

MHST080006312025

REGULAR CIVIL SUIT NO.120/2025

Bhagwan Narayan Shelke and Ors.

V/s.

Nilam Bhau Kharat and Ors.

ORDER BELOW EXH.5

The present application is moved by plaintiffs against defendant Nos.1 to 4 for relief of temporary injunction so as to restrain them from disturbing peaceful possession over suit property and from creating third party interest in suit property.

Facts of Plaintiffs' Case in Brief:

02. The agricultural land bearing Gat No 665/1 admeasuring 8H 56R + Pot Kharaba land admeasuring 3H 05R out of which property owned by plaintiff and defendant No 5 admeasuring 1H 47.13R + Pot Kharaba land admeasuring 0H 52.43R and out of which property owned by plaintiff admeasuring 1H 33.02R situated at Mouje Nimbodi, Taluka Khandala, District Satara is the subject matter of present application as well as main suit and hereinafter, it is referred as suit property. As per the contention of plaintiff, defendants No.1 to 3 had relinquished their rights in suit property in favour of father of plaintiffs for consideration of expenses incurred by father of defendants for the father of plaintiffs by way of oral partition dated 14/11/2020. The Reminder Deed dated 02/04/2022 was also executed by both parties and possession of suit property was transferred to father of plaintiffs. He incurred huge expenses for

development and cultivation of suit property. The defendants No.1 to 4 never objected for possession of father of plaintiffs at that time. However, after demise of father of plaintiffs, the defendants took advantage of their names in records of rights in suit property and defendants No.1 to 3 executed an agreement to sell regarding suit property in favour of defendant No.4. The defendants are trying to obstruct peaceful possession of plaintiffs over suit property and hence, present application is moved to restrain the defendants from creating third party interests in suit property and also from obstructing peaceful possession of plaintiffs over suit property.

03. The defendants No.1 to 4 filed their say to the present application at Exh 33 and contended that father of plaintiffs never incurred expenses for defendants in past. The defendants did not relinquish their rights regarding suit property in favour of father plaintiffs. They also denied oral partition dated 14/11/2020 and Reminder Deed dated 02/04/2022. It is further stated by them that the defendants No.1 to 3 cultivated their portion of property with the help of defendant No.4. The suit property is in possession of defendants No.1 to 4 and said fact is within knowledge of plaintiffs. The defendants further stated that sale deed dated 07/07/2025 was executed by defendants No.1 to 3 in favour of defendant No.4 and therefore, present application is not tenable and required to be rejected.

04. I heard arguments of both parties and perused documents on record. Considering documents on record and rival

submissions of both parties, following points of arose for may determination and my reasoned findings to them are as follows:-

Sr. No.	Points for determination	Findings
1	Whether plaintiffs proves that there is prima facie case in their favour ?	Yes
2	Whether balance of convenience tilts in favour of plaintiffs ?	Yes
3	Whether irreparable loss would cause to the plaintiffs if the relief of temporary injunction is rejected in their favour?	Yes
4	What Order?	Application is partly allowed.

REASONS

05. In order to buttress their contentions, the plaintiffs relied upon Power of Attorney executed by plaintiffs No 2 to 5 in favour of Plaintiff No 1., 7/12 extract of suit property, copy of Reminder Deed dated 02/04/2022 and copy of agreement to sell dated 12/03/2025. The Ld. Advocate for the plaintiff, during argument, further pointed out Section 12 of Maharashtra Project Affected Persons Rehabilitation Act, 1999 which provides for restrictions on transfer, sub-division, partition, conversion or improvement of land, Sections 29, 30 and 31 of Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971 and Section 47 and 48 of Maharashtra Co-operative Societies Act. The Ld. Advocate for the plaintiffs filed on record following rulings:

