

MHSN110000932025

**ORDER BELOW EXHIBIT - 5****IN RCS NO. 31/2025****(Bhimrao Metkari Vs. Damodar Metkari)**

1] The plaintiff has filed present application under Order 39 Rule 1 and 2 of Code of Civil Procedure Code.

2] Land situated at Nimbewadi total admeasuring 15 H. 12 R., Potkharaba – 69 R. out of that the land admeasuring 3H. 78R on the eastern side of Gat no. 57 is the disputed property and it shall be referred as “Suit Property” in the entire order as described in para 1 of the application.

3] It is the contention of plaintiff that, suit is filed for declaration and perpetual injunction. The suit property is ancestral property of plaintiffs. Suit property is inherited in the name of plaintiff no. 1 from his father Bhau Laxman Metkari. Plaintiff no. 2 is son of plaintiff no. 1 and plaintiff no. 3 is daughter and plaintiff no. 4 is wife of plaintiff no. 1. It is joint family of plaintiff no. 1 to 4. Plaintiff no. 1 is having three brothers by name Sandipan, Damodar and Shyamrao. Oral partition between plaintiff and his three brothers were held before 30 years. In the said oral partition, suit property was allotted to the plaintiff no. 1 Bhimrao. On the western side of plaintiff's share, Shyamrao was given share and on the western

side of Shyamrao, there is share of Sandipan and on the extreme western side of the Gat, there is share of Damodar i.e. defendant no. 1.

4] As per the oral partition, plaintiff and defendant no. 1 and their brothers are cultivating the property which have came in their share from last 30 years. Plaintiff no. 1 has invested a major amount and has developed the suit property. Defendant no. 1 has not developed his share. Plaintiff is residing at Badoda, State – Gujrat and he is doing service. Recently, defendant no. 1 who has not developed his land and so as to, grab the developed land of plaintiff, Defendant no. 1 and their children i.e. defendant no. 2 and 3 were asking re-partition of the Gat no. 57. Plaintiff no. 1 has executed a three gift deeds of the land which was allotted to plaintiff in oral partition i.e. suit property on 28/04/2023 respectively 1 H. 00 R and 0 H. 89 R in the name of plaintiff no. 2, 3 and 4. From that date, names of plaintiff no. 2 to 4 are recorded in record of rights and they are having possession over that area. The plaintiffs are owner and possessor of suit property and defendants or any other person is having no concern with the suit property.

5] Defendant no. 1 have started making construction forcefully over the suit property. Plaintiff has issued notice to defendant no. 1 and his brothers Sandipan and Shyamrao on 07/07/2024 and had intimated not to make construction.

Defendant no 1 has accepted the notice. Defendant no. 1 and Sandipan have replied the notice. Defendant no. 1 has falsely contended that, there was no any partition effected between them. Satish Metkari who is son of Sandipan Metkari has filed R.C.S. No. 138/2024 for partition of Gat no. 57 in the Court of Civil Judge, Jr. Division, Atpadi by specifying the four boundaries. This shows, there was oral partition effected long back 30 years between plaintiff and their brothers.

6] On 19/07/2024, defendant no. 1 has inserted name of defendant no. 2 and 3 in revenue record in the share of suit property. Plaintiff has challenged the mutation entry pending before Circle Inspector, Dighanchi. During that period, defendant no. 1 to 3 on the basis of sale deed dated 19/07/2024 trying to make construction in the suit property and have tried to make pits for columns in the suit property. Plaintiffs have objected but defendants abused and have threatened the plaintiff. Defendants have threatened the JCB driver when he has came to make fencing to the suit property. A complaint is registered at Atpadi Police Station in that regard. Defendants are obstructing the possession of plaintiffs. On 25/12/2024, cause of actin arose to file the suit for declaration of ownership and perpetual injunction. Accordingly, the present application.

7] Defendant no. 1 to 3 have filed say and resisted the application. It is the contention of the defendants that, the entire

contentions raised in the application are false. The suit is under valued and barred by Order 7 Rule 3. Plaintiff has hide the material events which had occurred in R.C.S. no. 138/2024. Defendant no. 1 was not made party in R.C.S. No. 138/2024 and an attempt was taken to make compromise in absence and behind back of defendant no. 1. Hence, the plaintiff has not come before the Court with clean hands to seek equitable relief. Hence, the application be rejected on single ground of suppression of fact.

