



CNR No. MHSI070004642025
Common Order passed below Exh. No. 05 & 23
in R.C.S.No.107/2025

The present suit is instituted for Permanent Injunction and Declaration coupled with the present applications for Temporary Mandatory (Exh.23) and Prohibitory injunctions (Exh.5).

BRIEF FACTS:

Plaintiff's case:

2. House No. 374B situated at Grampanchayat Malgaon, Village: Bagayat, Taluka : Malvan, District : Sindhudurg (Herein after referred as "Suit House") was recorded in the name of Balkrishna Keshav Bhogle, who expired on 01.02.2025. His wife Savita Bhogle had expired in the year 2019. Balkrishna Keshav Bhogle was survived by two sons, namely Purushottam and defendant No.1 and one daughter i.e. defendant No.2. Purushottam, the husband of the plaintiff, has also expired and he is survived by the plaintiff and their four children.

3. The plaintiff's husband Purushottam was running a cable business on the first floor of the suit. Defendant No.2 used to assist him in the said business. After the death of Balkrishna Keshav Bhogle, defendant No.1 attempted to divide the suit house into two parts, namely House No. 374B-1 and 374B-2. Defendant No.2

objected to this division. The Block Development Officer, Panchayat Samiti Malvan, restored the original status of House No. 374B in the name of Balkrishna Keshav Bhogle. However, defendant No.1 again applied to the Gram Panchayat on the basis of an alleged Will dated 31.01.2015 said to have been executed by Balkrishna Keshav Bhogle and sought mutation of the ground floor of the suit house in his favour.

4. The plaintiff contends that the alleged will is false and fabricated. According to the plaintiff, the relations between Balkrishna Keshav Bhogle and defendant No.1 were strained and therefore execution of a Will in his favour is improbable. It is further contended that the suit house is ancestral property and not the self-acquired property of Balkrishna Keshav Bhogle and therefore he had no authority to dispose of the suit house by Will without the consent of defendant no.2 and the legal heirs of deceased Purushottam.

5. On the basis of the alleged Will, defendant No. 1 is attempting to take forcible possession of the ground floor of the suit house and has already locked some of the rooms which were in his possession. One hall, kitchen, one toilet and one bathroom on the ground floor are in possession of the plaintiff and defendant no.2 and they are using the same for their residence. Defendant No. 1 is trying to take

forcible possession of these portions. He has also threatened to put locks on these rooms and to dispossess the plaintiff and defendant No. 2.

6. Defendant No. 1 has issued a legal notice through Advocate Amit Palav dated 25.09.2025, calling upon the plaintiff to remove their belongings from the said rooms. He has stated that if she did not remove her belongings, he will throw the same in the Veranda and he will not be responsible for any loss, damage or theft of the said articles. The suit house is ancestral property, therefore, until lawful partition takes place, defendant No. 1 has no right to forcibly take possession of the portions in possession of the plaintiff and defendant no.2.

7. During the pendency of the suit, on 02.12.2025, when the plaintiff was in Mumbai, defendant No. 1 put his own lock on the portion of the ground floor of the suit house which was in possession of the plaintiff. The plaintiff had earlier applied her lock on the said portion. By putting his lock, defendant No. 1 restrained the plaintiff from entering and using the said portion. In the said portion of the suit house, there are valuable belongings of the plaintiff and her children. Defendant No. 2 also uses the said portion for residence. Due to the act of defendant No. 1, the plaintiff and defendant No. 2 are unable to access the said portion. The plaintiff and defendant No. 2 do not have any

other alternative place of residence. Due to the said act of defendant No. 1, they are facing serious hardship and inconvenience. Therefore, defendant No. 1 be directed to remove the lock placed by him on the portion which is in possession of the plaintiff.

8. The plaintiff has a prima facie case and the balance of convenience is in her favour. If defendant No. 1 is allowed to take forcible possession of the said rooms, the plaintiff will suffer irreparable loss which cannot be compensated in terms of money. Hence prayed to allow the application.

Defendant no.1's case:

9. Defendant No. 1 has resisted the applications by filing his written statement and reply at Exh. 16 and Exh.26. He has denied all the allegations made by the plaintiff. According to him, the suit house bearing House No. 374B was originally constructed by Balkrishna Keshav Bhogle from his own income. He contends that the suit house was self-acquired property of Balkrishna Keshav Bhogle and therefore he had full right to deal with the same.

