

MHST130003832024 	R.C.S. No. 119/2024 Ramrao Rajemahadik Vs Bhawanji Rajemahadik & 5
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ORDER BELOW EXH. 87

The present application for a temporary injunction has been filed by Defendant No. 6 to restrain Defendants No. 1, 2, and 4 from making construction in, or alienating or creating a charge on the suit properties. This is a subsequent application, as the plaintiff had previously filed a similar application at Exhibit 5, which was rejected by this Court

2. Defendant No. 6 contended that the plaintiff filed a partition suit for the division of the suit property into six equal shares, with the plaintiff claiming a 1/6th share. Defendants 1, 2, and 4 have appeared and denied the plaintiff's claim, asserting that the property was already partitioned on December 28, 1956, and that each party has their own separate possession. However, defendant 6 has also appeared and supported the plaintiff's claim, stating that the property is jointly held, no partition has occurred, and that defendant 6 is also entitled to a legal share.

3. While the suit is pending, defendants 1, 2, and 4 are allegedly beginning unauthorised permanent construction on a portion of the suit property, specifically Gat No. 114/1 (old Gat No. 288/1). This property is a valuable plot located along the Tarale-Ghot road. The defendants are reportedly using force and taking advantage of a "hollow entry" in the 7/12 extract to begin this

construction. They are said to have started digging pits and collecting construction materials with haste, using large machinery. When defendant 6 objected to this activity, defendants 1, 2, and 4 allegedly verbally abused and threatened defendant 6 with physical harm.

4. The defendants have not obtained any government permission for the construction, nor have they secured a non-agricultural use order or building permits. The suit property is also classified as "Class 2" land and is not part of the alleged partition deed. Defendant 6 argues that Defendants 1, 2, and 4 have no right to alter the property's original character and are attempting to illegally seize the valuable roadside portion of the land. If the construction is completed, it will significantly change the property's nature and create major difficulties in its future partition.

5. Defendant 6 fears that defendants 1, 2, and 4 are reckless and will not respect the law. If they complete the construction, it will cause irreparable harm to defendant 6 and deprive them of their legal rights. Defendant 6 is confident of success in the final judgment, but the construction would cause significant technical problems during the partition process. Therefore, it is requested that an immediate temporary injunction be issued against defendants 1, 2, and 4 to prevent them from carrying out any permanent construction or altering the original character of the property Gat No. 114/1 (old Gat No. 288/1) until the suit is finally decided. Such an injunction would not harm the plaintiff but would prevent great harm to defendant 6.

6. Defendants Nos. 1, 2, and 4, in their reply, contended that the temporary injunction application filed by Defendant No. 6 is completely false and fabricated. They deny all claims made by Defendant No. 6 unless specifically admitted. They contend that the Plaintiff and Defendant Nos. 3, 4, 5, and 6 have never had ownership or possession of Gat No. 114/1 since the registered partition deed of 1956. They further state that the road from Tarale to Ghot has existed on Gat No. 114/1 for many years, and their father received compensation for it. They claim that the Plaintiff's previous temporary injunction application was decided against them, a fact known to both parties.

7. The defendants strongly deny the allegation that they threatened Defendant No. 6 with physical harm for opposing construction. They claim that due to their advanced ages (Defendant 1 is 90, Defendant 2 is 75, and Defendant 4 is 78), threatening anyone with death is out of the question. They assert that the accusation is a malicious attempt to prejudice the court against them. The defendants acknowledge that the land is of Occupancy Class II but state that since their ownership record is valid, they have the full right to decide what to do with their land. They deny attempting to grab a prime location next to the road.

