

MHST090005422026



Order below Exh. 5 in R.C.S. No.118/2026

1. The plaintiff has filed the present suit seeking partition and separate possession in respect of the suit property bearing Gat No. 368, admeasuring 0.66 H.R. The plaintiff has also preferred the present application at Exhibit-5 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, seeking a temporary injunction restraining the defendants from carrying out excavation, construction, cutting of trees, or otherwise changing the nature and physical features of the suit property during the pendency of the suit.

2. The case of the plaintiff is that the suit property was jointly purchased by the plaintiff and deceased Vinayak Krishna Shelke under a registered sale deed dated 21.02.1983. According to the plaintiff, though both purchasers were co-owners of the suit property, no partition by metes and bounds has ever taken place and both parties continued to have joint rights in the property. It is contended that in the last week of April 2026, defendant Nos. 1 and 2 started excavation work with a JCB and tractor, removed trees, and attempted to alter the nature of the suit property. Therefore, the plaintiff seeks protection of the suit property till the final disposal of the suit.

3. The defendants have appeared and filed their say at Exh.29 opposing the application. The defendants have specifically denied that the suit property is under joint possession. According to them, at the time of purchase itself, an oral partition was effected between the plaintiff's family and deceased Vinayak Krishna Shelke. It is their contention that the eastern portion admeasuring about 0.33R. fell to the share of the defendants, and they have been in exclusive, independent possession and cultivation of the same ever since.

4. The defendants have further strongly resisted the application by bringing on record the details of a prior transaction. It is contended by the defendants that Vinayak Krishna Shelke had executed an agreement to sale in respect of a specific portion of the property. The details of this agreement to sell transaction clearly indicate that the plaintiff treated a distinct, earmarked portion of the land as his own, which completely falsifies his plea of un-partitioned joint possession. Hence, prayed to reject the application with costs.

5. After hearing arguments advanced by learned advocates of both the parties and after going through the record, following points arise for my consideration and I recorded my finding thereon for the reasons mentioned there under :-

<u>Sr. No.</u>	<u>Points for consideration</u>	<u>Findings</u>
1)	Whether the plaintiff has a prima-facie case ?	No

- | | | |
|----|--|--------------------------|
| 2) | Whether the balance of convenience lies in favour of the plaintiff ? | No |
| 3) | Whether irreparable loss would be caused to the plaintiff if application is rejected ? | No |
| 4) | What order ? | Application is rejected. |

REASONS

6. The plaintiffs in respect of their contentions have filed documents alongwith list at Exh.3 i.e certified copies of the 7/12 extract of Gat no.368 for the year 2025-2026, property card pertaining to Property no.872, xerox copy of the sale deed executed by Bajirao Govind Jadhav in favour of Vinayak Krishna Shelke, certified copy of Mutation entry No.7047, xerox copy of decree and judgment passed in R.C.S.no.12/1999, photographs of the suit property, receipt of photographs, xerox copy of death certificate of Vinayak Krishna Shelke, xerox copy of written statement filed by defendant no.5 Vinayak Krishna Shelke in R.C.S.no. 12/1999 on record.

7. On the other hand, defendant Nos.1 and 2 have filed documents alongwith Exh.36 i.e certified copy of the sale deed executed by Vinayak Krishna Shelke dtd 11/06/2026. Also filed certified copy of deposition of the plaintiff Mohan Maruti Kumbhar recorded in R.C.S.22/1999 certified copy of the sale deed dtd 20/11/1998 executed by Vinayak Krishna Shelke in respect of Gat no.368 on record.

8. The plaintiff has relied upon the case law cited in the in the case of *Maharwal Khewaji Trust Vs. Baldev Dass, 2005(5) ALL MR (S.C)3*, 2) in the case of *Mehal Singh and ors Vs. The state of Punjab and ors, AIR 1992 Page 219*, 3) in the case of *Mohamad Shafi and anr Vs. National Insurance Co.Ltd AIR 2001 J & K*. And stated that “co-sharer in exclusive possession of suit land cannot be permitted to raise construction unless it is regularly partitioned by mets and bonds.”

