



**RCS NO. 80/2021**  
**Santosh Vrs. Maroti**  
**CNR NO.MHWS080011352021**

**ORDER BELOW EXH. 05**

This is an application under order XXXIX Rule 01 and 02 read with section 151 of the Code of Civil Procedure for the Temporary Injunction (for short T.I.).

**02.** The field property mentioned in point No.01 Gut No. 56, 07 H 45 R. L.R 15 .50 out of it only 01H. 07 R land is the disputed property. (Here-in-after referred to as suit property).

**03.** It is averred by applicant that he is the owner and possessor of suit field and his possession is legal. He has received suit property land from Kisan Jayaji Khandare vide registered gift deed on 02/12/2020 and received the possession of same. On 21/12/2021 Kisan Jayaji Khandare executed correction gift deed due to over sight mistake four boundaries of suit property not mentioned in the said document. In this year the applicant has sown a crop of soyabean . The defendant have no concern with the suit side but even then he started to create obstruction and interference in the peaceful possession of applicant over the suit field. On 26/07/2021 the applicant was present in the suit field and he was removing the wastage material from the suit property at that time non- applicant created quarrel with him. And given a threat that he will take forcible possession of suit side. Hence, the plaintiff filed the suit for

permanent injunction and inter alia filed this application for temporary injunction.

**04.** Non- applicant appeared and filed his written statement and say to this temporary injunction application at Exh. 13. He opposed the application. He contended the plaintiff has not given the map of suit property , not described the suit property as per location of spot, there is nothing made clear that to what extent applicant is claiming possession of suit property. The applicant has not made party defendant to Kisan Khandare .The suit in Gut No.56 is never in possession of Kisan Jayaji Khandare at any time.In alleged document of gift deed dated 02/12/2021 no any boundary is shown as alleged in this suit. He further contended that he has purchased 80 R land of suit Gut No.56 possessed by Govinda Jayaji Khandare by registered sale deed on 28/04/1995. He has also purchased 01 H ,17 R land of Gut No. 56 from Gularao Kundlikrao Khandagale by registered sale deed on 10/05/2005 . He has sown crop of soyabean and toor suit property. The suit land is in his possession. The plaintiff is not in possession of the suit property. Hence, he prayed for rejection of the application.

**05.** Perused the application and say thereon. Heard Mr. M.K. Undal advocate for the applicant and Mr. V.J Gavali advocate for the non-applicant . Following Points arose for my consideration to which I have recorded my findings along with reasons.

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
01	Whether the prima-facie case is in favour	No.

	of the applicant?	
02	Whether the balance of convenience is in favour of the applicant?	No.
03	Whether applicant will suffer irreparable loss if the T.I. is not granted ?	No.
04	What order?	As per final order.

### **REASONS**

**06.** The applicant relied on zerox copy of gift deed , zerox copy of correction gift deed, 7/12 extract, 8-A extract. To the contrary, defendant filed on record zerox copy of sale deed , zerox copy of sale deed, 7/12 extract , zerox copy of mutation entry .

**Point No. 01, 02 and 03:**

**07.** The applicant averred that he has received suit property from Kisan Jayaji Khandare vide registered gift deed on 02/02/2020 and has taken possession on the basis of it. On 21/12/2021 the correction gift deed has been made in registered gift deed which shows the four boundaries of suit property.

**08.** To the contrary the non-applicant contended that the applicant has not made proper description of suit property. The defendant further contend that the land of suit No. 56 is never in possession of Kisan Jayaji Khandare . He has purchased 80 R land in Gut No. 56 possessed by Govinda Khandare by registered sale deed on 28/04/195. He has also purchased 01 H, 17 R land of Gut No. 56 from Gulabrao Kundlikrao Khandagale on 10/05/ 2005.

**09.** Thus, in this backdrop and at this juncture to find out the truth and to see whether applicant prima-facie appears to be in

possession of the suit property or not. It is necessary to see whether the prima-facie case and balance of convenience is in favour of the plaintiff and whether plaintiff will suffer irreparable loss if the T. I. is not granted in his favour.

The plaintiff in his application has described the suit property as it is situated at village Dhodap Khu. Tq- Risod, Dist- Washim in Gut No. 56 , 07 H, 45 R out of it 01 H, 07 R land is on his name .

