



Order Below Exh. 05

(Passed on 15th day of April, 2026)

The plaintiffs have prayed for temporary injunction under Order 39 Rule 1 & 2 r/w Section 151 of Code of Civil Procedure to restrain the defendants from interfering with their alleged possession over the suit property bearing Field Survey No. 30/2 and from creating third party interest therein. Perused application, say filed by defendants at Exh.13 and pursis at Exh.14 treating it as reply. Heard learned counsel for plaintiffs and learned counsel for defendants.

02] Considering the contentions in the application, say, documents filed on record and submissions made by learned counsel for both sides, following points arise for determination and my findings against each of them for the reasons given below.

Sr.No.	Points	Findings
1.	Whether the plaintiffs have prima-facie case ?	--No.
2.	Whether the balance of convenience lies in favour of the plaintiffs ?	--No.
3.	Whether the plaintiffs will suffer irreparable loss, if the temporary injunction is not granted ?	--No.
4.	What order ?	As per final order.

REASONS

AS TO POINT NO. 1 TO 3 :-

03] The present suit is filed for declaration, partition, separate possession, confirmation of possession and permanent injunction in respect of several agricultural lands. However, in the present application, the controversy is essentially confined to Field Survey No. 30/2 situated at Mauza Bibi, Tal. Seloo, Dist. Wardha.

04] It is a well settled principle of law that for the grant of temporary injunction under Order 39 Rules 1 and 2 of CPC, the applicant must satisfy the Court on three essential conditions: (i) existence of a prima facie case; (ii) balance of convenience in his favour; and (iii) that irreparable loss or injury would be caused if the injunction is not granted. All three conditions must co-exist. If the prima facie case is not made out, then the other two conditions need not be examined at all. In this regard, the defendants have relied upon the judgment of the Hon'ble Bombay High Court in **Bhawana Arbind Bapat and Another vs. Navneet Bhojraj Lakhotiya and Another, 2015 (3) Mh. L.J. 472**, wherein it is held that once it is found that there is no prima facie case established, the further aspects of balance of convenience and irreparable loss are immaterial and need not be considered.

05] Before examining the merits of the application, it is necessary to mention that the suit is filed for partition and separate possession. The plaintiffs are the widow and children of deceased Rajesh Vithobaji Deotare, who was the son of Vithoba

Dhondbaji Deotare. Defendant No. 1 is the wife and defendants No. 2 and 3 are the children of the said Vithoba Dhondbaji Deotare. The plaintiffs themselves have pleaded in the plaint that the suit properties are ancestral/joint family properties in which all parties have equal shares. In other words, the plaintiffs and the defendants are co-owners or co-sharers of the suit properties.

06] It may be noted that a co-owner cannot claim an order of injunction against another co-owner with regard to jointly owned property. This principle is based on rule that the possession of one co-owner is the possession of all co-owners. It cannot be adverse to the other co-owners unless there is an outright denial of their right to their knowledge, followed by exclusion and ouster for the statutory period. It is settled position in law that the co-owner cannot claim an order of injunction against another co-owner with regard to property owned jointly. The Hon'ble Supreme Court in **T. Ramalingeswara Rao vs. N. Madhava Rao, Civil Appeal No. 3408 of 2019, decided on 05/04/2019**, wherein it is held that a co-sharer in possession cannot be restrained by injunction at the instance of another co-sharer, and that the proper remedy of the aggrieved co-sharer is a suit for partition.

07] In the present case, the plaintiffs, as legal heirs of deceased Rajesh Vithobaji Deotare, are co-owners along with the defendants of the suit properties. The application for temporary injunction seeks to restrain defendant No. 2, who is a co-owner, from allegedly interfering with Field Survey No. 30/2. Since both

plaintiffs and defendant No. 2 are co-owners of the suit property, and since the main suit itself is for partition of those properties, the prayer for temporary injunction seeking to restrain one co-owner from possession of a specific field is not maintainable in law. When a suit for partition is pending, the remedy available to the plaintiffs is to ultimately obtain a decree for partition and separate possession and not to seek interim injunction against another co-owner from enjoying the property. Granting such an injunction would amount to pre-judging the partition and allotting a specific field to one party even before the final decree.

08] However, even if the above objection of maintainability were to be set aside and the application were to be examined on merits, the plaintiffs still fail to establish a prima facie case. The case of the plaintiffs rests entirely on an alleged oral arrangement between deceased Rajesh Deotare and defendant No. 2, namely, that although Field Survey Nos. 134 and 137 were purchased from joint income and registered in the name of defendant No. 2, Field Survey No. 30/2 was to remain in the possession of deceased Rajesh Deotare. However, such a plea of an oral arrangement affecting immovable property requires strong prima facie documentary support. In the present case, the plaintiffs have not produced any documentary evidence whatsoever to support this contention. There is no agreement, no record of joint contribution, no bank statement, no receipt, no payment record, and no document of any nature showing any exchange or adjustment of rights between the parties in respect of Field Survey No. 30/2.

