

**Regular Civil Suit No. 243/2024**  
Mukund Gund & ors. vs. Shivaji Gund & ors.  
CNR No. MHSO07-000300-2024

**ORDER BELOW EXH.05**  
(Passed on 03.08.2024)

Plaintiffs have filed this application vide order XXXIX rule 1(a) of The Code of Civil Procedure, 1908 (hereinafter referred as 'the C.P.C.', for the sake of brevity) for the grant of relief of temporary injunction against the defendant no.1 to 4 to restrain them from creating third party interest in the suit property and restraining them from alienating the suit property.

2. **Description of the suit properties:**

A. The following properties are situated at village Narayan Chincholi, Tq. Pandharpur, Dist. Solapur -

Sr. No.	Gat Number	Area H. R.
1	246/1	0.86, potkharab 6R
2	125/1	1.97, potkharab 8R
3	3/A	0.59
4	246/2	0.87, potkharab 5R
5	7/1/B	0.20
6	7/2/A	0.50
7	7/B/2	0.40
8	5/2	1.26, potkharab 10R
9	4/1/B	0.42, potkharab 6R

B. The house property bearing C.T.S. No. 717/A admeasuring area of 133.80 sq.ft. situated at village Pandharpur,

Tq. Pandharpur, Dist. Solapur. The above mentioned all properties are called as 'suit properties' for the sake of brevity. All suit properties are more specifically described in plaint para no.1.

3. The plaintiffs have submitted that, defendant no.1 is father of plaintiff no.1 and defendant nos. 2 and 3 and husband of defendant no.4. Defendant no.1 was working in Maharashtra State Electricity Board and he is also farmer. Defendant no.1 purchased suit property Gat nos. 3A, 7/1/B and 5/2. He also purchased house property bearing no.717/2 and since then plaintiffs and defendants residing jointly in said house property. Plaintiff no.1 is farmer and he is doing all agricultural work. The suit properties are purchased by defendant no.1 from the income of Hindu undivided family. The said properties are not self acquired properties of defendant no.1.

4. Defendant no.1 is retired from his service and due to the medical emergency he is bed-ridden. Defendant nos. 2 and 3 take benefit of his illness and executed gift deed dated 10.03.2023 bearing no. 1329/2023. Plaintiff came to know about this fact on 22.04.2024. Defendant nos.2 and 3 registered said gift deed by defrauding defendant no.1. All suit properties are Hindu undivided family properties but, defendants are now trying to create third party interest in the suit property hence, plaintiffs filed present suit. The time will be taken for trial of the present suit hence, plaintiffs file present application and prayed for temporary injunction against defendant nos. 1 to 4 for restraining them from alienating the suit properties.

5. The application is opposed by defendants vide their say at Exh.55. They denied all the contentions in the application in toto. They specifically submitted that, suit property bearing Gat nos.125/1 and 246/2 are properties of defendant no.1. In the year 1981 defendant no.1 get these properties vide partition between him and his brother and since 1981 these properties are separate properties of defendant no.1. He further submits that property bearing Gat no.125/1 is given to defendant no.4 and property bearing Gat no.246/2 is given to defendant no.2 by defendant no.1 vide partition and to that effect mutation entry no. 1118 was registered and said partition was effected on 7/12 extract of the suit property and since the partition, these properties are separate properties of defendant no.2 and 4. Hence, plaintiffs have no right to claim partition in these properties.

6. They further submits that, other suit properties are self acquired properties of defendant nos.1, 2 and 4. Defendant no.1 purchased those suit properties from his separate income hence, plaintiffs cannot claim partition regarding self acquired properties of defendant no.1

7. Defendants further submits that, property bearing C.T.S. No. 717/A is purchased by defendant no.1 and 3 from their income. Said properties are self acquired properties of defendant no.1 and defendant no.1 has right to transfer said property and accordingly he executed registered gift deed in favour of defendant nos. 2 and 3.

8. According to defendants, suit properties are self acquired properties of defendant no.1. The suit filed by plaintiffs is sham and bogus. The suit is not maintainable in present form. Hence, they prayed for dismissal of present application.

9. The points for determination along with the findings and the reasons thereon are as under.

<b><u>Sr. No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
1.	Whether plaintiffs have prima facie case in their favour?	No.
2.	Whether plaintiffs would suffer irreparable injury, in case, temporary injunction is rejected?	No.
3.	Whether the balance of convenience lies in favour of the plaintiffs?	No.
4.	What Order ?	The application is rejected.

### **REASONS**

10. Heard Learned advocate for plaintiffs and defendant nos.1 to 4. They reiterated their contentions as per the pleadings. In view of O. XXXIX R. 1(a), when defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiffs in relation to any property in dispute in the suit, the court may grant temporary injunction. Now, in this case, as plaintiffs prayed for the relief of interim injunction against the defendant nos. 1 to 4. Accordingly, I would discuss these facts in following points.

**As To Point No.01:-**

11. In order to prove the prima facie case in favour of plaintiffs, the plaintiffs should prove that the suit properties are joint family properties of plaintiffs and defendant nos. 1 to 4. Further plaintiffs should prove that, defendant nos. 1 to 4 are alienating the suit properties to third party.

12. In order to substantiate the contention raised by plaintiffs, they filed on record 7/12 extract and property cards of suit properties. They also filed mutation entries on record. Ld. advocate for plaintiffs argued that, vide M.E. No. 589 property bearing no.125/1 and 246/2 is given to defendant no.1. The said properties are ancestral properties of plaintiffs and defendant no.1 to 4 and other suit properties are purchased by defendant no.1 from the agricultural income accrued from Gat nos. 125/1 and 246/2 hence, other properties are joint family properties of plaintiff no.1 and defendant nos. 1 to 4. To counter this argument, it is argued by Ld. advocate for defendants that, the suit properties are not purchased from agricultural income but from the salary income of defendant.1. Hence, these properties are self acquired properties of defendants and plaintiffs cannot claim partition. Defendant no.1 can dispose of these properties as per his wish.

