



ORDER BELOW EXH. 436.

The plaintiffs No. 2 and 3 have filed present application under order XXXIX Rule 1 and 2 read with section 151 of Code of Civil Procedure against defendants except defendant no. 14,15,and 20 a,b,c. to restrain defendant from dealing with the suit property in any manner and from creating third party interest. Plaintiff also prayed to restrain defendants or any one on behalf of them from dispossessing plaintiff without following due process of law.

2] It is the case of plaintiff that, survey No. 26/3-B, 26/4-B and 42/2 situated in the limits of Grampanchayat Undri, Sub-division Taluka Haveli District Pune are the ancestral properties and referred to as suit property 1A to 1C respectively. Survey No. 26/4/2A referred to as suit property 1D is the self acquired property of their father. They have filed suit for declaration and injunction against defendants. Suit is filed on the issue whether woman had rights in ancestral properties in the year 1947 as per the existing law. Initially, they had moved an application seeking temporary injunction vide Exh. 5. Order of status-quo was passed below Exh. 61. They also filed written argument at Exh. 99 but the final order was not passed on Exh. 5. On their application Exh. 364 court passed order that it is not proper to go at initial stage to decide Exh. 5. It was observed that pendente lite purchaser is bound by the outcome of the suit.

3] Plaintiffs further contended that the order of status-quo is in force even then defendants willfully disobeyed the same. Resultantly, contempt petition is filed by plaintiffs. Lrs of defendant No. 1 and Tulshidas Numbiyar executed agreement to sale in respect of 0.11 R land of suit property No. 1C on 12/03/2024. Said execution of documents is without right, title, interest and share in the suit property. Lrs of defendant No. 2 executed sale deed on 16/02/2022 in respect of suit property No. 1D. Defendant No. 1 and her son defendant No. 13, defendant No. 2 and defendant No. 3 also executed sale deed in respect of 13 R of suit property No. 1A. Defendant No. 1 and her son defendant No. 13 and defendant No. 2 and her son defendant No. 2A, 2B and 2C executed sale deed and consent deed without right, title, interest and share in the suit property.

4] Plaintiffs further contended that defendant No. 12 executed conveyance deed with PMC on 04/06/2021 without clear title. Defendant No. 12 further executed another conveyance deed dated 10/02/2022 in respect of suit property 1B. Defendant No. 12 has not obtained sanction of the court before creating third party interest in the suit property. Defendant No. 12 has demolish border walls of illegally purchased suit property and initiated construction of commercial complex without sanction of the court. On 19/03/2022 Lrs of defendant No. 1 tried to dispossess plaintiff from suit property by breaking cement and steel pole wire fencing No. 1B and 1D. Plaintiff filed FIR on 21/03/2022. Investigation is in progress. Defendant No. 16B and 16C have executed agreement

to sale in regard to 0.2140 R of survey No. 42/2 (1C) on 04/07/2024. Suit property is transferred by defendant No. 13 and Mr. Somnath Bobade to Amar Shelar and Amit Shelar on 14/11/2025 vide sale deed No. 27334. Transferee Amar Shelar and Amit Shelar on the basis of illegal document trying to trace-pass and building cement wall compound in the present suit property No. 1D. Defendant No. 2 and her legal representatives have executed Sathekhat for suit property No. 1B on 25/05/2023.

5] Plaintiffs have already filed contempt petition. Plaintiffs have prima facie case. If the injunction is not passed against defendants, plaintiffs will suffer injury and irreparable loss. The nature of suit property is being changed. It will result the suit infructuous and multiplicity of proceeding. Hence, they prayed for injunction to restrain defendant from dealing with the suit property in any manner and from creating third party interest. Plaintiff also prayed for injunction to restrain defendants or any one on behalf of them from dispossessing plaintiff without following due process of law.

6] In spite of sufficient opportunity defendants have not filed reply. Hence, application proceeded without reply of defendants.

7] Heard learned advocate for the plaintiff.

8] Having regard to all contentions of plaintiff and documents filed on record, following points arise for my

consideration. I have recorded my findings thereon for the reasons to follow.

Sr. No.	Points	Findings
1.	Whether plaintiff has a prima facie case to the extent of grant of temporary injunction in his favour ?	...Affirmative.
2.	Whether balance of convenience lies in favour of plaintiff ?	...Affirmative.
3.	Whether irreparable loss will cause to plaintiff if injunction as prayed is denied ?	...Affirmative.
4.	What order ?	As per final order.