8. They contend that the property Survey No. 288/1 was allotted to them in a partition, even though it was mistakenly written as Survey No. 228/1 in the partition deed. This error was later corrected in the records, and the parties have been in separate possession of their respective shares. They point out that the father

of the Plaintiff and Defendant Nos. 5 and 6 had previously demanded a partition in 1995, to which the defendants' father replied that a partition had already been carried out. Since no legal action was taken after that, it shows the plaintiff's side accepted the 1956 partition. The defendants also state that there are already houses and shops on Gat No. 114/1 with their permission, and the plaintiff's side never objected. They mention specific individuals who have constructed structures, including three shops, a two-story house, and a shed for manure storage that is currently under construction, with a significant investment already made. They argue that the application from Defendant No. 6 is meant to harass them. They conclude that they have a legal right to start construction on Survey No. 288/1, as they have ownership and possession, and granting the injunction would cause them irreparable harm. Therefore, they request that the temporary injunction application be dismissed with costs

9. Upon careful perusal of the record and the arguments presented, the Court has determined the following points for consideration:

Sr. No.	Points	Findings
1.	Whether defendant No. 6 has established a prima facie case ?	No
2.	Whether defendant No.6 will suffer irreparable loss if the injunction is not granted ?	No

3.	Whether the balance of convenience lies in Defendant No. 6's favour ?	No
4.	What order ?	As per the final order

REASONS:

10. I have carefully examined the rival contentions and supporting documents. The applicant, defendant No. 6, asserts that the properties remain undivided, evidenced by his claim that the family resided jointly and that a legal partition never occurred. He also produced six photographs to show that construction has begun on the property, with pits dug and materials accumulated.

11. It appears that the relationship between the parties is not in dispute, with Defendants No. 1 to 4 being the sons of Malharrao, and the Plaintiff, Defendant No. 5, and Defendant No. 6 being the sons of Shankaraji, both of whom were sons of Bhavanji and Anandibai. This relationship is further recorded in the mutation entry no. 5940, which lists their names as heirs in the revenue records, strengthens the fact that the family lineage and the ownership of the ancestral property are acknowledged.

12. However, it is noted that the strong evidence presented by Defendants No. 1, 2, and 4. Their advocate submitted a registered partition deed dated 28th December, 1956, which is a document carrying a presumption of validity. A registered document, under the provisions of the Indian Evidence Act, holds a

strong presumption of genuineness and correctness until the contrary is proved. The effect of this deed was given to the revenue records as early as 23rd January, 1957, via mutation entry no. 4635, which also corrected the typographical error regarding the survey number from 228/1 to 288/1. On this count, the applicant's contention that the revenue authority does not have the power to rectify a registered deed is misplaced. Though it is a well-established legal principle that a revenue authority does not have the power to rectify a registered document itself. Their authority is limited to updating the record of rights based on a document presented to them. The fact that the parties accepted and acted upon the revenue entry for over half a century, which identified the land as Survey No. 288/1, further demonstrates that the partition deed was acted upon by mutual consent and acquiescence. Furthermore, the record of rights, including the 7/12 extracts, shows the names of the parties according to their respective shares from the partition deed. The Court specifically notes that the 7/12 extracts show the names of Bhavanji Malharrao Rajemahadik and Bhauso Malharrao Rajemahadik, i.e. Defendant No. 1 and 2 respectively. Under Section 157 of the Maharashtra Land Revenue Code, these entries in the record of rights are presumed to be true until the contrary is proved.

13. The applicant has not provided any material to rebut this statutory presumption. The court also took into consideration that the plaintiff's father, Shankaraji, had sent a notice in 1995 demanding partition but, after receiving a reply denying the claim, took no further legal action for over a quarter-century. This

historical inaction and acquiescence on the part of his predecessor further weaken the applicant's contention. Additionally, Defendants Nos 1, 2, and 4 have shown that they have exercised dominion over the property, even allowing others to construct buildings on it with their permission. At this prima facie stage, the documentary evidence of the registered partition deed and the subsequent unchallenged revenue entries outweigh the applicant's oral assertions.

14. The applicant further argues that the recent acts of Defendants No. 1, 2, and 4 in commencing construction, as evidenced by the six photographs, create a prima facie case for an injunction. The applicant contends that these acts demonstrate a clear intent to alter the nature of the property and treat it as their exclusive share, thereby causing harm to the applicant's alleged joint ownership. It also notes the applicant's contention that the defendants have not obtained the necessary permissions for construction. While this may be an issue for the relevant administrative or municipal authorities, it does not, in and of itself, establish a prima facie case in a civil suit regarding title or partition. The right to seek an injunction in this case is contingent on the applicant proving a valid claim to joint ownership, which, as discussed, has not been established at this prima facie stage. Therefore, the lack of a construction permit, while an alleged illegality, is not sufficient to invalidate the strong presumption of validity afforded to the registered partition deed and the revenue records. The physical acts of construction do not, on their own, constitute sufficient evidence to establish a prima facie case in

favour of defendant No. 6, especially when weighed against the long-standing and unchallenged documentary record.