10. Defendant No. 1 states that during the lifetime of Balkrishna, the suit house was divided into two parts,

namely House No. 374B-1 and House No. 374B-2. The ground floor portion bearing House No. 374B-1 was recorded in the name of defendant No. 1, while the first floor portion was recorded in the name of Purushottam, the husband of the plaintiff. According to him, the mutation entries were made accordingly and are still in force.

11. He further contends that the cable business was jointly carried on by Purushottam and defendant No. 1 at Vile Parle, Mumbai and also at the suit house. Later, the business at Vile Parle was separated. However, the business at the suit house continued jointly between them. According to defendant No. 1, he has never obstructed the plaintiff or defendant No. 2 from using the first floor of the suit house.

12. Defendant No. 1 further states that the plaintiff is his sister-in-law. According to him, he had permitted the plaintiff to temporarily keep certain household articles on the ground floor for a few days. These articles included an iron cupboard, iron bed, refrigerator, table, gas cylinder, gas stove and cooking utensils. Considering the conduct of the plaintiff and her intention to claim the entire suit house, he issued a notice calling upon the plaintiff to remove her belongings.

13. Defendant No. 1 also contends that Balkrishna had executed a registered will during his lifetime and

therefore the ground floor portion has lawfully come to him. According to him, the plaintiff and defendant No. 2 have no right, title or interest in the ground floor of the suit house. No portion of the ground floor of the suit house is in possession of the plaintiff. Therefore, there is no question of the plaintiff putting any lock on any portion of the ground floor. As per the Will dated 30.01.2015 and Tax Assessment records, the ground floor portion of the suit house, bearing House No. 374B-1, stands in the name of defendant No. 1. Defendant No. 1 is the recorded owner of the said portion. Therefore, defendant No. 1 has every right to put a lock on the said portion and to protect his possession over the same.

14. Defendant No. 1 therefore contended that the plaintiff has filed the present suit only to harass him and to grab the entire suit house. The plaintiff has no prima facie case. The balance of convenience is not in favour of the plaintiff. If injunction is granted, defendant No. 1 will suffer irreparable loss. Therefore, he prayed to reject the applications with costs.

15. Heard the learned advocates for both the parties at length.

Argument by the plaintiff

16. Shri A. Patkar, learned Advocate for the plaintiff, submitted that the suit house is an ancestral property. He

submitted that the assessment extract cannot be relied upon to prove that the suit house was partitioned on the basis of Will. He further submitted that the alleged will, on the basis of which defendant No. 1 claims title over the ground floor of the suit house, is bogus and suspicious. He further submitted that the plaintiff and defendant No. 2 are in possession of some portion of the ground floor of the suit house. According to him, this possession is also admitted by defendant No. 1 in the notice issued through Advocate Amit Palav. He argued that defendant No. 1 has put a lock on the portion which is in possession of the plaintiff.

17. Learned Advocate further submitted that defendant No. 1 cannot dispossess the plaintiff or interfere with her possession without following due process of law. Therefore, defendant No. 1 should be directed to remove the lock placed on the said portion and should be restrained from disturbing the possession of the plaintiff and defendant No. 2 over the suit house. He further argued that the plaintiff has made out a prima facie case and that the balance of convenience lies in her favour. If defendant No. 1 is not directed to remove the lock and restrained from disturbing the possession of the plaintiff, the rights of the plaintiff will be seriously affected. Hence, he prayed that the application be allowed.

Argument by defendant No.1:

18. The learned Advocate for defendant No. 1, Mr. A.G. Palav, submitted that the suit house was the self-acquired property of Balkrishna Keshav Bhogle. Therefore, Balkrishna had every right to execute a Will in respect of the suit house. He submitted that as per the Will, the ground floor of the suit house bearing House No. 374B-1 has come to the share of defendant No. 1 and therefore he is the owner and in possession of the same. He further submitted that the division of the suit house was made with the consent of Balkrishna Keshav Bhogle. Balkrishna himself had made an application to the Gram Panchayat and had given consent for the division of the suit house. Defendant No. 2 has no concern with the suit house. He also submitted that the relations between Balkrishna and the husband of the plaintiff and defendant no.2 were strained and that Balkrishna was residing with defendant No. 1.

