing an injunction to protect the res, as the potential alteration of the property's character would prejudice the Plaintiffs' rights regardless of which Defendant is carrying out the work. Hence, a strong prima facie case is made out.

8. The balance of convenience must be weighed by assessing the comparative mischief or inconvenience likely to be caused to either party. If the Defendants are permitted to carry out extensive soil dumping and raise permanent structures on a portion of the suit land during the pendency of this partition suit, it will drastically alter the nature of the property. In the event that the Plaintiffs succeed in the final trial, distributing the shares equitably will become highly complicated, if not impossible, due to the physical changes and potential creation of third-party rights. Conversely, directing the parties to maintain the status quo and refrain from raising construction or altering the land's topology until the disposal of the suit will cause no prejudice to the Defendants. Thus, the balance of convenience heavily tilts in favor of the Plaintiffs.

9. It is a well-established principle of law, as laid down by the Hon'ble Supreme Court in '**Dalpat Kumar v. Prahlad Singh, AIR 1993 SC 276**', that the Court must be satisfied that the party

seeking an injunction will suffer irreparable injury if the relief is denied. Irreparable injury means an injury that cannot be adequately compensated by damages. If the Defendants change the character of the suit property by raising permanent structures, it will lead to a multiplicity of proceedings and may result in the destruction of the subject matter of the partition. Such an injury cannot be calculated or compensated in terms of money. Therefore, to preserve the status of the property as it exists today, the grant of a temporary injunction is necessary.

10. Although the Plaintiffs have prayed for a direction to the Uran Police Station to ensure compliance with this order, such extreme directions are not warranted at this primary stage. It is expected that the parties, being law-abiding citizens, shall comply with the orders of this Court. Any breach can be addressed under the appropriate provisions of Order XXXIX Rule 2A of the CPC. Hence, the application deserves to be allowed in part. In the light of the findings on Points (1) to (3), for the answer of Point No- (4), I proceed to pass the following order.

ORDER

1. This application for temporary injunction (Exh. 18) is hereby partly allowed.
2. The Defendants, their agents, contractors, and persons acting

on their behalf are hereby temporarily restrained from dumping soil, carrying out any further construction, or altering the physical status and nature of the suit property, i.e., Survey No. 151, Hissa No. 6, situated at Mouje Kalambusare, Taluka Uran, District Raigad, until the final disposal of the suit on merits.

3. The prayer for directing the police authorities to enforce this order is rejected at this stage.
4. Costs shall be costs in the cause.

Uran,
Date : 10.06.2026

(S. P. Wankhade)
Civil Judge, J.D., Uran