**10.** I gone through the document filed by the applicant on record. It appears that the plaintiff has filed on record xerox copy of gift deed and also correction copy of same. It shows that on 02/12/2020 the Kisan Jayaji Khandare has executed gift deed of suit land in Gut No 56 , 07 H, 45 R out of it 01 H ,04 R and wastage land 0 H , 03 R land in favour of Santosh Bhaurao Khandare i.e plaintiff. The correction gift deed of dated 21/12/2021 shows four boundaries of suit land.

**11.** The zerox copy of 7/12 extract which shows Gut No. 56 that the name of Kisan Jayaji Khandare 01.04 admeasuring, assessment 2.16, wastage 0.3. It also shows the name of Maroti Ananda Jirwalkarr i.e non-applicant admeasuring 1.97, assessment 1.97, mutation NO. 527 of dated 01/12/2020. Moreover, zerox copy 8-A extract also shows Gut No.56 and in the name of Kisan Jayaji Khandare dated 01/12/2020.

**12.** The non-applicant has filed zerox copy of sale deed dated 28/04/1995 in respect of Gut no. 56 ,07 H, 68 R. Out of it 80 R land the non -applicant has purchased from Govind Jajaji

Khandare for consideration of Rs. 18, 000/- ( Rs. Eighteen thousand only) . The non applicant has also filed zerox copy of sale deed of dated 10/05/2005 . It shows the non- applicant has purchased land in Gut No. 56, 01 H, 17 R. from Gulabrao Kundlikrao Khandagale for consideration of Rs. 80,000/- ( Rs.eighty thousand only ). The zerox copy of 7/12 extract shows the name of Gulabrao Kundlik Khandagale in Gut No 56 , 02 H, 62 R.

**13.** The zerox copy of mutation entry No. 475 of dated 10/05/2006 shows Gulabrao Kundlik Khandagale has sold the land in Gut. 56 , 01 H,17 R to non – applicant for consideration of Rs. 80,000/- ( Rs. Eighty thousand only). The zerox copy of mutation entry No. 307 shows that the Govind Jayaji Khandare has sold the land in Gut 56 , 80 R land to non applicant for consideration of Rs 18,000/- ( Rs. Eighteen thousand only ). On perusal of sale deed dated 28/04/1995 and mutation entry No.307 it appears that the non-applicant has purchased 80 R land for consideration of Rs.18,000/- from Govinda Jayaji Khandare. Sale deed of dated 10/05/2005 and mutation entry No.475 show that the defendant has purchased 1 H, 17 R land for consideration Rupees 18,000/- from Gulabrao Kundlik Khandagale.

**14.** The learned Advocate for the applicant argued that the applicant is owner and possessor of the suit property and it is in possession of applicant since registered gift deed has been executed of dated 02/12/2020. The applicant has sown a crop of soyabean in suit property. Hence, he prayed for temporary injunction as the non- applicant is creating obstruction or interference in his peaceful possession.

**15.** To the contrary, the learned advocate for the non-applicant has argued that from the pleading and documents there is nothing made clear that to what extent the plaintiff is claiming possession of the suit property. The non-applicant has purchased 80 R land of suit Gut No. 56 from Govind Jayaji Khandare on 28/04/1995. On 10/05/2005 the non-applicant has purchased 01 H ,17 R. land in Gut N. 56 from Gulabrao Kundlik Khandagale by registered sale deed.

**16.** On perusal of record it appears that the four boundaries in application mentioned as follows:

East : government road, West : field of Ramchandra Ugale, South : field of sahebrao Khandagale, North: field of Damodar Keru More. In correction of gift deed the four boundaries are follows : East : government road, West : field of Ramchandra Ugale, South : field of sahebrao Khandagale, North: field of Damodar Keru More. In written statement and reply of defendant the four boundaries of suit property are as follows. East : government road, West : field of Ramchandra Ugale, South : field of sahebrao Khandagale, North: field of Damodar Keru More. Which is sold to Gajanan keshav Ugale. It appears that the four boundaries of suit property mentioned in plaint and written statement are same.

