

CNR No. MHRT090002962018 	<u>IN THE COURT OF CIVIL</u> <u>JUDGE JUNIOR DIVISION</u> <u>LANJA, AT LANJA</u> REGULAR CIVIL SUIT NO. 44/2018
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ORDER BELOW EXH. 60

Perused the application. This is for temporary injunction filed by plaintiff.

02. The plaintiff's case in nutshell, is that the present suit is for declaration, Partition and other reliefs of possession. Defendant no. 1 sold out suit property - Sr.No. 5, Gat no. 1091 to one person, namely Yunus A. Sattar Rakhangi on 26/12/2022 by Regd. Sale-deed no. 1403/2022. During that time, because of some personal and domestic issues, plaintiff could not take necessary steps in this suit.

03. Plaintiff further contended that defendant no. 1 re-purchased said sold suit property on his name by Regd. Sale-deed no. 419/2023 on 17/04/2023 and again, he sold out it to two persons, namely Bhushan Chandrakant Bandekar and Milind Dattatray Vedak. As per further contentions of plaintiff, there will be irreparable loss to him, if other suit property will be sold out by defendant no.1. Hence, he filed this application.

04. On the other hand, defendant no. 1 filed his say at Exh.63 and opposed the application contending that plaintiff has no right to complain about properties, which are at share of defendant no. 1. According to defendant no. 1, the plaintiff's suit is not tenable, as partition of suit properties was already taken place, dated 16/03/2006 and mutation no. 1179 was entered into 7x12 Extract accordingly. R.T.S

Revision no. 7/2013, filed by defendant no. 2 against this mutation entry was partially allowed and R.T.S Appeal no. 30/2016 was allowed on 27/06/2017. The mutation no. 1179 came to be confirmed by an order dated, 27/06/2017. Making these contentions, defendant no. 1 prayed for rejection of the application.

05. Heard Ld. Advocates of both parties at length. Perused the record minutely.

06. In view of these rival pleadings of both parties and argument advanced on their behalf, following points arise for determination for deciding this application and I have recorded my findings against each of them for the reasons stated below :-

No.	Point	Finding
1	Whether plaintiff proves a <i>prima-facie</i> case?	No.
2	Whether the balance of convenience is in favour of plaintiff?	No.
3	Whether plaintiff will suffer irreparable loss if injunction is not granted?	No.
4	What Order?	As per final order.

REASONS

07. Perused the record minutely. It shows that the present suit is for declaration, partition and separate possession. The plaintiff challenged mutation entry no. 1179. As per contentions of plaintiff, there is no partition of suit properties previously. On the other hand, it is the contention of defendant no. 1 that there was partition already taken place on 16/03/2006 and mutation no. 1179 was came to be

entered accordingly. Hence, defendant no. 1 further contended that the suit is not tenable.

08. In present suit, perusal of main suit at Exh.01 shows that the plaintiff challenged mutation no. 1179 and also prayed for declaration of suit property as of common ownership of plaintiff and defendants. The plaintiff also made prayer of partition and separate possession. Here, the plaintiff's prayer in this application at Exh.60 is injunction against defendant no. 1 not to create any third party interest in the suit property and not to dispose of the same. Prayer of the plaintiff at Exh.01 challenging mutation no. 1179 is certainly part and parcel of evidence.

09. The plaintiff contended that suit property – Sr. no. 5, Gat no. 1091 was sold out by defendant no. 1 to persons namely Bhushan Chandrakant Bandekar and Milind Dattatray Vedak by Regd. Sale deed no. 652/2023. In present suit, Ld. Adv. of defendant no. 1 argued that there is no prayer of injunction in main suit and as per ruling of the Hon'ble High Court of Gujarat, plaintiff could not make an application for injunction during this proceeding. Ld. Adv. defendant no. 1 has submitted said citation of Hon'ble High Court of Gujarat, along with Exh. 66. Perused this citation ***Ishwarbhai Alias Batukbhai L. Shah Vs. Bhanushali Hiralal Mohanlal Nanda, 2002 CJ (Guj) 394*** minutely. The Hon'ble High Court of Gujarat, has held in para 4 and para 5 of said ruling as -

'4. "It is also a settled principle of law that in a suit where there is no permanent injunction sought for, in the final analysis, ordinarily a temporary injunction cannot be granted. The principles that govern the grant of perpetual

injunction, therefore, would govern the grant of a temporary injunction also."

5. In view of the above legal position, when the plaintiff has not prayed for a decree for perpetual injunction in terms of Para 9 (a) of the application Exh. 5 an interim injunction cannot be granted to the plaintiff. The learned Judge of the trial Court has assigned reasons for arriving at a decision for refusing the interim injunction.'

10. Perused case law minutely submitted by defendant No. 1 at Exh. 65, ***Bhalchandra Vishweshwar Deshmukh Vs. State of Maharashtra, AIR (BOM) 1983 0 436.***

11. Here, it is true that contention of plaintiff is of sale of Gat no. 1091 to Bhushan Chandrakant Bandekar and Milind Dattatray Vedak during the suit proceeding. However, taking into consideration the main suit at Exh.01, there are prayers of declaration, partition and separate possession. There is no prayer of injunction in this suit. As per above citation of Hon'ble High Court of Gujarat, it is settled principal of law when there is no prayer of permanent injunction in a suit, ordinarily a temporary injunction can not be granted. Furthermore, the plaintiff has not taken necessary steps for addition of prayer of injunction in main suit. In such situation, the relief which can not be granted at final decision, said relief can not be granted at interim stage. The procedural perfectness is essential while deciding a civil proceeding.

12. Thus, now, considering overall discussion, it can be said that the prayer of plaintiff of injunction is not tenable at this interim stage, as it is not mentioned in main suit and

therefore, the plaintiff failed to prove points of *prima-facie* case, balance of convenience and irreparable loss in his favour. Hence, I answer these all points No. 1 to 3 in negative.

13. Taking into consideration above all discussion, in answer to point No. 4, I pass following order:-

ORDER

1. The application is rejected.
2. Both parties shall bear their own cost.

Date:05/12/2025
Place: Lanja.

(S. R. Joshi)
Civil Judge Junior Division.
Lanja.

CERTIFICATE

I affirm that the contents of this pdf file Order are same words as per original Order,

Name of the Clerk: P. B. Chopade

*Court Name: Civil & Criminal Court, Lanja,
Dist.Ratnagiri,*

Date of decision : 05/12/2025.

Judgment/Order signed by P.O.on : 05/12/2025.

Judgment/Order uploaded on : 09/12/2025.