

IN THE COURT OF JOINT CIVIL JUDGE
JUNIOR DIVISION, DIGRAS.
[Presided over by M.B. Sakhare]



R.C.S. 68/2024
Shubhash –Vs- Vijay & Others.
CNR:MHYA13-000559-2024

ORDER BELOW EXH.05

[Passed on 26/09/2025]

The instant application is filed by plaintiff under O.XXXIX Rule I and II of the Code of Civil Procedure, 1908 and by way of this application plaintiff sought to temporary restrain the defendant No.1 to 3 from selling, transferring or alienating and also creating charge or interest of third party over the suit property till final decision of suit.

2] The facts of plaintiff's application in brief are as under:

The plaintiff contended that, the suit property i.e.residential house (Wada) bearing property No.1, situated at around 10000 sqr. ft. at Mouja Lingi wai, Tahasil: Digras was constructed in the year 1923 by his great grandfather i.e. Dattatray Krushnaji Kane. So also he has purchased an agricultural land at the same Mouja. He has contended that, the wife of Dattatray Kane namely Lakshmibai Kane has prepared her registered “Will” dated 02/04/1969 and given share in said property

to the father of plaintiff. However, said "Will" was not confronted to him. In the year 2024, he has found the duplicate copy of the said "Will". Upon inquiry he has acquainted with the fact that, name of father of defendnat no.1 to 3 namely Anand Dattatray Kane only was recorded. The father of defendant No.1 to 3 has fraudulantly recorded his name on the revenue record. Therefore, he has filed the instant suit. As he has acquainted with the fact that, after demise of Anant Kane, his legal heirs i.e. defendant No.1 to 3 are trying to alienate the said house (wada). Therefore, he has filed the instant application and prayed to grant the temporary injunction under Order 39 Rule 1 and 2 of CPC.

3] Defendant no. 1 to 3 filed their written statement and say on present application at Exh (25) and thereby by denied the averments of plaintiff in toto. They contended that, they are brothers and sisters interse. Their grand father namely Dattatray Kane had his immovable property at Lingi (Wai). He did partition of his all self acquired and ancestral properties prior to his death among his children and wife. Therefore, no property left in his name after 1953. They further contended that, late Dattatray Kane had incurred a huge amount of debt during his lifetime. Therefore, to pay said debt father of defendant no.1 to 3 did financial support to him. After demise of Dattatray Kane, father of defendant no.1 to 3 paid debt incurred by late Dattatray Kane. Father of defendant no. 1 to 3 namely Anant Kane was owner and possessor of suit property. His name is also recorded to Namuna No.8. This fact is also known to plaintiff, his father and sister of Anant Kane.

4] After demise of late Anant Kane name of defendan no. 1 to 3 is recorded as his legal heirs. Plaintiff did not filed any document which shows that suit property was owned by late Dattatray Kane. Plaintiff as well as his father have knowledge that Anant Kane was owner of suit property therefore they did not raise any objection or claim for partiton with respect to suit property during life time of late Anant Kane. They further contended that, father of plaintiff worked in many place for his job and finally settled in Yevatmal. Late Lakshmibai never lived in the house of plaintiff and they never took case of her or looked after her. Late Lakshmibai was living in Nagpur after 1962 and she also died in Nagpur in the year 1971. Therefore, plaintiff did not take care of Lakshmibai during her last days. The “Will” as per plaintiff was written in the year 1969 therefore “Will” is out of date.

5] They further contended that, the plainitff never paid tax to Gram Panchayat with respect to suit property. Therefore, it shows that, plaintiff is not owner as per “Will”. Aslo name of plaintiff and description of suit property also not mentioned in the “Will”. As late Anant Kane was owner of suit property therefore, late Lakshmibai did not mentioned anything about it in the “Will”. As the suit property was not belonging to late Lakshmibai therefore, plaintiff is having no right to claim partiton in it. Also, suit of plainitff is not within limitation. Plaintiff filed present suit for monetary gain. Plaintiff did not filed any document which shows that suit property is ancestral property. Lastly, they prayed to reject application of plaintiff.

6] From rival contentions of both the parties. Following points arise for my consideration to which I have recorded findings thereon for the reasons given below:

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiff has prima facie case?	Yes.
2.	Whether the balance of convenience lies in favour of plaintiff?	Yes.
3.	Whether the irreparable loss will be caused to plaintiff, if application is rejected?	Yes.
4.	What Order?	Application is allowed.

REASONS

7] In support of contentions of the plaintiff, he has relied on documents vide document lists at Exh. 03 i.e death certificate of Shripad Dattatraya Kane and Shalini Shripad Kane, photocopy of “Will” bearing No, 1692/1969, copy of application given to VDO, Gram panchayat Lingi (Wai) dated 16.11.2024, copy of proceeding register of Gram panchayat Lingi (Wai), copy of notice given to defendant no. 1 to 3 dated 24.04.2024, copy of Adhar card of plaintiff, copy of application given to Sarpanch, Mouja Lingi (Wai), copy of Namuna No. 8.