13. Further I have perused mutation entry no.1300 wherein it shows that in the year 03-02-1993 suit property bearing Gat no. 246/1 is purchased by defendant no.4. Mutation

entry no. 895 dated 19/10/1980 shows that, defendant no. 1 purchased property bearing no. 5/2 from Aba Mahadu Shete. M.E. No. 896 dated 19.10.1986 shows that defendant no.1 purchased property bearing Gat no. 3/1 and 3/2 from Pandurang Waghmode. Further mutation entry no. 1118 shows that defendant no.1 effected partition and Gat no.125/1 was given to defendant no.4 and Gat no. 246/2 was given to defendant no.2. M.E. No. 2886 shows that, defendant no.1 purchased Gat no.7/A/2 from Sambhaji Chavan. M.E. No. 2650 shows that, Gat no. 7/B/2 purchased by defendant no.2 from Arjun Pawar. Gat no.7/B/1 is also purchased by defendant no.1 vide mutation entry no. 2651. M.E. No. 999 shows that, Gat no. 5/2 purchased by defendant no.1. M.E. No. 968 shows that Gat no. 4/1/B is purchased by defendant no.1. Plaintiffs have filed on record 7/12 extract of suit properties. I have perused the 7/12 extracts of suit properties. In occupant column the name of defendant nos.1, 4 and 2 is shown. From the above discussion it shows that, the suit properties are purchased by defendant no.1. These are all self acquired properties of defendant no.1 and he can transfer said properties during his lifetime as per his will.

14. Plaintiffs relied upon Judgment of Hon'ble Supreme Court in *Appasaheb Peerappa Chandgade Vs. Devendra Peerappa Chandgade and Ors., AIR 2007 Supreme Court 2018*, wherein it is held by Hon'ble Supreme Court that, initial burden to prove the entire property is joint family property is on plaintiff and after initial discharge of burden, it shifts on defendant to show that

property is purchased by them is of independent of them.

15. With due respect to the authority cited by plaintiff, here in present case plaintiff prima facie failed to establish the fact that, suit properties are joint family property. Here with due respect to the authority cited by plaintiff, the facts of present suit and authority cited by plaintiff are different. Hence, this authority is not helpful to plaintiffs.

16. The plaintiffs failed to bring on record that suit properties are joint family properties of plaintiffs and defendant nos. 1 to 4. The document on record prima facie shows that the properties are self acquired properties of defendant no.1. Hence, there is no prima facie case in favour of plaintiffs. Hence, I answer point no.1 in negative.

**As To Point No. 2:-**

17. In this suit, dispute is in respect of immovable property. Hence, the adjudication has to be made in consonance with the irreparable injury. Plaintiffs have raised the only fear that, defendants will alienate the suit properties and plaintiffs have sharing the suit properties but mere assertion without prima facie proof will not create balance of convenience in favour of plaintiffs. It is well settled principle of law that, injunction can be issued only on prima facie proof of actual interference or threat of interference and not in the absence of it.

18. Then there is no such fact to assume that, the defendant

nos. 1 to 4 are alienating the suit property and thus thereby they might suffer to any irreparable loss. Thus, plaintiffs need for such protection does not weigh more against corresponding need of the defendant nos. 1 to 4 to be protected against injury resulting from their rights for which they could be adequately compensated. There is no need to protect them from the consequences of apprehension and injury which cannot be compensated in terms of money. For these reasons, answer to point no. 2 is in the negative.

**As To Point No.3:-**

19. In this aspect of comparative mischief and inconvenience which is likely to be caused to the plaintiffs by refusing to grant injunction will not be greater than that which is likely to be caused to the defendants by granting it. Considering the alleged threatening of the defendant nos.1 to 4 as to alienation, it can be said that, plaintiffs would not suffer greater hardship if interim relief is refused, as they themselves failed to bring on record such material even to assume prima facie and the reasonable apprehension as to obstruction and thus thereby they might suffer to any irreparable loss. Thus, plaintiffs need for such protection does not weigh more against corresponding need of the defendant nos.1 to 4 to be protected against injury resulting from their rights for which they could be adequately compensated. Hence, it is appropriate to say that, the balance of convenience not lies in favour of plaintiffs. Resultantly, answer to point no. 3 is in the negative.

**As To Point No. 4:-**

20. In view of above discussion and considering the nature of suit, it will be going to decide differing rights of parties finally. In the result, as per O. XXXIX R. 1(c), it would not be just and proper to grant interim relief of injunction to restrain the defendant nos.2 to 4 from causing any said obstruction over the suit property. Consequently, in answer to point no. 4, the prayer of plaintiffs being devoid of merits and thus, liable to be rejected. In the result, following is the order.

**ORDER**

1.	The application at (Exh.05) is rejected.
2.	Parties to bear their own costs.
	(Dictated and pronounced in open court).

Date:- 03.08.2024

(PN. Pathade)  
6<sup>th</sup> Jt. Civil Judge J. D.,  
Pandharpur.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer :- S. M. Gaddam

Court :- 6<sup>th</sup> Jt. C.J.J.D. & J.M.F.C.,  
Pandharpur

Date :- 03.08.2024

Judgment/Order signed by :- 08.08.2024  
the Presiding Officer

Judgment/Order uploaded on :- 08.08.2024