

MHSN060013752017 	ORDER BELOW EXH.59 IN RCS NO.147/2017 <i>[Shalan Laxman Khade Vs Mahadev Aaba Omase & Ors.]</i> [Passed On 01st January, 2026]
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This is an application filed by the plaintiff for restraining defendant No.9 from alienating the suit property. It is her contentions that, the defendant No.9 is in haste to alienate the suit property.

02. Description of the suit property : Gat No.2258, area to the extent of 5-12 R + 0-22 R situated in the locality of village Bedag, Tal. Miraj, Dist. Sangli having four boundaries are as follows :

Towards east : Property of Swati Omase

Towards west : Property of Anappa Omase

Towards south : Road

Towards north : Property of Parasram Omase & Sukumar Dadibude.

(Hereinafter referred as “suit property”).

03. Perused the say filed by defendant No.9 at Exh.65, wherein it is submitted that, defendant No.9 became owner of suit property by way of gift-deed executed by defendant No.7 in the year 2016. This defendant has also filed one suit bearing RCS No.351/2023. There is no allegations or pleadings against this defendant while filing the suit or after adding her as a party to the suit. Hence, prayed to reject the application.

04. Plaintiff has filed the application submitted before Sub-

Registrar, Miraj and Public Notice. The defendant No.9 has submitted copy of 7/12 extract, gift-deed, copy of order in RCS No.351/2023.

05. Considering application, say and arguments, following points arise for determination with my reasons ensued thereon :

Sr.No.	Points	Findings
1.	Whether plaintiff proves the <i>prima-facie</i> case ?	No.
2.	Whether balance of convenience tilts 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

As to Point No.1 :-

06. The learned Advocate for plaintiff submitted that, the plaintiff is coparcener of the suit property. Suit property is the joint family property. The gift-deed is not binding on her. In the RCS No.351/2023, she is not party to the suit. If defendant No.9 has sold out the property then there is irreparable loss to the plaintiff. The greater hardship to the plaintiff than defendant No.9.

07. *Per contra*, the learned Advocate for defendant No.9 submitted that, there is no *prima-facie* case. The application for addition of defendant No.9 is in the year 2025 whereas the defendant No.7 filed her written statement in the year 2018.

Thereafter, the defendant No.9 has been added as defendant after long gap. In the plaint, there are multiple infirmities. There is no pleading, how the property became the property of defendant No.7. Even there is no pleading in respect of the relation of the parties. There is no prayer of declaration and without prayer of declaration, the suit is not maintainable. In the amended plaint, there is no pleading against this defendant. There is notice given by the one of the defendant and also filed application to Sub-Registrar for showing the present suit. The description of the suit property is mentioned as per Exh.01. However, the suit property must be as per gift-deed. There is protection to the plaintiff as per Section 52 of Transfer of Property Act. She has no *prima-facie* case. Balance of convenience is not in favour of plaintiff. Plaintiff has not shown apprehension. Hence, prayed to reject the application.

08. On perusal of record it appears that, the defendant No.9 has been added after the order below Exh.49. The defendant No.7 had mentioned in her written statement about the alleged gift-deed. But, plaintiff has filed application for addition of defendant No.9 in the year 2024. There is no diligence to add her as defendant.

09. It is the contention that, defendant No.7 has given the property to the extent of 64 R to the defendant No.9 by way of gift-deed. However, perusal of the gift-deed divulges that, defendant No.7 has executed gift-deed in favour of defendant No.9 in the year 2016, before the filing of the suit.

10. At this juncture, it is clear that defendant No.9 is the party to the suit. Thus, if there is transfer by her then it has legal effect. Though there is remedy under Section 52 of the Transfer of Property Act, plaintiff has to show the *prima-facie* case, balance of convenience and irreparable loss. The plaintiff has filed one public notice published by one Rahul Suresh Omase which shows that, defendant No.9 is in haste to alienate the suit property. It is pertinent to note that, the defendant No.9 has filed suit for perpetual injunction in respect of 64 R land against Rahul Omase. Public notice filed by plaintiff is published by him. There is no such document which shows defendant No.9 or any person intended to purchase the land has published the public notice for the suit property. Public notice shows that, apprehension is to one of the person and not to the plaintiff.

11. In an amended plaint also, after addition of defendant No.9, there is no relief sought against this defendant. Plaintiff has failed to show that defendant No.9 is intended to sell the suit property. Moreover the application is in respect of the entire suit property but only 64 R land is concerned against defendant No.9. Therefore, there is no *prima-facie* case. The overall conduct of the plaintiff shows that she is not diligent to proceed against this defendant. Hence, I answer Point No.1 in the negative.

As to Point No.2 & 3 :-

12. Having answer Point No.1 in the negative, the balance of convenience and irreparable loss also in favor of defendant No.9. If the injunction is granted then defendant No.9 would suffer more

hardship than plaintiff. Plaintiff has to prove the *prima-facie* case which she failed. In such circumstances, the other two factors need not to be considered in detail. The Hon'ble Bombay High Court in the case of **Bhavna Vs. Navneet, 2015(3) MHLJ 472** assumes importance. In para No.8 therein, his Lordships has observed that;

“Once the prima-facie case is not established, the further aspects as to balance convenience and irreparable loss are immaterial and they need not be considered.”

In this view of the matter, Point Nos.2 and 3 does not survive and are answered accordingly.

As to Point No.4 :-

13. Having answers to Point No.1 to 3 in the negative, I proceed to pass the following order :-

ORDER

1. Application is rejected.
2. Costs in main cause.

(Dictated and pronounced in the open Court).

Miraj.
Date : 01/01/2026.

(Pravin U. Kulkarni)
Jt. Civil Judge Jr. Dn., Miraj.