8] It is the contention of defendants that, on perusal of para 1, the suit property cannot be identified. The plaintiff has not made any explanation as how plaintiff no. 1 to 4 have received the ownership of the same four boundaries in the plaint. The plaintiff has mentioned separate four boundaries in each illegal gift deeds. The four boundaries in those gift deeds does not match with the four boundaries mentioned in the suit property. The description of property is suspicious. The plaintiff has not filed any evidence on record which shows, on which part of land defendants are making construction as alleged. The plaintiff has filed alleged mutation no. 2272 which is not a mutation of partition but it was only family arrangement. The mutation entry shows, on 01/02/1993, father of plaintiff being old age has filed an application on allotted land in common and accordingly, a mutation was sanctioned, hence, it is not a

partition. All these facts have been hide by the plaintiffs and they have not come before the Court with the clean hands, hence, requested to reject the application.

9] Heard both the Advocates. Considering the rival contentions of both the parties, following points arise for my determination. I have recorded my findings thereon with reasons to follow :-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
(i)	Whether the plaintiff proves prima facie case in his favour ?	In the Negative.
(ii)	Whether the balance of convenience lies in favor of plaintiff?	In the Negative.
(iii)	Whether the plaintiff will suffer irreparable loss if the injunction is not granted?	In the Negative.
(iv)	What order ?	As per final order...

REASONS

10] The plaintiffs have filed copy of 7/12 extract and copies of gift deed executed by himself in favour of plaintiff no. 2 to 4. The plaintiff has also filed copies of gift deed executed by Shyamrao Metkari in favour of his children and wife. On the

other hand, defendant has filed copy of 7/12 extract from the year 1998 to 2016. Copy of mutation entry no. 2272, certified copy of exhibit no. 1 R.C.S. No. 138/2024. Copy of Vakilpatra filed by defendant in R.C.S. No. 138/2024. Copy of compromise deed filed on record in RCS No. 138/2024. Copy of partition deed dated 31/12/2024 executed between plaintiff and his three brothers. Affidavit of one Pandurang Sadashiv Mote, Tax receipts, extract of 8-A and photograph of constructed house.

As to Point No. I to III :-

11] Heard both the Advocates at length. It is pertinent to note here that, the plaintiff is claiming the oral partition which is 30 years back and extreme eastern side portion admeasuring 3 H 78 R land was allotted to the plaintiff no. 1. On the western side of plaintiff Bhimrao, Shyamrao was allotted with share of Shyamrao and on the western side of Shyamrao there was share allotted Sandipan and on the western side of Sandipan share was allotted to defendant Damodar. On perusal of mutation entry no. 2272 father of plaintiff has allotted 4 Pai share equally to his for sons i.e. Sandipan, Damodar, Shyamrao and Bhimrao. Accordingly, the record shows mutation was sanctioned and thereafter converted into Anewari. It is pertinent to note here that, the father plaintiff has nowhere mentioned four boundaries which are mentioned in para 1 of the plaint. It is also pertinent to note here that, the

plaintiff has not filed any documentary evidence to show that, the portion mentioned with four boundaries in plaint para 1 was in possession of plaintiff.

12] On perusal of gift deeds executed by Bhimrao and his brother Shyamrao has shown Shyamrao on his western side whereas Shyamrao has shown Bhimrao on his eastern side. But the fact of matter is that, the gift deed executed by defendant Damodar in favour of his children on the western side he has shown land of Sandipan. In fact, as per the pleading of the plaintiff Damodar was allotted with the extreme western side of portion of Gat no. 57 so, in the gift deed executed by Damodar on the western side it was expected to mentioned some other Gat rather than land of Sandipan. This documentary evidence shows and falsifies that, as per pleading of plaintiff the sequence shown Sandipan after Shyamrao is broken and Damodar claims as per gift deed he is western side of Shyamrao. This documentary evidence also demonstrate that, the possession of plaintiff and their brothers are not determined and specified by all brothers mutually there is discrepancy in the four boundaries. This prima facie shows that, there was no partition between brothers inter se by any Court decree or they have not acted upon as per the oral partition pleaded in the plaint.