19. Learned Advocate further submitted that defendant No. 1 is not interfering with the possession of the first floor of the suit house. According to him, the plaintiff was only permitted to use some portion of the ground floor for a limited period. However, the plaintiff is now trying to take illegal advantage of the said permission. He argued that the plaintiff has no prima facie case and the balance of convenience does not lie in her favour. Defendant No. 1

being the owner of the ground floor cannot be restrained from using and occupying the same. If applications are allowed, defendant No. 1 will suffer irreparable loss. Therefore, he prayed that the applications be rejected.

20. Perused the record. Points for my determination along with the findings and reasons thereon are as under :

| Sr.No. | Points | Findings |
|---------------|-------------------------------------------------------------------------------------------------|-----------------------------------|
| 1 | Whether the plaintiff has made out a prima facie case ? | ...No |
| 2 | Whether the plaintiff shows that balance of convenience lies in her favour ? | ...No |
| 3 | Whether the plaintiff will suffer irreparable loss if injunction as prayed for is not granted ? | ...No |
| 4 | What order ? | Applications are rejected. |

REASONS

AS TO POINT NO. 1 to 4

21. To avoid repetition Point Nos. 1 to 4 are discussed together.

22. I have considered the pleadings, the documents on record, and the rival submissions advanced by the learned advocates for both parties.

23. The plaintiff has filed the present application Exh. 5 seeking to restrain defendant No. 1 from obstructing the possession of the plaintiff and defendant No. 2 over some portion of the ground floor of the suit house till conclusion of the suit. It is also alleged that during the pendency of the suit defendant No. 1 placed his lock on the portion which was in possession of the plaintiff. Therefore, by way of the present application Exh.23 the plaintiff has also sought a temporary mandatory injunction directing defendant No. 1 to remove the said lock.

24. On perusal of the documents on record, it appears that the suit house was recorded in the name of Balkrishna Keshav Bhogle. The suit house was later divided into two parts, namely House No. 374B-1 and House No. 374B-2. The ground floor portion bearing House No. 374B-1 was recorded in the name of defendant No. 1 and the first floor bearing House No. 374B-2 was recorded in the name of Purushottam, the deceased husband of the plaintiff. It further appears from the documents on record that while mutating the names of defendant No. 1 and Purushottam, Balkrishna had given consent to the Gram Panchayat and the mutation entries were made accordingly.

25. Moreover, the Will dated 30.01.2015 executed by Balkrishna is also placed on record. The said Will is a registered Will. The division of the suit house into ground floor and first floor also appears to be consistent with the consent given by Balkrishna to the Gram Panchayat, whereby the ground floor was to be recorded in the name of defendant No. 1 and the first floor in the name of Purushottam. Thus, prima facie it appears that the first floor of the suit house was given to Purushottam and the ground floor was bequeathed to defendant No. 1.

26. Whether the suit property is ancestral property or self-acquired property of Balkrishna is a matter which can be decided only after full trial. Similarly, whether the will is genuine or false can also be decided only after evidence is recorded. At this stage, the Court is only concerned with the question of lawful possession while deciding the application for temporary injunction.

27. The plaintiff claims that she is in possession of one room, one hall, one kitchen, one toilet and one bathroom on the ground floor. The defendant has contended that since the plaintiff and defendant no.1 were carrying on business jointly with him, the plaintiff was permitted to use some portion of the ground floor only for a limited purpose. From the notice issued by defendant No. 1 through Advocate Amit Palav, it also appears that an air

conditioner was installed in the said room by the husband of the plaintiff. Therefore, prima facie it appears that the plaintiff and her husband were occupying some portion on the ground floor of the suit house since the lifetime of purshottam.

28. Thus, although the assessment record shows that the ground floor stands in the name of defendant No. 1 and the first floor stands in the name of Purushottam, it prima facie appears that the Will was not strictly acted upon as the plaintiff and her husband were in possession of some portion of the ground floor. What was the nature and extent of such permissive possession is a matter which can be decided only after trial.

