

MHWS080007482019



ORDER BELOW EXH.38 IN RCS NO. 64/2019

1. By this application, plaintiffs are claiming temporary injunction by restraining the defendants or anybody on behalf of them from dispossessing the plaintiffs and from creating obstruction to their cultivation of suit property till the decision of this suit.

2. Facts giving rise to this application are that, during the pendency of this suit temporary injunction application of plaintiff is allowed and defendants are restrained from creating third party interest in suit property. Meanwhile son of defendant no.01 namely Goutam Sakharam Turukmane and his wife Vandana trying to dispossess plaintiffs from suit property and for that purpose they restrained plaintiffs from entering into the suit property frequently. The son of defendant No.01 has threatened plaintiffs when they approach suit property. On 14.06.2024 at about 11.30 a.m. plaintiff along with laborers went to their share which is orally allotted to them by defendants. At that time son of defendant no.01 and his wife are stood before sowing machine and restrained plaintiff from sowing.

3. Further as per contention of plaintiff, plaintiffs have requested them regarding not to disturb. But above said persons without hearing plaintiffs, restrained them and also threatened them to kill. On the same day plaintiff went to the Risod Police Station to file complaint against Gautam Turukmane and his wife Vandana. But

instead of registering complaint police advised plaintiffs that the matter is of Civil nature, therefore go to the Civil Court for proper action. Hence plaintiffs have filed this Injunction application against defendants. The balance of convenience is also lies in favor of plaintiffs and if this application is not allowed irreparable loss will be caused to the plaintiffs which will not be compensated by money. In contrary there is no any loss to the defendants if this application is allowed. Hence prayed that, application be kindly allowed.

4. Defendant no.01 has filed his reply. As per contention of defendant no.01 plaintiffs have no right to file this application. Plaintiffs have wrongly ascertain meaning of this Courts order and filed this false application. Therefore, this application deserves to be rejected.

5. Defendant no.02 has filed his reply. It is submitted by defendant no.02 that, he is in possession of suit property to the extent of 02 acres and 29 R. land bearing Gat no.473 situated at Haral Tq. Risod. As per Partition-Deed defendant no.02 is cultivating the same land till today and he is also had possession over 04 acre land in Gat no.318 situated at Savad Tq. Risod. So as per Partition-Deed defendant no.02 has possession over above said property. Therefore, plaintiffs application deserves to be rejected.

6. In view of the rival pleadings, material produced on record and arguments advanced, following points arise for my determination. I have recorded my findings thereon for the reasons given herein below.

Sr No	Points	Findings
1	Whether the plaintiff has made-out prima-facie case?	In the Negative.
2	Whether balance of convenience tilts in favour of the plaintiff ?	In the Negative.
3	Whether plaintiff will suffer irreparable loss if injunction is refused?	In the Negative.
4	What Order ?	Application is Rejected.

REASONS

AS TO POINT NO. 1 :-

7. I have carefully gone through the record. In order to get the temporary injunction it is necessary for the plaintiff to prove that, he has made out the prima-facie case. Plaintiff has to prove the balance of convenience lies in his favour. He has to prove further that, he will suffer irreparable loss if the injunction is refused. Now, it is to be seen whether the plaintiff has made out prima-facie case or not.

8. It is the case of the plaintiff that, suit land as mentioned in plaint para No. 01-A is ancestral property of plaintiff and defendant. Property no.01-B is joint family property purchased by joint family income of husband of plaintiff no.01 and original defendant no.01 and 02. Husband of plaintiff no.01 was died on 19.12.2012 and plaintiffs jointly cultivated suit property with defendants. In January-2019 plaintiffs asked for their share in suit A and B property. But defendant clearly denied. Hence, this suit is filed for partition of suit A and B property. On Exh.25 defendant no.02 filed his WS and counterclaim.

While below Exh.43 and 53 defendant no.03-A and 01-B to 01-E filed their WS respectively. Further below Exh.08 plaintiffs have filed Injunction application for not to alienate suit property with was allowed on 16.03.2024.

9. As per contention of defendant no.02 in Exh.25, suit-B property is purchased property of original defendant no.01 Madhav, defendants brother-in-law Rambhau Hiranman Padghan and defendant no.02. Said suit-B property is partitioned between them and each one had 04 acre land. Thereafter Rambhau Padghan has sold his 04 acre land to 01 Datta Gyanuji Pandit. According to defendant no.02 suit-A property is also partitioned between husband of plaintiff no.01, original defendant no.01 to 03 through partition deed and he also filed counterclaim by adding house properties.

10. Here, to support contentions in this application or reply both parties have not filed any documentary evidence on record. I have gone through the pleadings of both sides. Having considered the same and submissions of both sides it is seen that, plaintiffs have come with specific case that, defendant no.01-B and his wife Vandana are obstructed their possession over the suit property by creating hurdles in sowing crops. So here burden is shifted on plaintiff to show that, defendant no.01-B and his wife are obstructed plaintiffs from cultivating suit property or disturbs their possession over the suit property.