13] It is specifically contended by plaintiff that, Damodar has executed gift deed in favour of his children by mentioning

four boundaries which are shown in the plaint but the gift deed executed by Damodar as mentioned above itself changes the location and it clearly the four boundaries mentioned gift deed executed by the Damodar are totally different and which is not similar to the plaintiffs four boundaries mentioned in the plaint. Prima facie, the documentary evidence falsifies the pleadings of the plaintiff contending that, defendant Damodar has started constructed on the portion of plaintiff's land by mentioning four boundaries in the gift deed. This documentary evidence also shows that, there is one brother between land of plaintiff and defendants i.e. Shyamrao. This prima facie shows, defendant Damodar is certainly not making construction on the land of plaintiff as alleged.

14] Moreover, plaintiff has failed to bring on record any documentary evidence or affidavits of their brothers to state that, Damodar is making construction on the eastern side of Gat no. 57 which is in the possession of plaintiff Bhimrao. From the gift deeds it can be prima facie seen that, land of Damodar and land of Bhimrao are two different locations. It cannot ascertain from the photographs filed by the plaintiff the construction is going on, on the eastern side of Gat no 57 which is in the possession in plaintiff as alleged.

15] It is very strange to note here that, in the gift deed executed by Shyamrao he has shows Sandipan on the western

side. Moreover, in the compromise pursis executed between Sandipan, Bhimrao, Shyamrao and their children, it can be seen that, a share of 0 H 78 R land out Gat no. 57 was allotted to the share of plaintiff Bhimrao and on the western side of his share the share of Sandipan is shown. The compromise is signed by plaintiff Bhimrao. Even though, the compromise has not been verified and read and recorded the previous statements of plaintiff estoppes him from making contrary statements to that.

16] Considering these consent in compromise in RCS No. 138/2024, it falsifies the pleadings more particularly four boundaries mentioned in the plaint para 1 by plaintiff. Moreover, a document executed on 31/12/2024 which is the partition deed the plaintiff again contradicts his pleadings and admits that, on the western side of Bhimrao there is share of Sandipan, on the western side of Sandipan share of Shyamrao and on the western side of Shyamrao share of Damodar. This contrary admissions about the possession of plaintiffs share in every document certainly dis-entitles him from getting any equitable relief from Court.

17] Moreover, by entering into in RCS No 138/2024 the plaintiff is indirectly admitting that, there was no partition between brothers by metes and bounds and by any registered document of partition deed or Court decree. The pleadings and documents itself shows the plaintiff himself is uncertain about

his possession over suit property. In this circumstance, possibility of making construction by defendant in the property possessed by plaintiff does not arise at all. It is question of trial whether plaintiff, defendant, their brothers are having right to execute the gift deed without making any valid partition.

18] Considering all these facts and circumstance, the plaintiff has miserably failed prima facie to show he is in possession of the suit property and defendant Damodar has executed gift deed mentioning four boundaries of suit property and his is making construction within the four boundaries mentioned in the plaint para 1. In case the application is rejected, no irreparable loss would cause to plaintiff rather than it will cause loss to the defendant who has started constructed work by investing the amount. Considering all these facts and circumstances, I answer point no. I to III in negative and point no. iv I proceed to pass following order.

ORDER

- 1) Application Exhibit 5 stands rejected.
- 2) Plaintiff to bear cost of application.

Date:- 09/05/2025
Atpadi

(R.B. Kulkarni)
Jt. C.J.J.D. Atpadi.

Atpadi, Dist- Sangli

<u>CERTIFICATE</u>		
I affirm that the contents of this P.D.F. file Order/Judgment is same word for the word as per original Order/Judgment.		
Name of Steno	:-	Shri. A.R. Jadhav, Steno (Grade-3)
Court Name	:-	R.B. Kulkarni Jt. CJJD & JMFC, Atpadi, Dist- Sangli
Date of Order/Judgment	:-	09/05/2025
Signed by PO on	:-	09/05/2025
PDF uploaded on	:-	09/05/2025