



CNR No. MHSI070004792018  
Order passed below Exh. No. 106  
in R.C.S.No. 94/2018

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The suit has been filed for partition and separate possession. Defendant No. 1D has filed the present application seeking to restrain the plaintiff from creating any third-party interest in the suit property. The defendant no.1D has also sought a mandatory direction against the bank to recover the loan amount granted to the plaintiff against the suit property and to release the suit property from all charges and encumbrances.

**Defendant No. 1D's case**

2. It is contended by defendant No.1 that the present suit for partition and separate possession filed by the plaintiff is false and without any legal basis. According to this defendant, the plaintiff has no legal relationship with the suit property or with the family lineage of the defendants. This defendant has stated that the plaintiff has relied upon false and incorrect documents relating to another person in order to claim rights over the suit property. The defendants and their ancestors have been in possession of the suit property since long.

3. This defendant further contends that the plaintiff has obtained a loan of ₹22,00,000/- from Sindhudurg District Bank, Walawal Branch, by mortgaging the suit property through a registered mortgage deed dated

18.03.2025. According to this defendant, the plaintiff created the mortgage despite knowing that he has no legal right in the suit property. The defendants thereafter issued notice to the bank and informed it that the dispute regarding the suit property is pending before Court. They also called upon the bank to recover the loan amount from the plaintiff and remove the encumbrance over the suit property.

4. This defendant submits that if the plaintiff fails to repay the loan amount, the bank may attach and auction the suit property. In such circumstances, the defendants may suffer serious and irreparable loss. Therefore, defendant No.1D contend that he has a prima facie case and that the balance of convenience is in his favour. Hence the present application has been filed for the reliefs mentioned above.

#### **The plaintiff's case**

5. The plaintiff has opposed the application by filing a reply at Exh. 110. It is his contention that the application under consideration is false, frivolous, and based on misleading facts. He submits that although he is not a member of the defendants' lineage, he has acquired lawful rights in the suit property through a registered Will executed by Shri Shrikrishna Ganesh Samant vide Registered Document No. 816/2009. The mutation entry

based on the said Will was duly recorded and certified by the competent authority. The same was never challenged by the defendants or other co-sharers within the prescribed period of limitation. The plaintiff further submits that he has never claimed any right on the basis of genealogy and that his claim is solely based upon the registered Will.

6. The plaintiff has denied the allegations made by defendant No. 1D regarding the identity and death of Shri Shrikrishna Ganesh Samant and contended that the said statements are false and misleading. According to the plaintiff, Shri Shrikrishna Ganesh Samant, who executed the Will in the year 2009, was the lawful co-owner and joint holder of the suit property. The plaintiff has also denied the allegation that false documents were created for mutation of his name in the revenue records. The plaintiff admits that he obtained a loan of ₹22,00,000/- from Sindhudurg District Bank, Walawal Branch, by executing a registered mortgage deed. However, the plaintiff contends that the defendants have no legal right to interfere in his financial transactions or to direct the bank regarding recovery of the loan amount.

7. The plaintiff further submits that defendant Nos. 1A to 1D have no prima facie case and that the balance of convenience is not in their favour. According to the plaintiff, rejection of the injunction application will not

cause any loss to the defendants, whereas allowing the application would unnecessarily restrict the plaintiff from exercising his lawful ownership rights over the property acquired under the registered Will. The plaintiff contends that the defendants have filed the present application only to harass him and to create unlawful claims over the suit property. Therefore, the plaintiff has prayed for rejection of the application with costs.

8. Heard the learned advocates for both the parties at length. Perused the record. Points for my determination along with findings and reasons thereon are as under :

Sr.No.	Points	Findings
1	Whether defendant No.1(d) has made out a prima facie case?	...Partly Yes
2	Whether defendant No.1(d) shows that balance of convenience lies in his favour ?	...Partly Yes
3	Whether defendant No.1(d) will suffer irreparable loss if injunction as prayed for is not granted ?	...Partly Yes
4	What order ?	Application is partly allowed.

### **REASONS**

#### **Undisputed facts:**

9. The plaintiff has obtained a loan of ₹22,00,000/- from Sindhudurg District Bank, Walawal

Branch, by mortgaging the suit property through a mortgage deed dated 18/03/2025.

