

ORDER BELOW EXH. 76 IN RCS NO. 155/2020
(MHST07000988-2020)

Raju Vasant Thoravade --- Plaintiff.

Vs.

Sanjay Vasant Thoravade & others --- Defendants.

The present application has been filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "*the C.P.C.*"), seeking a temporary injunction against defendant No. 12. Defendant No. 12 has filed say at Exh. 80 and opposing the application.

2. Perused the application, say, and record. Heard learned advocate Shri. U.L. Patil for the plaintiff and learned advocate Shri. N.P. Jadhav for defendant No. 12.

Plaintiff's Case in Brief :-

3. The plaintiff alleged that the old Survey No. 298, admeasuring 4 Hectares 30 Ares, pot kharab 0.0.3 Ares, having an assessment of Rs. 4.10 paise, corresponds to the new Gat No. 311, admeasuring 1 Hectare 92 Ares, pot kharab 0.0.3 Ares, which is the suit property. The eastern half portion of the suit property was originally owned by Ghalsasi. The predecessor of the plaintiff was a tenant and a deemed purchaser from the year 1950, and therefore, he was in possession of the suit property as an owner.

4. The plaintiff further alleged that he has paid the price fixed by the competent authority under Section 32G and, accordingly,

obtained a certificate under Section 32M. The said certificate has been duly registered in the office of the Sub-Registrar, Karad. The plaintiff's father, viz., Vasant Narayan Thoravade, is absconding. However, defendant Nos. 1 to 11 have executed illegal sale deeds in respect of 76 Ares of land without obtaining permission under the Tenancy Act, and therefore, the said sale deeds are void.

5. The plaintiff further alleged that the present suit has been filed for removal of encroachment and recovery of possession. Defendant No. 1 has sold the property to defendant No. 12, who has commenced illegal construction on the second floor without obtaining permission from the Municipal Council, Karad. The plaintiff had issued a notice to the defendant; however, the defendant continued the construction with additional labourers since 15/09/2025. Consequently, the construction has been completed as shown in the map HIJK, which has caused irreparable loss to the plaintiff. Therefore, the defendant be restrained from carrying out any further construction.

Defence of Defendant No. 12 :-

6. Defendant No. 12 has filed his say at Exhibit 80 opposing the application. He has denied the plaintiff's case in *toto*.

7. The defendant contended that he has purchased 0 H. 05 Ares of land from Maruti Nagesh Ghorpade for an amount of Rs. 28,00,000/- along with the RCC constructed building under a sale deed dated 20/03/2025. The said land is non-agricultural. As the

property was damaged and had leakage in the ceiling, the defendant commenced repair work on the said property. If the said work is not carried out, it would cause irreparable loss to the defendant. Defendant No. 12 has already procured the necessary materials for construction on the suit property.

8. The defendant further contended that the plaintiff has filed various suits regarding the suit property. As per the map prepared by the Court Commissioner in R.C.S. No. 167/2011, it is proved that the area shown as HIJK, i.e., 0.05 Ares of land, is in the possession of Maruti Ghorpade. The certificate under Section 32M filed by the plaintiff is false. The plaintiff had not made defendant No. 12 a party to the proceedings under Section 32G before the Tahsildar and obtained the said certificate by filing the case only against the landlord, Ghalsasi. Therefore, the said certificate is liable to be cancelled. The defendant has already preferred an appeal before the Sub-Divisional Officer, Karad.

9. The defendant further contended that Maruti Ghorpade had purchased 0.05 Ares of land from Yashwant Anant Jadhav in the year 2007. After obtaining non-agricultural permission, he constructed an RCC building admeasuring 60.96 sq. meters. Yashwant Anant Jadhav had purchased the said land from the predecessor of the plaintiff, viz., Vasant Narayan Thoravade, on 03/05/1974. Accordingly, Mutation Entry No. 20849 was effected on 05/10/1989. Thus, the possession of the suit property has been continuous for about 51 years. The plaintiff's predecessor, Vasant Thoravade, had sold portions of the suit property to various persons

under different sale deeds for his necessity. Therefore, those sale deeds are binding upon his legal heirs, as they were executed after receiving proper consideration. No objection or complaint was raised within the prescribed period regarding those sale deeds.

10. The defendant further contended that the names of 124 persons are recorded in the 7/12 extract of the suit property. The predecessor of the plaintiff had sold land out of Gat No. 311 to various persons under several sale deeds. Considering the market value of the suit property and the plaintiff's selfish intentions, he has filed multiple false suits against the purchasers. Therefore, the present application deserves to be rejected.

Points for Determination :-

11. Having considered the rival submissions of both parties, the following points arise for determination, along with the findings and reasons thereon:

Sr.No.	Points		Findings
1.	Whether the plaintiff has prima facie case ?	..	In the Negative
2.	Whether balance of convenience lies in favour of the plaintiff ?	..	In the Negative
3.	Whether the plaintiff will suffer irreparable loss if injunction is not granted ?	..	In the Negative
4.	What order ?	..	As per final order.