29. Be that as it may, it appears that during the pendency of the suit defendant No. 1 placed a lock on the portion which was allegedly in possession of the plaintiff when she was at Mumbai. It is to be noted that the plaintiff has not amended the plaint to seek a mandatory injunction directing defendant No. 1 to remove the lock as the final relief. Therefore, there is no final relief claimed to that effect in the plaint. It is a settled principle of law that an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of its rights in a suit or proceedings. Moreover it is also a settled principle of law a relief which

cannot be granted finally cannot be granted by way of interim relief. Therefore, the relief directing defendant No. 1 to remove the lock cannot be granted at this stage. Therefore in such circumstances the application at Exh.5 for temporary injunction restraining defendant No. 1 from interfering with the possession of the plaintiff over the some portion of the ground floor of the suit house, becomes infructuous.

30. The plaintiff ought to have amended the plaint and sought the relief of mandatory injunction as a final relief in the suit. It is not open to the court to grant a relief to the plaintiff on a case for which there is no basis in the pleadings. Since such relief has not been sought, the present application at Exh. 23 is not maintainable. Therefore, the plaintiff is not entitled to the relief claimed in the application at Exh.23.

31. It is also to be noted that the plaintiff has filed the present suit seeking a declaration that the Will executed by Balkrishna Keshav Bhogle is invalid and that the suit house is ancestral property. The plaintiff has also contended that defendant No. 2 has an equal share in the suit property. However, defendant No. 1 has denied that the suit house is ancestral property. He has also denied any right or share of defendant No. 2 in the suit house. In such circumstances, the plaintiff ought to have also sought the relief of partition

of the suit house. However, no such relief has been claimed in the present suit, despite cause of action for seeking partition being arisen for the plaintiff at the date of institution of the suit.

32. It is a settled principle of law that the Court will refuse to grant a mere declaration where the plaintiff, being able to seek further relief than a bare declaration, omits to do so. The object of the proviso to Section 34 of the Specific Relief Act is to avoid multiplicity of suits. The intention of the legislature is that if the plaintiff, at the time of filing the suit, is entitled to claim some further relief against the defendant in addition to a declaration, he must claim such relief in the same suit. The plaintiff cannot be permitted to vex the defendant by filing multiple suits for the same cause of action.

33. In the present case, the plaintiff has sought a declaration that the will executed by Balkrishna Keshav Bhogle is invalid and has also claimed that the suit property is ancestral in nature and that Defendant No. 2 has a share in the same. In such circumstances, the plaintiff ought to have sought the relief of partition and separate possession of her share in the suit house. However, the plaintiff has failed to claim such relief. Therefore, the proviso to Section 34 of the Specific Relief Act is attracted and prima facie the suit for mere declaration and injunction without seeking partition would not be maintainable.

34. Further, Section 41(h) of the Specific Relief Act provides that an injunction cannot be granted when an equally efficacious remedy is available to the plaintiff and the plaintiff fails to avail the same. In the present case, if the plaintiff claims a share in the suit property, the proper remedy available to the plaintiff is to file a suit for partition and separate possession. However, the plaintiff has not availed such remedy and has instead filed the present suit for declaration and injunction. Therefore, in view of the proviso to Section 34 and the bar under Section 41(h) of the Specific Relief Act, prima facie the plaintiff is not entitled to the relief of injunction.

35. In view of the above discussion, the plaintiff has failed to establish a prima facie case and the balance of convenience is not in her favour. The plaintiff will not suffer any irreparable loss if the relief of injunction is refused. The plaintiff herself has failed to seek relief of mandatory injunction as the main relief in the suit and also failed to file a comprehensive suit by seeking the necessary relief of partition and separate possession along with the declaration. Therefore if the plaintiff suffers any loss, the same would be a consequence of her own omission in not claiming the appropriate relief in the present suit. Hence, Point Nos. 1 to 3 are answered in the negative. In answer to Point No. 4, the following order is passed.

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R.C.S.No.107/2025
Tanuja Vs. Nagesh
common order Exh.No. 05 and 23

| <u>ORDER</u> | |
|------------------------------------------|-------------------------------------------------|
| 1. | The applications at Exh. 5 and 23 are rejected. |
| 2. | Costs in cause. |
| (Pronounced and dictated in open Court.) | |

Place : Malvan
Date : 11/03/2026

M.K.Fakih
Civil Judge J.D. Malvan.