11. In order below Exh.08 this Court finds that, though both parties claiming different status of suit A and B property. But revenue

record of suit property had names of both parties in common as well as partition of suit properties is yet not effected. Here, in order to claim injunction plaintiffs have to prove the alleged obstruction at the hands of defendant no.01-B and his wife but for that purpose plaintiffs have not filed any single documentary evidence on record. As per plaintiffs contention defendant no.01-B and his wife have obstructed them from sowing crops in presence of laborers but no specific affidavits of that laborers who were present at the time of alleged incident are not filed on record by plaintiffs to prove this contention.

12. Moreover plaintiff could also file complaint forwarded to police regarding alleged incident mentioned in this application. But inspite of sufficient opportunity plaintiffs failed to file the same. It is also contended by plaintiff that at the time of alleged incident they are going to sow the crop. But plaintiffs have not filed any bill of crop seeds if it is purchased by them at the time of incident or any other documentary evidence which supports plaintiffs contentions regarding alleged incident.

13. In other side, defendants have denied the alleged incident and submitted that plaintiffs have no right to claim injunction against co-sharer or co-owner. Without any supporting evidence to support their contentions in application it is not firmly reveals that, defendant no.01-B and his wife have trying to obstruct plaintiffs possession over suit property. Even plaintiff have not stated exact Gat number among suit properties where the alleged incident occurs. So it is hard understand whether alleged incident was occurred in suit-A or suit-B property. Therefore, from overall circumstances it can be gathered

that, here plaintiffs are unable to prove their contention that, defendant no.01-B and his wife obstructs plaintiffs possession over suit property or create any hurdle in sowing crops. Thus, from the above discussion, I feel that plaintiff has not made out prima facie case. Hence I answered point no.01 in the Negative.

As to point No.02:-

14. Though **throughout** this application plaintiffs pointed out finger towards defendant no.01-B and his wife. But in prayer plaintiffs have claimed blanket injunction against all defendants. Out of them defendant no.02 supports plaintiffs contention, while defendant no.03 of her legal heirs have not filed any reply to this application. Only LR's of defendant no.01 have contested this application. Here only by mentioning act of defendant no.01-B and his wife, plaintiffs cannot ask any claim against all defendants combianably.

15. Plaintiffs in this application have complained about wrongful behavior defendant no.01-B and his wife Vandana. But said Vandana (wife of defendant no.01-B) is not party to this suit. As per Order 39, Rule 1 and 2 of CPC Court have power to grant temporary injunction even against third party. But for that plaintiffs have to prove that said third party is acting in collusion with defendant. Here, plaintiff only contended that, wife of defendant no.01-B is aiding him to obstruct sowing machine of plaintiff. But the said contention is not sufficiently proved through self-sufficient evidence on record.

16. So it is plaintiff who have to prove their case through their own evidence on record. However it appears from record that,

plaintiffs fails to prove balance of convenience is lies with them. Hence, I answered point No.02 in the Negative.

As to Point No.03:-

17. During argument defendants have filed 02 case laws i.e. 1) **T. Ramalingeswara Rao Vs. N. Madhava Rao. (SC)**, 2) **Rohtash Vs. Sheela Devi (P&H H.C.)** and submitted that, “Even assuming that plaintiffs claimed to be in possession of suit properties for claiming injunction but they were not entitled to claim injunction against other co-sharers over suit property”. Here it can be said that, findings of these case laws are applicable to the present case of defendant to some extent.

18. Plaintiff submitted that, they suffers an irreparable loss if the injunction is not granted, on the contrary defendants also stated that, if injunction is granted then they would be put to a great loss which cannot be compensated by any means. As plaintiffs fails to prove the fact that, defendant no.01-B and his wife trying to dispossess plaintiffs or creating obstruction to their cultivation over suit property through cogent and sufficient evidence. Here if application is granted then, surely irreparable loss will be caused to defendant than that of plaintiffs. Hence I answered point No.03 in the Negative.

As to point No.04 :-

19. Plaintiffs have failed to prove prima facie case and balance of convenience in his favour as well as irreparable loss or injury in case of refusal of injunction. Hence, I proceed to pass the following order.

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ORDER

1] Plaintiff's application below Exh.38 is hereby rejected.

2] No order as to cost.

(Dictated and Pronounced in open Court.)

Date: 08.09.2025

Place: Risod.

(P. V. Sapkal)

Civil Judge J. D. Risod

शेरा

मी शपथेवर सांगतो की, आदेशातील मूळ मजकूर व पी.डी.एफ. मधील मजकूर शब्द-न-शब्द सारखा आहे.

न्यायालयाचे नांव	:	पी.व्ही.सपकाळ दिवाणी न्यायाधीश व प्रथमवर्ग न्यायदंडाधिकारी, रिसोड
लघुलेखकाचे नांव	:	एच.ए. उचाडे
निकाल तारीख	:	08.09.2025
पिठासीन अधिका—याने आदेशपत्रावर सही केलेचा दिनांक	:	08.09.2025
निकालपत्र अपलोड केलेचा दिनांक	:	08.09.2025