09] On the contrary, the defendants have placed on record documentary evidence. The 7/12 extract for Field Survey No. 30/2 shows the name of defendant No. 2 as the exclusive *Bhogvatadar*, with active crop entries for *Kharif* 2024-25 and *Rabi*, and a poultry shed. The 8-A extract also records Field Survey No. 30/2 and Field Survey No. 134 in the name of defendant No. 2. The PMFBY crop insurance certificate is taken out in the name of defendant No. 2 for Field Survey No. 30/2 for wheat crop. These are official documents and carry a statutory presumption of correctness under the Indian Evidence Act. Significantly, the revenue record does not reflect the name of deceased Rajesh Deotare or any of the plaintiffs as occupant or cultivator of Field Survey No. 30/2 at any point in time.

10] As regards Field Survey Nos. 134 and 137, the registered sale deeds dated 24/03/2004, and 26/05/2004 clearly show defendant No. 2 as the sole purchaser. The deceased Rajesh Vithobaji Deotare was personally present at the time of execution of both these sale deeds and signed them as Witness No. 1. Despite having full personal knowledge of those transactions, he never raised any objection, never claimed any right in those properties, and never filed any suit against defendant No. 2 during his entire lifetime.

11] The plaintiffs have relied upon affidavits of Narayan Gomase, Saurabh Pimpale and Naresh Pimpale, along with photographs, to establish their possession over Field Survey No.

30/2. However, in the absence of any supporting documentary evidence such as revenue entries, cultivation records, crop insurance or any official document, such oral affidavits cannot outweigh the documentary evidence at this stage. The defendants have relied upon the judgment of the Hon'ble Supreme Court in **Pratap Singh vs. Shiv Ram, AIR 2020 (SC) 1382**, wherein it is held that documentary evidence always prevails over oral evidence, and that oral evidence alone cannot rebut the statutory presumption arising from an official document. The golden rule that 'witnesses may lie but documents do not' applies to the present case.

12] Furthermore, the plaintiffs had relied upon the affidavit of one Jitendra Dasharath Tekade, dated 05/12/2025, filed along with the status quo application at Exh. 23, stating that defendant No. 2 is creating third party interest in Field Survey No. 30/2. However, the said deponent has subsequently filed a detailed retraction affidavit dated 17/12/2025 in which he has categorically stated that the affidavit was prepared by the plaintiff's advocate and its contents were never disclosed to him, that he signed it only because of his friendly relations with the plaintiff, and that to his full knowledge, Field Survey No. 30/2 is in the ownership and possession of defendant No. 2. This retraction undermines the reliability of the affidavit filed by the plaintiffs.

13] The defendants have relied upon case of Hon'ble Supreme Court in **S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar and Others, (2004) 5 SCC 166**, wherein it is held that

suppression of a material fact by a litigant disentitles such litigant from obtaining any equitable relief, and that the Latin maxim 'Suppressio veri, suggestio falsi' applies in such cases. Further in **Arbind Kumar Pal vs. Hazi Md. Faizullah Khan, AIR 2007 (NOC) 1035 (Pat.)**, it is held that where a person is found guilty of concealment of material information from the scrutiny of the Court, he is not entitled to any equitable relief under Order 39 of CPC. In **Seema Arshad Zaheer and Others vs. Municipal Corporation of Greater Mumbai and Others, 2006 (5) Mh. L.J. 218**, the Hon'ble Court reiterated that a party who does not approach the Court with clean hands is not entitled to injunction.

14] Once it is found that the prima facie case is not established, the other two ingredients of balance of convenience and irreparable loss lose significance and need not be examined in detail. As held in **Bhawana Arbind Bapat (supra)**, these aspects are immaterial once prima facie case fails. Even otherwise, the balance of convenience does not lie in favour of the plaintiffs, as defendant No. 2 is prima facie in possession of Field Survey No. 30/2 as per the official revenue record, the crop entries and the PMFBY certificate. Granting injunction would amount to disturbing the possession of a person who is prima facie the lawful occupant as per official documents. The plaintiffs have also failed to show any irreparable loss, since any alleged loss can be adequately compensated at the time of final adjudication of the suit. Further, it may be noted that Section 52 of the Transfer of Property Act, 1882, the doctrine of lis pendens protects the plaintiffs from any

alienation by the defendants pendente lite, without any separate injunction order being required to that effect. Accordingly, points No.1 to 3 are answered in the Negative.

15] Thus, considering all above aspects, the plaintiffs have failed to satisfy all ingredients for granting temporary injunction. Hence, in view of point no. 4, following order.

ORDER

- 1] The application Exh.5 is rejected.
- 2] Costs in cause.

Seloo
Dt. 15/04/2026.

(S. R. Satbhai)
Civil Judge, Jr. Division,
Seloo

CERTIFICATE

I affirm that the contents of this PD.F file is same, word to word
as per the original.

(R. M. Khan)
Stenographer (Grade-III)