

MHYA150002552025

**ORDER BELOW EXH.05 IN R.C.S.No.9/2025**

(Passed on 11.11.2025)

This is an application move by the plaintiffs under Order XXXIX Rule I and II of Code of Civil Procedure, 1908 for restrain defendant No.1 from creating third party interest over the suit property till the decision of the suit property.

2. The plaintiffs filed present application for temporary injunction along with the suit on 18.03.2025.

3. **Description of the suit property :-**

The land bearing Bhumapan No. 21/1, area 4H. 16R. and 0H.32R. total admeasuring 4H. 48R. situated at Malkhed Pragane Lalkhed, Tal. Ner, Dist. Yavatmal. (herein in after referred as the "suit property").

4. **The case of the plaintiffs can be summarized as under :-**

The suit filed for declaration, partition and separate possession. The plaintiffs and defendant No.2 are daughters of defendant No.1 Uddhao. The plaintiffs mother Vimal expired in 2023. Defendant No.3, 4 and 5 are the legal heirs of the deceased Ashok Uddhavrao Bobade who was the only brother of the plaintiffs and defendant No.2.

5. The suit property was earlier bearing survey No.12. The village Lalkhed was formally included in taluka Darwaha. The suit property is the portion of old survey No.12 which was having total area 11H.37R. Now, the village Malkhed included in taluka Ner has been given Bhumapan No.21 with its sub division. The suit property was ancestral property of the Devrao Bobade. The son of Devrao Bobade namely Uttam had already expired. Therefore, there was registered deed of partition dated 20.04.1974 between defendant No.1 and legal heirs of Uttamrao Bobade. In the said partition the portion of survey No.12 area 11H.37R. came into share of defendant No.1. There was also a partition between defendant No. 1 and his deceased son Ashok Bobade. The deceased Ashok received more than 4H. land of the said Bhumapan No.21. There were sub division of the field bearing No.21/1 and 21/2. Ashok Bobade sold property during his lifetime. The plaintiffs were neither consulted nor given any share during the said partition between defendant No.1 and deceased Ashok Bobade. But, the plaintiffs are not challenging the said partition and subsequent transfers by the deceased Ashok.

6. The suit property is an ancestral property. The plaintiffs, defendant No.2 and legal heirs of the deceased Ashok also have a equal share in the suit property till the death of the plaintiffs mother Vimal. The plaintiff fell secure about their share and interest in the suit property. However, the plaintiffs recently new that, defendant No.1 intends to transfers entire suit field in favour of defendant No.3 to 5 and does not want to give any share

to the plaintiffs and defendant No.2.

7. The plaintiffs each having 1/7th undivided share and interest in the suit property. Similarly defendant No. 1 and defendant No.2 also having 1/7th share and interest each in the suit property.

8. The plaintiffs stated that, defendant No. 1 has no absolute right to transfer the suit property to anyone. The plaintiffs recently knew that, defendant No.1 intends to transfer the suit property. If defendant No.1 succeeds in transferring the suit property or any portion of the suit property to anyone the plaintiffs will suffer great irreparable loss. Therefore, the present application filed by the plaintiffs for temporary injunction to restrain defendant No.1 from transferring the suit property to anyone and creating third party interest over the suit property.

9. Defendant No.1 to 4 appeared and filed their written statement at Exh.14 and they filed reply at Exh.15 to the said temporary injunction application.

10. Defendant No.1 to 4 denied all the adverse allegation made against them. Defendant No.1 to 4 admitted that, the plaintiffs as well as defendant No.2 are daughters of defendant No.1. Further admitted that, defendant No.3, 4 and 5 are legal heirs of the deceased Ashok Bobade. Further, defendant No.1 to 4 admitted the description of the suit property. It is also admitted old survey No.12 had given as a new Bhumapan No.21. It is admitted that, partition took place between defendant and his son i.e. the

deceased Ashok Bobade. The deceased Ashok Bobade sold his share in Bhumapan No.21/2 during his lifetime.

11. Defendant No.1 to 4 stated that, defendant No.1 has become absolute owner of 4H.48R. land bearing Bhumapan No. 21/1. Hence, defendant No.1 has every right to alienate the suit property on his share. The plaintiffs having no share in the suit property. The plaintiffs have no right to claim for partition during life time of defendant No.1. There is no prima facie case, balance of convenience not lies in favour of the plaintiffs and no irreparable loss will be caused to the plaintiffs if the said application of temporary injunction is rejected. Hence, the said application is liable to be rejected with costs.

12. Heard the learned counsel for the plaintiffs Shri. A. A. Thakare and learned counsel for the defendant Shri. B. G. Chaudhari.

13. Perused the record, following points arise for the determination to which my findings for the reasons are as under :-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiffs prove that, there is prima-facie case in their favour ?	No.
2.	Whether balance of convenience lies in favour of the plaintiffs ?	No.
3.	Whether irreparable loss will be caused to the plaintiffs, if the temporary	No.

	injunction is refused ?	
4.	What order ?	As per final order.

REASONS

14. The plaintiffs have relied upon the following documents :-

Sr. No.	Particulars of documents
1.	Digitally signed copy of 7/12 extract of the suit property dated 04.02.2024.
2.	Xerox copy of partition deed dated 19.04.1974.
3.	Certified copy of sale-deed executed by the Ashok dated 16.05.1998.
4.	Certified copy of 7/12 extract of Bhumapan No.21/2-A dated 19.04.2000.
5.	Certified copy of 7/12 extract of Bhumapan No.21/2-B dated 19.04.2000.
6.	Certified copy of death certificate of Vimalabai Bobade dated 24.11.2023.
7.	Original copy of letter indicating consolidated lands dated 06.06.2025.
8.	Certified copy of registration of rights dated 18.08.2025.