**AS TO POINT NO. 1 to 4**

10. These points are interconnected. Therefore, they are taken up together for consideration to avoid repetition.

11. I have given anxious consideration to the pleadings, documents, and rival submissions advanced by both parties. Defendant No. 1D has filed the present application seeking to restrain the plaintiff from creating any third-party interest in the suit property and for a direction to the bank to recover the loan amount and release the suit property from encumbrances. Therefore, the present application seeks two reliefs. Firstly, to restrain the plaintiff from creating any third-party interest in the suit property. Secondly, to direct the bank to recover the loan amount from the plaintiff and release the suit property from all encumbrances.

12. Firstly, regarding the relief of restraining the plaintiff from creating third-party interest, it is the plaintiff's own case that the suit property is a joint family property and that the same has not yet been partitioned by metes and bounds. Therefore, the plaintiff has filed the present suit for partition and separate possession. It is a settled principle of law that until partition takes place, every co-sharer has an equal right in every inch of the joint property.

However, this does not mean that a co-sharer can create a charge or encumbrance over the entire property for his exclusive benefit. In the present case, the plaintiff has admittedly mortgaged the suit property and obtained a loan of ₹22,00,000/- from Sindhudurg District Bank, Walawal Branch. A mortgage deed to that effect has also been executed.

13. This conduct of the plaintiff shows that he may further create third-party interest in the suit property, which may prejudice the rights of the other co-sharers. Whether the plaintiff has any right, title, interest, or share in the suit property is a matter to be decided during trial. However, considering the present conduct of the plaintiff, the possibility of further alienation or creation of third-party interest cannot be ruled out. If such acts are permitted, the defendants may suffer loss which cannot be compensated in terms of money. Therefore, it is just and necessary to restrain the plaintiff from creating any third-party interest in the suit property till disposal of the suit.

14. As regards the second relief, namely directing the bank to recover the loan amount from the plaintiff and release the suit property from encumbrances, such relief cannot be granted. Firstly, the defendants have not sought such relief by filing any counterclaim. It is a settled principle of law that a relief which cannot be finally granted cannot ordinarily be granted at the interim stage.

15. Secondly, the bank against whom the direction is sought is not a party to the present suit. In the present case, no such direction can be issued against the bank in its absence and without giving it an opportunity of being heard. Further, the mortgage deed has already been registered and the loan amount has already been disbursed. Therefore, Defendant No. 1D is not entitled to interim mandatory relief directing the bank to recover the loan amount from the plaintiff and release the suit property from encumbrances.

16. If, at the conclusion of the trial, it is held that the plaintiff has no right, title, or interest in the suit property, then the bank cannot recover the loan amount by enforcing the mortgage against the suit property or by auctioning the same. The bank granted the loan at its own risk and on the basis of the representations and assurances made by the plaintiff. In the event the plaintiff fails to repay the loan and it is ultimately held that he had no transferable interest in the suit property, the bank cannot enforce the mortgage against the suit property and recover the loan amount from the same. Therefore, no irreparable loss would be caused to the defendants by refusal of the said relief. Moreover, grant of an interim mandatory injunction requires a much stronger prima facie case, which is absent in the present matter.

17. Thus, defendant No. 1D has partly established a prima facie case. The balance of convenience also partly lies in his favour. If the plaintiff is restrained from creating third-party interest, no irreparable loss will be caused to him, as according to his own case, the property is joint family property. On the other hand, if the plaintiff is permitted to create third-party interest, the same may seriously prejudice the rights of the other co-sharers and may cause irreparable loss to them. Therefore, the application deserves to be partly allowed. Hence, Point Nos. 1 to 3 are answered partly in the affirmative. In answer to Point No.4 the following order is passed,

<b>ORDER</b>	
<b>1</b>	Application Exh.106 is partly allowed.
<b>2</b>	The plaintiff is hereby restrained from creating any third-party interest, charge, or encumbrance in respect of the suit property till final disposal of the suit.
<b>3</b>	cost in cause.
	(Pronounced and dictated in open Court.)

Place : Malvan  
Date : 18/05/2026

Sd/-  
M.K.Fakih  
Civil Judge J.D. Malvan.