- i) **Ravinder Kaur Grewal v. Manjit Kaur; AIR 2020 SC 3799-** It was held in this case that document in question being memorandum of family settlement and not document containing terms and recitals of family settlement is not required to be registered.
- ii) **Bhimabai Kambekar v. Arthur Import and Export Company; 2019 (3) ALL MR 975 SC-** In this case, it was held that mutation entries neither create nor extinguish title in landed property and it has no presumptive value as to title.
- iii) **Hardeo Rai v. Sakuntala Devi & Ors; (2008) 7 SCC 46-** It was held in this case that even a coparcenary interest can be transferred subject to the condition that the purchaser cannot get possession of what he has purchased. Such a purchaser, however, acquires a right to sue for partition.
- iv) **Gajara Gosavi v. Prakash Kambale & Ors; 2009 (6) ALL MR 983 SC-** In this case, it was held that undivided share of coparcener can be subject matter of sale or transfer but possession cannot be handed over to vendee unless property is partitioned.
- v) **Baburao Nalawade v. Tukaram Nalawade; 2015 (2) ALL MR 277-** It was held that long standing possession of plaintiff is evident from report of commissioner as also from 7/12 extract which needs to be protected.
- vi) **Rame Gowda v. M. Varadappa Naidu; AIR 2004 SC 4609-** In this case, it was held that when title of either party was not proved and plaintiff was found to be in settled possession, he would be entitled for relief of injunction restraining defendant from interfering with his possession.

06. On the other hand, Ld. Advocate for the defendants relied upon ruling of Hon'ble Bombay High Court in case of **Venubai Mankar v. Vimalabai Thakare; Second Appeal No 393 of 1995 dated 06/02/2013** in which it was held that *"Once the shares are defined, whether by an agreement between the parties or otherwise, the partition is complete. After the shares are so defined, the parties may divide the property by metes and bounds, or they may continue to live together and enjoy the property in common as before."*

As To Point No.1 to 3:-

07. Provisions of Order XXXIX Rule 1 of the Code of Civil Procedure provide that temporary injunction may be granted, if in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, or c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act until the disposal of the suit or until further orders.

08. It is now well settled that the party seeking temporary injunction has to satisfy the triple requirements of prima facie case, balance of convenience and irreparable loss. In case of **Mandali Ranganna and Ors. V/s. T. Ramachandra and Ors., AIR 2008 SC 2291**, the Hon'ble Supreme Court held that *"while considering an application for grant of injunction, the Court will not only take into*

consideration the basic elements in relation thereto, i.e. existence of prima facie case, balance of convenience and irreparable injury, it must be also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. Grant or refusal of injunction has serious consequences depending upon the nature thereof”.

09. Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that the contentions which the plaintiff is raising, require consideration on merit and are not liable to be rejected summarily. In the backdrop of above discussion, facts of the present case are required to be analyzed thoroughly.

10. In the present case, the plaintiffs come up with the case that, defendant Nos.1 to 3 relinquished their rights in suit property in favour of father of plaintiffs by way of oral partition dated 14.11.2020 and Reminder Deed dated 02.04.2022. However, legality and validity of said Reminder Deed is to be considered at the time of evidence from both sides on merit. As far as possession over suit property is concerned, the defendants specifically averred that, they are in possession of suit property. The defendant Nos.1 to 3 also admitted about execution of sale-deed in favour of defendant No.4 regarding suit property.

11. The main suit is filed by plaintiffs for declaration and perpetual injunction. The settled possession over suit property by the plaintiffs is not prima facie proved by the plaintiffs. Moreover, fact regarding possession is also disputed by said defendants. It is

required to evaluate issue of possession at the time of hearing of suit on merit. At this juncture, the status of suit property is required to be maintained. Further alienation or transfer of suit property will create complexity in the proceeding and also will harm the interest of plaintiffs in the suit property. Therefore, the defendants are required to be restrained from creating further interest in the suit property. Hence, I answered point No.1 to 3 in affirmative and in answering point No.4, following order is passed :

ORDER

1. The application at Exh.5 for temporary injunction is partly allowed.
2. The defendants Nos.1 to 4 are temporarily restrained from creating third party interest in the suit property or transfer or alienation of suit property till final disposal of suit.
3. No order as to costs.

Date: 22.09.2025.
Khandala.

(Smt. S. G. Kuvalekar)
Civil Judge Junior Division
Khandala