15. It is important to note that the issues regarding whether the partition deed is legal and valid, whether the family remained joint despite the deed, and whether the properties are indeed Watan lands are matters that require a full-fledged trial where both parties will have the opportunity to lead their evidence. These questions cannot be conclusively determined at this interim stage.

16. It is pertinent to state that the plaintiff had previously filed a temporary injunction application at Exhibit 5. The order passed below Exhibit 5 resulted in the dismissal of that application after finding that the plaintiff had failed to establish a prima facie case, irreparable loss, or that the balance of convenience lay in his favour. The filing of a subsequent application on the same grounds, without presenting new facts or evidence, does not alter the Court's previous determination. This prior finding, known to all parties, serves to reinforce the Court's current view that the applicant has not established a prima facie case. The reasons for the rejection of the previous application are relevant to the present application, as they deal with the same subject matter and parties. The court, in the previous order, found that the plaintiff's father's failure to challenge the partition deed during his lifetime weakened the claim, a fact that remains true in the present matter. The previous order also dismissed the claim of irreparable loss, stating that any damage could be compensated monetarily. These contentions are

of high relevance to the current application and support the finding that the applicant has failed to establish a prima facie case.

17. For these reasons, the Court finds that defendant No. 6 has failed to establish a prima facie case.

18. The applicant has not provided any substantial evidence to prove that the loss, if caused, would be irreparable and not compensable in monetary terms. The primary apprehension of the applicant is the construction of a building and the potential alienation of the property. The applicant argues that allowing construction will irretrievably alter the land's character, making a fair partition impossible and diminishing its value for his share. It is pertinent to note that Section 52 of the Transfer of Property Act, which embodies the doctrine of *lis pendens*, adequately protects the applicant's interest. Any transaction regarding the suit properties during the pendency of the suit would be subject to the final decree of the court. The defendants have not shown any document of a pending sale or transfer. Furthermore, while the defendants may be undertaking construction, they are doing so at their own risk. I do not find any merit in the contention that the construction of a building would cause a loss to the land itself or diminish its value. In fact, a constructed property can enhance the total value of the land, which would benefit all parties in a final partition. The total area of the disputed property is 0.22 R, and it is not the applicant's contention that the defendants are constructing on the entire plot, which suggests that the plaintiff's share can still be demarcated at a later stage. An injunction cannot be granted

merely on the basis of apprehension or a potential future loss that can be remedied. The loss must be of such a nature that no amount of compensation could alleviate it. Based on the facts presented, the loss is purely financial and can be addressed by a final decree.

19. Based on the material and arguments presented, defendant No. 6 has not been able to prove that he will suffer irreparable loss if the temporary injunction is not granted.

20. Therefore, clearly inclines in favour of the defendants. The Court is satisfied that defendant No. 6 has failed to meet the requisite conditions for the grant of a temporary injunction, particularly as the defendants have a history of peaceful possession and their names are recorded in the revenue records. The construction material and partial work shown in the photos submitted by defendant No. 6, while confirming construction, do not automatically justify an injunction in light of the other facts presented.

21. For the reasons outlined above, the Court determines that the balance of convenience **does not lie in favour of Defendant No. 6.**

Conclusion:

22. In light of the foregoing analysis, the Court concludes that the applicant has not satisfied the three essential conditions for a temporary injunction. The applicant has failed to establish a prima facie case, as the documentary evidence presented by the defendants, particularly the registered partition deed and

corresponding revenue entries, carries a strong legal presumption of validity that has not been rebutted. Furthermore, the applicant's claim of irreparable loss is based on mere apprehension and can be adequately addressed by Section 52 of the Transfer of Property Act and the final decree of this Court. Finally, the balance of convenience favours the defendants, who have been in recorded possession of the property since the time of the partition deed. Therefore, the application is liable to be rejected.

ORDER

The application is hereby rejected with costs.

Date:- .03/09/2025
Patan

(Rajesh M. Lolge)
Civil Judge Junior Division,
Patan.