

ORDER BELOW EXH. 05
IN REG. CIVIL SUIT NO. 60/2018

1. This is an application made under Order-39, Rule-1 of the Code of Civil Procedure, 1908 [in short '**the CPC**'] seeking temporary injunction against the defendants, restraining them jointly and severally their agents, servants or anybody acting on their behalf from any way creating any right, title or interest by transferring or alienating the suit property or any portion thereof, till the disposal of the present suit.

2. The background of the case is that plaintiff Parashram Rambharose Mishra is also known by Parashram @ Ganeshprasad s/o Rambharose Mishra. He is known by both these names in his family. He had acquire property bearing survey No.84, 40, 135 (Kinhala), Tah. Seloo by virtue of will executed by his late Grand-father i.e., father of his mother namely Sawalaram Hariprasad Pande in the year 1930. Since then, the fields are in possession of the plaintiff i.e. in all record of rights. Plaintiff has no real brother. Plaintiff's both name Parashram and Ganeshprasad are recorded in government record also. The Will also do had the reference of plaintiff by both the names. The original defendant namely Late. Ganeshprasad Mishra was the son of Shivnarayan Mishra born in 1935 i.e. after five years of the execution of the Will referred above.

3. It is alleged that defendant played a fraud to grab the above

mentioned properties by changing his name during his life time in the government gazette. He has done so taking the advantage of the name of plaintiff i.e. Parasram @ Ganeshprasad Rambharose Mishra mentioned in the Will. He has mutated his name showing himself to be Ganeshprasad Rambharose Mishra and changing to Ganeshprasad Shivnarayan Mishra with respect to the above mentioned property taking the advantage of the government gazette in the year 2018. Plaintiff however has filed objection before the competent authority to cancel the mutation of the defendants which is still pending before the appellate authority. Hence, defendant since played fraud fraud by changing his name and using that for mutation, this application is made.

4. The defendants are the sons and daughters of late Ganeshprasad Mishra appeared and filed written statement below Exh.16 denying the averment of plaint. They have admitted upto their relationship with plaintiff. It is the special pleading of defendants that their great grand father namely Sawalaram Hariprasad Pande died leaving behind their grand-mothers namely Jankibai and Raniabai. Raniabai was married to Rambharose Mishra and plaintiff is their son. Jankibai was married to Shivnarayan Mishra and Late. Ganeshprasad was their son. After the death of Sawalaram and his wife, both Jankibai and Raniabai inherited his property. After their deaths also plaintiff and defendants became the joint owners of the property which was the combination of the suit properties and some other properties.

5. Suit property came in the joint ownership of the plaintiff and Late. Ganeshprasad Mishra in mutual arrangement of Sawalaramji. While recording the names as joint owners, the name of father of Late. Ganeshprasad was wrongly recorded as Rambharose instead of Shivnarayan. When this mistake came into knowledge of Ganeshprasad, he applied for correction of the same. To take disadvantage, plaintiff declared his second name as Parashram @ Ganeshprasad s/o Rambharose Mishra and tried to show his exclusive ownership over the suit property and denied equal right of defendants over it.

6. Plaintiff soon sold his undivided share in field No.135 out of the suit properties to one Pardeshi Mukaji Pache. Therefore, the other properties are also not safe in his hand and so defendants desire to separate their share in the suit properties and so have filed a counter claim along with a temporary injunction application demanding an injunction to restrain plaintiff and others from alienating the suit properties. Accordingly, on the basis of all of the above contention defendants have prayed to reject the application.

7. Read the application and say. Heard learned counsel for plaintiff. Despite the presence of defendants and their counsel no argument was advance from their side. Specific direction to argue was given on previous date. Since, this application was pending since long, it is taken for order, considering the say of defendants as their oral

argument.