15. The contents of application are solemnly affirmed by plaintiff No.5.

16. The contents of say are solemnly affirmed by defendant No.1.

As to point No.1 to 3 :-

17. All the points being inter-connected are taken together for discussion to avoid the repetition. It is worthwhile to be mentioned that, the plaintiffs have not disputed that, defendant No.1 is the father of the plaintiffs and defendant No.2. Defendant No.3, 4 and 5 are the legal heirs of the deceased Ashok Bobade who was the only brother of the plaintiffs and defendant No.2. The partition took place between defendant No.1 and the deceased Ashok Bobade. It appears that, it is not disputed that, defendant No.1 has the possession over the suit property.

18. The plaintiffs came with the case that, suit property is their ancestral property. Hence, the plaintiffs each having 1/7th share in the suit property. Therefore, defendant No.1 has no absolute right to alienate the suit property to anyone and create third party interest over the suit property.

19. Defendant No. 1 to 4 specifically stated that, during the lifetime of defendant No.1 the plaintiffs have no right to claim partition.

20. It is pertinent to note that, the main issue in the suit is whether or not his daughters, i.e. the plaintiff and defendant no. 2, have the right to claim partition as long as defendant no. 1 is alive. If a finding is given on this issue, it appears to have an impact on the original suit.

21. It is settled principle of law that, while deciding an application for a temporary injunction, should not decide the main issues affecting the suit on a final basis.

22. If the above issue is decided, it may affect the main suit. Therefore, I am not giving a finding on the said issue.

23. It is a settled law that, the court must exercise sound judicial discretion and consider the three "golden principles" (prima facie case, balance of convenience, and irreparable injury). The grant of an interlocutory injunction is a matter of discretion to be exercised when the legal right and its violation are contested and uncertain.

24. The learned counsel of the plaintiff relied on following judgments.

A. In the case of Colgate Palmolive (India) Ltd vs Hindustan Lever Ltd, AIR 1999 SUPREME COURT 3105, decided on 18 August, 1999. The Hon'ble Apex Court held that, interlocutory injunction is to preserve and maintain the existing state of things (status quo) until the legal rights of the parties are

finally determined at trial. It acts as a protective measure, ensuring that the final decision of the court.

B. In the case of VERGHESE DANIEL, VS. BALAKRISHNAN, C.R.P. No. 1231 of 1996 and C.M.P. No. 6783 of 1996, decided on 31 August, 1998. The Hon'ble Madras High Court held that, a judicial aim is to minimize disputes and maintain peace by protecting existing possession until rights are fully determined in court.

25. The Hon'ble High Court also held that, a person with settled, long-term possession of a property is entitled to protection through an interlocutory injunction until the final court decision, even if their title is disputed or they are alleged to be a trespasser.

C. In the case of CHINNAMMA AND OTHERS VS. N. NAGARAJ AND OTHERS, M.F.A. No. 49/1994, decided on 09th March, 1995. The Hon'ble Karnataka High Court held that, granting or refusing a temporary injunction is a matter of judicial discretion.

26. Further, the Hon'ble High Court held that, the primary purpose of a temporary injunction in property disputes is to preserve the subject matter in its existing condition and prevent irreversible changes (like alienation, encumbrance, or new construction) that could render the final relief infructuous and lead to further litigation.

27. As mentioned above, no evidence has filed on record which shows that, the exact status of the suit property from the date of filing of the suit 18.03.2025 to till today. The possibility of change in the situation and status of the suit property during the said seven months period cannot be ruled out. The plaintiffs admitted that, a partition took place between the defendant No. 1 and his son, the deceased Ashok. However, whether the plaintiffs had demanded or not in the said partition? What exactly was decided in that partition ? Was all the property divided or how? These questions need full fledged trial and evidence. This is not the stage to go into the details and merits of case. Whatever, will be final decision of the suit. The plaintiffs admitted that, defendant No.1 has share and right in the suit property. Fact and circumstance in the above judgments and fact and situation of the present matter are not same. Hence, the above judgments are not helpful to the plaintiffs at this stage.

28. In the light of aforesaid discussion and considering circumstance of the case. I am of the opinion that, the plaintiffs have failed to show prima-facie case. Hence, it can not be said that, the plaintiffs would suffer irreparable loss and for the same reasons balance of inconvenience does not lie in favour of the plaintiffs. In the result, I answer point Nos.1 to 3 in the negative.

As to point No.4 :-

29. In view of my findings to point Nos.1 to 3, the application is liable to be rejected at this juncture. Hence, In

answer to point No.4, I pass the following order.

ORDER

1. The application is hereby rejected.
2. Costs in the main cause.

(Order pronounced in the open Court.)

Place : Ner,
Date : 11.11.2025.

(G. C. Fulzalke)
Civil Judge Junior Division,
Ner, Dist. Yavatmal.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same word to word as per the original order.

Name of Stenographer	:-	Ku. B. N. Nare (Grade-III)
Court	:-	Civil Judge Jr. Dn., Ner.
Date	:-	11/11/2025
Order signed by		
the Presiding Officer on	:-	11/11/2025
Order uploaded on	:-	11/11/2025