On the other hand, the defendant nos.1, 2 have relied upon the case in *Rohani Prasad and ors Vs. Smt.Phoolmati and ors, M.P.No.1301/2024, High Court of Madhya Pradesh* in which it is held that if a property is a joint Hindu family property, then plaintiff showing no previous partition cannot claim exclusive possession and not injunction can be claimed by him.

As To Point No. 1 to 3 :-

9. Upon perusal of the record, it appears that the title of the parties originates from the registered sale deed dated 21.02.1983. However, the principal controversy between the parties is whether the suit property continued to remain joint and undivided or whether an oral partition had already taken place long back and the parties have been enjoying separate possession of their respective portions.

10. At this stage, the Court finds considerable substance in the contention of the defendants that the question of partition and possession is seriously disputed and requires full-fledged trial. The

defendants have produced material showing that in Regular Civil Suit No.12 of 1999, deceased Vinayak Krishna Shelke had asserted exclusive possession over a specific portion of the suit property. The record further reveals that the present plaintiff had, in the said proceedings, made statements indicating that the property had been orally divided and that separate possession of respective portions was being enjoyed by the parties.

11. The defendants have also pointed out that a Sathekhat dated 15.09.1994 was allegedly executed by deceased Vinayak Krishna Shelke in respect of a portion of the property and that the plaintiff had knowledge of the said transaction. The plaintiff, during cross-examination in the earlier suit, is stated to have admitted knowledge of the said agreement. These circumstances prima facie indicate existence of long-standing separate possession claimed by the defendants.

12. The plaintiff has alleged that the defendants recently carried out excavation and removed trees. However, except photographs, no independent material such as panchanama, report of revenue authorities, expert report or any other cogent evidence has been produced to establish that the defendants are presently altering the nature of the property in a manner causing irreparable injury to the plaintiff. The allegations are specifically denied by the defendants and therefore constitute disputed questions of fact requiring evidence.

13. It is a settled principle of law that while considering an

application for temporary injunction, the Court is required to examine whether the applicant has established (i) a prima facie case, (ii) balance of convenience in his favour, and (iii) likelihood of irreparable loss in the absence of injunction.

14. In the present case, the issue regarding oral partition, separate possession and exclusive enjoyment of portions of the suit property is seriously disputed. The documentary material produced by the defendants, including pleadings and admissions in the earlier litigation, creates substantial doubt regarding the plaintiff's contention that the property continues to be jointly possessed without partition. Therefore, the plaintiff has failed to establish a clear and strong prima facie case warranting grant of temporary injunction.

15. So far as balance of convenience is concerned, the defendants claim to be in exclusive possession of the portion allotted to their predecessor since several decades. Granting injunction in the facts of the present case would amount to restricting the alleged long-standing possession claimed by the defendants before adjudication of the rights of parties. Hence, the balance of convenience cannot be said to be exclusively in favour of the plaintiff.

16. Further, the plaintiff has failed to demonstrate that any irreparable injury would be caused if the injunction is refused. The suit is essentially one for partition and separate possession. The rights of the parties can be finally determined after recording

evidence and appropriate relief can be granted at the time of final disposal of the suit. Therefore, the element of irreparable loss is also not established. Having regard to the entire material on record, this Court is of the considered opinion that the plaintiff has failed to satisfy the essential requirements for grant of temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. Therefore, I conclude that the plaintiffs have failed to prove a prima-facie case. Hence, I answer **point no.1 to 3** in the **negative**.

As To Point No. 4 :-

17. Considering the respective contentions of the parties, arguments advanced by the counsels appearing for both sides and documentary evidence on record, it becomes crystal clear that the plaintiffs have no prima facie case, the principle of irreparable loss and balance of convenience lies in favour of the defendants and for these reasons present application deserves to be rejected. Hence, in answer to point no.4, I pass the following order :-

ORDER

- 1) The application (Exh.5) is hereby rejected.
- 2) No order as to costs.

Date:- 16/06/2026
Koregaon

(**P. D.Yavatkar**)
Jt. Civil Judge Junior Division,
Koregaon.