8] On the contrary defendant Nos. 1 to 3 filed on record documents vide document list at Exh. 35 i.e water and house tax payment receipts and copy of Namuna No.8

AS TO POINT NO. 1 TO 3: -

9] All the points are interlinked thus it is good reason to club all points together to avoid repetition. For getting relief of temporary injunction, it is essential on the part of the plaintiff to show that, he has prima facie case, balance of convenience lies in his favour, and he will suffer irreparable loss if injunction application is rejected. In the present case, the plaintiff is seeking relief of temporary injunction against defendant no 1 to 3 on the basis of his share in the suit property.

10] As per plaintiff, suit property is ancestral property of plaintiff and defendants. During hearing, the learned advocate for plaintiff vehemently argued that, suit property is ancestral property of plaintiff and defendants. Therefore, plaintiff is entitled for share in suit property. On 24.04.2024 plaintiff requested to defendants for his share but they did not give answer to it now defendants are trying to alienate or create third party interest in the suit property. However, it is contention of defendants that suit property is not ancestral property per contra it is self acquired property of their father.

11] In order to prove that suit property is ancestral property, plaintiff has filed on record copy of "Will" bearing no. 1692/1969. On minute observation of copy of "Will" prima facie reveals that, Lakshmibai Kane has given the share of property which is situated at mauja Lingi (Wai) in favor of father of plaintiff namely Shripad Dattatray Kane. As per defendants "Will" does not describe description of suit property as ancestral property. As per plaintiff, no property except suit property

situated at Mouja Lingi (Wai) which was in the name of late Dattatray Kane. If this is the situation then it is the duty of defendnats to show that there was any other property situated at Mouja Lingi (Wai) other than suit property which was in the name of late Dattatray Kane. Unless and untill it is brought on record it can be presumed that, property mentioned in the “Will” is suit property.

12] So far as possession is concerned, to prove possession of plaintiff, he has filed on record the sworn affidavits of Ajabrao Shere, Vijay Sagane and Hirasingsh Rathod all R/o. Wai lingi. As per contentions in the affidavite, plaintiff is in possession of suit house and taking its care and defendants are trying to alienate the suit house. However, contentions in the affidavite are not proved by putting the concern witness into witness box. It is part of trial at this stage court cannot take into consideration truthness as to the contentions mentioned in it. On the contrary, to prove possession of defendnats they filed on record copy of Namuna No. 8 and copies of water and house tax payment receipts. On perusal, it shows name of late Anant Kane and name of defendant no. 1 to 3 as occupier and tax payer.

13] Admittedly, for claiming temporary injunction the factum of possession would only be relevant factor. Though it is so, the plaintiff filed present suit for partition and separate possession of his share from suit property. Which he prima facie proved that, suit property is ancestral property of plainitff and defendants. The adjudication of suit on merits will take it's own time. Whether the suit property is ancestral or separate

property will be decided after evidence and hearing of both parties. At present suit property is in the name of defendants. If suit property is alienated or transferred then the very purpose of suit will be frustrated. As per Order XXXIX Rule 1 of the Code of Civil Procedure provided that, if any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or if the defendant threatened or intends to remove or dispose of the property with an intention to cause injury to the plaintiff in relation to the property in dispute, then the Court may grant temporary injunction to restrain act of alienation till disposal of the suit or till further order.

14] Plaintiff has raised an apprehension that, defendant No.1 to 3 has tried to alienate the suit house. He also filed on record copy of proceeding register of Gram Panchayat Lingi Wai of the year 2023-2024 which shows that, defendant no.1 to 3 and plaintiff has also filed an application to record their respective names in revenue record. If defendants are restrained from selling suit property no prejudice or loss will cause to them. However, if defendants alienate suit property and create third party interest then it will cause irreparable loss to the share of plaintiff, if any. Prima facie it can not be decided whether suit property is ancestral or self acquired property of plaintiff and defendants. The plaintiff has prima facie case and balance of convenience till in his favour. If property is alienated then he will suffer irreparable loss. Hence, I answer point no. 1 to 3 in affirmative. I thus allow the application and inclined to pass the following order:

ORDER

1.	Application is allowed
2.	The defendant No.1 to 3 are hereby temporarily restrained from selling, transferring or alienating and also creating charge or interest of third party over the suit property till final decision of present suit.

[Order passed in open court.]

Digras.
Date :- 26.09.2025.

(M.B.Sakhare)
Jt.Civil Judge Junior Division,
Digras, Yavatmal.