8. Perused documents produced on record from both the sides. Considering the rival submissions, following points are necessary to be answered on the basis of which the fate of this application is based. So the following points are answered with reasons as below :

	<u>POINTS</u>		<u>FINDINGS</u>
1]	Whether the plaintiff has prima-facie case ?	:	No
2]	Whether the balance of convenience lies in favour of plaintiff ?	:	No
3]	Whether the plaintiff would suffer irreparable injury, if the injunction prayed is not granted?	:	No
4]	What order ?	:	As per final order.

=REASONS=

POINT NOS. 1 TO 3 :

9. All three points are inter linked. Hence, they are taken for discussion together.

This court now proceeds to deal this application on merits. Plaintiff has come up with this application for seeking the equitable remedy of injunction. Plaintiff has produced certain documents below Exh.4. Out of those documents, while arguing on this application learned counsel for the plaintiff invited the attention of this court on

documents No.8 & 12, which are namuna-8 with respect to property No.40, 84 & 135; documents No.9, 10 & 11, which are 7/12 extracts of property No.40, 84, 135; documents No.16, which is the copy of government gazette showing the change of name from Ganeshprasad Rambharose Mishra to Ganeshprasad Shivnarayan Mishra dated 09/11/2017; his pan card on document No.17, domicile on document No.18; election card on document No.19; school leaving certificate document No.20; ration card document No.21- all showing his name as Ganeshprasad Shivnarayan Mishra and copy of Adhikar Abhilekh Panji showing mutation of names of plaintiff and his brother Ramdas on the basis of Will.

10. Defendants, on the other hand, have not produced any documents on record. The names of plaintiff and defendants are appearing on the copies of 7/12 extracts and gaon namuna-8 with respect to properties No.40, 84 and 135. Their names are appearing jointly in these documents. Record shows a presence of one document which is produced at Sr.No.1 below Exh.4, which is a government gazettee dated 18/01/2018. It shows that plaintiff has also changed his name from Parashram Rambharose Mishra to Parashram @ Ganeshprasad Rambharose Mishra. The document on which the plaintiff is relying most i.e. Adhikar Abhilekh Panji listed at document No.31, prima-facie shows the mutation on the basis of will dated 03/06/1930. However, the document appears to be a xerox copy on which the contents are not legible to understand the exact meaning

behind it.

11. The documents on record shows that there happened change in name by adopting the government procedure. This appears to be done by both the sides. However, what was the purpose behind that ? This question cannot be answered at this stage. It requires thorough inquiry. What prima facie appears at this stage is that both plaintiff and defendants have their name in the records of government relating to the suit properties. The copy of government records with respect to the suit properties prima-facie shows that defendants jointly own the suit properties. When, the government record prima-facie shows this then, as per the settled principle of law injunction cannot be granted against the co-owner. Shares do not appearing to have been divided between plaintiff and defendants. When the shares are undivided, the other person cannot be restricted to enjoy the whole property. Things would have been different if it would have been appeared on record that plaintiff and defendants have their separate shares over the suit properties.

12. Even otherwise the suit subjudice before this Court, where the suit properties are the subject matter of disputes. Therefore, section 52 of the Transfer of Property Act would automatically come into play and make invalid any transfer with respect to the present suit properties.

13. For all the discussion made above at this stage, this court is

not convinced as to the averments of plaintiff regarding fraud of defendants and their fixed share on the suit properties. On the basis of the government record, it appears prima-facie that plaintiff is in possession of the suit properties. However, he is not alone in queue but defendants are equally present with plaintiff in that queue. On the basis of this, plaintiff do not have a prima-facie case at this stage unless he proves his averment. Therefore, in view of the prayer made, this court has come to the conclusion that when there is no prima-facie case then balance of convenience of plaintiff and his irreparable loss do not arise. Accordingly, points No.1 to 3 are answered in negative and in answer to point no.4 the following order is passed.

- ORDER -

The application is rejected.

Cost in main cause.

Sd/-

Seloo.
Date : 14/08/2019

[Enna Vijay Dhande]
Joint Civil Judge,
Junior Division, Seloo.