REASONS

As to Points No. 1 to 3 :-

12. These points are interlinked; therefore, they are taken up for common discussion.

13. When the plaintiff seeks the discretionary relief of an injunction, he must establish that he has a *prima facie* case, that the balance of convenience lies in his favour, and that he would suffer irreparable loss or injury if the injunction is not granted. The foremost requirement is that the plaintiff must make out a *prima facie* case in support of the rights claimed by him. The evidence led by the plaintiff must be such that the Court is satisfied there exists a bonafide dispute, that there is a strong case for trial requiring investigation and adjudication on merits, and that, based on the facts before the Court, there is a probability of the plaintiff being entitled to the relief claimed. Thus, the existence of a *prima facie* right and its infringement is a condition precedent for the grant of a temporary injunction.

14. To support his claim, the plaintiff has relied upon the following documents:

1. 7/12 extract of gat No. 311 of village Karad, Tal. Karad.
2. Copy of notice sent to defendants by plaintiff.
3. Postal receipts.
4. Certified copy of decree of R.C.S. No. 278/2007.

5. Certified copy of plaint and order below Exh. 1 in R.C.S. No. 167/2011.
6. Measurement map through the Court Commissioner.
7. Photographs of suit property.
8. copy of registered certificate of 32 M

15. On the other hand, defendant No. 12 has has filed on record.

1. Property card exact of the suit property.
2. Assessment extract.
3. Tax payment receipt.
4. Copy of Mutation entry No. 20849
5. Photographs.
6. Certified copy of Exh. 161 in R.C.S. No. 167/2011.

16. The present suit is filed for the relief of partition and perpetual injunction. The plaintiff has claimed that the suit property, admeasuring 0 H. 97 Ares 5 Sq. Mtrs. out of Gat No. 311 (old Survey No. 298) of Karad, belongs to him to the extent of his half share. The plaintiff has further claimed that the suit property came to his predecessor as a deemed purchaser. His father, viz., Vasantrao, was not in a sound mental condition. Therefore, he executed sale deeds in favour of defendant Nos. 2 to 11. Consequently, the plaintiff filed

R.C.S. No. 167/2011 in another Court for declaration and possession. In the meantime, defendant No. 11 sold the suit property to defendant No. 12.

17. Upon perusal of the 7/12 extract of the suit property, it appears that there are various possessors of the suit land. R.C.S. No. 167/2011 is pending for declaration regarding the sale deeds. Those sale deeds are not before this Court. However, defendant No. 12 has appeared *suo motu* and filed his sale deed on record. It appears therefrom that he has purchased 0 H. 05 Ares (i.e., 500 sq. meters) of land along with an RCC constructed building from Maruti Nagesh Ghorpade, who is not a party to this suit, under a sale deed dated 20/03/2025. From the perusal of Mutation Entry No. 20849, it appears that the father of the plaintiff and his son, Narayan Thoravade, had sold 0 H. 05 Ares of land to one Yashwant Anant Jadhav on 03/05/1974 for an amount of Rs. 1,000/-. There is no explanation given by the plaintiff as to why he has filed the suit at such a belated stage.

18. The plaintiff has not made Maruti Suresh Ghorpade a party to this suit. No explanation has been offered by the plaintiff as to why he has not been impleaded. Moreover, as per the sale deeds, it is clear that there was already an RCC building on the property purchased by defendant No. 12. Furthermore, though the plaintiff has claimed to be a deemed purchaser, the order under Section 32G was passed by the Tahsildar/Agricultural Tribunal on 15/04/2025. The present defendant, though a purchaser of the property, was not a party to those proceedings. Moreover, the said order was passed after

the execution of the sale deed in favour of defendant No. 12.

19. In view of the above discussion, I am of the considered opinion that the plaintiff has failed to establish a prima facie right in the suit property. The plaintiff has not made out a prima facie case. Moreover, it is a settled principle of law that when the plaintiff fails to establish a prima facie case, other factors such as balance of convenience and irreparable loss need not be considered, and an injunction cannot be granted in the plaintiff's favour.

20. On this point, I rely upon the following judgment of the Hon'ble Bombay High Court. In *Bhavana vs. Navneet* (decided on 28/10/2014), the Hon'ble Court held: "*Once it is found that there is no prima facie case established, further aspects such as the conduct of the appellants, balance of convenience, etc., are immaterial and need not be considered.*"

21. Hence, in view of the above discussion, I am of the considered opinion that the plaintiffs have prima facie failed to establish the necessary elements for the grant of a temporary injunction. Accordingly, I answer Points Nos. 1 to 3 in the "Negative".

As to Point No. 4 :-

22. In view of the findings on Points Nos. 1 to 3 above, I proceed to pass the following order. Costs shall follow the event.

ORDER

1]	The Application (Exh.76) is rejected.
2]	Costs in main cause.

Place :- Karad.
Date :- 10/10/2025.

(Smt. A.V. Mohite)
3rd Jt. Civil Judge (Jr. Div.), Karad.
Tal. Karad, Dist. Satara.