**17.** On perusal of record it appears that the suit has been filed on 27/07/2021 and the original gift deed executed on 02/12/2020 in it there were no four boundaries of suit property are mentioned. After filing of written statement on 06/12/2021 the applicant has made correction gift deed on 21/12/2021. Accordingly the applicant has also made amendment in plaint and in application under Exh.No.

05. It means the applicant has made correction about boundaries of suit property after filing of written statement of non-applicant and it create suspicion on the part of applicant. After considering the facts and circumstances of case it prima facie appears that the applicant has shown the four boundaries which has shown by non-applicant.

**18.** The applicant averred that he is possession of suit property and take crops regularly. The applicant has merely made averments in his application that he is in possession of the suit property and the non-applicant has obstructed him. However, he has not filed on record any document to show that he is in possession of the suit property. Possession of applicant in temporary injunction application must be revealed. The applicant has to establish prima facie possession over the suit property. On the contrary the documents of sale deed and mutation entry brought on record by non-applicant show that he has purchased the suit property in the year the 1995 and 2005. It is clear that the non-applicant is owner and possessor of suit land prior to applicant. Therefore, it appears that the document upon which the applicant is relying on are not complementary.

**19.** Perused the application and say of the other side. Heard both sides. Also, perused the documents filed on record. In every temporary injunction application the applicant must have to satisfy three tests i.e. prima-facie case in his favour, balance of convenience in his favour and likely object of irreparable loss. However, in the case at hand it appears that the applicant has not fulfilled these tests. There is necessity to show the possession of the plaintiff on the suit property. Whether that possession is lawful or not is not

material. Possession of the applicant in temporary injunction application must be revealed. Therefore, it appears that the applicant has failed to show prima-facie his possession over the suit property. Therefore, I am of the opinion that the applicant has failed to prove prima-facie case in his favour. Accordingly, I answered point no. 01 in negative.

**20.** The applicant has relied on *Shamrao Ganapat Chintamani Vrs Kakasaheb Laxman Gorde* 2008 (02) ALL MR 118 The Hon'ble Bombay High Court has observed that section 149 and 154 of Maharashtra Land Revenue Code has to be read with section 154 and co-joint reading shows that in case of acquisition otherwise than by registered instrument , the party has to make a written application to the village officer . Suffice to say that in case of registered instrument, it is a legal obligation on the registering authority. If registering authority commits an error or fails in its duties, citizen like the plaintiff can not be blamed or made to suffer.

In the said case the sale deed was in question . The facts in the case at hand no question in respect of sale deed. But the location of suit property is disputed . Therefore the cited case law is not helpful to the case in hand.

**21.** Having answered point no. 01 in negative I am of the opinion that the applicant has not succeed to show the balance of convenience in his favour. Had it been a case that the applicant is in possession of the suit property whether lawful or unlawful then it may be held that the balance of convenience is in his favour. Therefore, I am of the opinion that balance of convenience is also not in favour of the applicant and accordingly I answered point no.

02 in negative . It prima facie appears that if this application allowed irreparable loss will cause to the non- applicant .So far as point no. 03 is concerned it also can be answered not in favour of the applicant . As the point no. 01 and 02 already I have answered in negative . Thus, resultantly I answered point no. 03 in negative.

**POINT NO. 04:**

**22.** The applicant has prayed for temporary injunction to restrict non-applicant from causing obstruction into his peaceful possession I have already answered point no. 01 in negative and has not assumed the possession of the applicant over the suit land. The correct situation will come on record after full fledged trial . Hence, it would not proper to issue temporary injunction against the non-applicant not to obstruct the possession of the applicant .Accordingly, in the result I proceed to pass following order.

**ORDER**

- 01.** Application is rejected.
- 02.** Cost shall follow the event.

Dated: 06.05.2023

**Sd/-**  
**( Smt. P.M.Kamble)**  
Jt. Civil Judge (Jr.Dn.)  
Risod.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Clerk :- V.V.Gaykwad. (Jr.clerk)

Court :- J.M.F.C.& 2nd Civil Court,J.D.,Risod

Date :- 06/05/2023

Judgment/Order signed by :- 06/05/2023  
the Presiding Officer

Judgment/Order uploaded :- 08/05/2023  
on