: REASONS :

9] **AS TO POINTS NO. 1 TO 3 :-**

All three points are interlinked to each other. Therefore, they are discussed together to avoid repetition.

10] In support of the contents of the application plaintiff has filed on record 7/12 extracts and mutation entries of suit property 1A to 1D. It shows that their names are mutated in the suit properties as Lrs of Sadashiv Abnave. Along with present application they have filed on record index-II of the transaction dated 12/03/2024 for suit property 1D, index-II of the transaction dated 16/02/2022 for suit property 1D, copy of sale deed dated 25/01/2011, mutation entry No. 11700 about the transaction of suit property 1B dated 19/04/2021, mutation entry No. 11878 about the transaction of suit property 1B dated 28/01/2021, three

photographs, FIR dated 21/03/2022, mutation entry No. 12556 about the transaction of suit property 1C dated 24/01/2025, mutation entry No. 12483 about the transaction of suit property 1C dated 07/11/2024, mutation entry No. 12774 about the transaction of suit property 1C dated 14/11/2025, index-II about notice of lis pendence, copy of notice issued under Section 80 of Code of Civil Procedure, postal receipt, index-II for suit property No. 1B about the transaction dated 25/05/2023.

11] In support of the argument learned advocate for the plaintiff placed reliance on the observation of Hon'ble Rajasthan High Court in the case of **Bhura Vrs. Additional District Judge No. 8 Jaipur city [AIR 2004 Rajasthan 67]**. It was observed therein that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the Court usually take. They did not in that sense, decide in any manner the merits of the controversy to issue in the suit and do not course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not infringe upon the legal rights of parties to the litigation the principle of res judicata does not apply to the findings on which these orders are based, though if applications were made, for relief on the same

basis after the same has once been disposed of, the Court would be justified in rejecting the same as an abuse of the process of Court.

12] In support of the argument learned advocate for the plaintiff placed reliance on the observation of Hon'ble Rajasthan High Court in the case of **Amar Singh Rathod and ors Vrs. Smt. Anju Agarawal and ors** [2017 SCC Online RAJ 2877]. In that case trial court allowed the second application for temporary injunction and restrained respondents, directed them to maintain status-quo with regard to plot in dispute. The appellate court reassess the material and set aside the order of the trial court. It was observed that trial court considered all material available on record, it was not advisable for appellate to reassess material and substitute its own findings.

13] Further plaintiff relied on the decision in the case of **M.D. Azizur Rahman Chowdhury Vrs. Tahududdin Chowdhury and ors** [Civil Appeal No. 219/2003, 15 MLR (AD) (2010) 160]. But the copy submitted is not authenticated copy of any reporting platform.

14] Perusal of record on the background of above legal position it reflects that my learned predecessor had passed order below Exh 61. By said order parties except defendant No. 12 were directed to maintain status-quo to the suit properties till hearing on Exh. 5, defendant No. 12 is directed to maintain status-quo regarding suit property No. 1C till hearing on Exh. 5. It further

appears from application Exh. 364 that plaintiffs had moved said application on 02/05/2023 for final orders on Exh. 5. my learned predecessor had observed that matter is posted for evidence. No cross-examination order is set aside. Therefore, it will not be proper to go back and decide application Exh. 5. It was observed in said order that pendente lite purchaser is bound by the outcome of the suit. Merely, for alienation it will not be proper to go at the initial stage.

15] Thus record makes it clear that the earlier application of temporary injunction Exh. 5 was not decided finally on merits. Moreover, earlier application of temporary injunction Exh. 5 was filed along with suit in the year 2009. In the present application plaintiff has mentioned several subsequent events leading them to file present application. Hence, present subsequent temporary injunction application is maintainable.

16] In support of the contention plaintiff has filed on record documents i.e. mutation entries and 7/12 extracts. These documents support their contention of co-sharers. By way of this application plaintiffs have challenged the right, title, interest and share of their aunt Sitabai and Shalutai in the suit property. Plaintiffs have contented sole possession over the suit properties. But, the 7/12 extract shows the names of other co-sharers. Therefore, it cannot be said that plaintiffs are in sole possession of the suit properties.

17] Record further reflects that defendants have created third party interest in the suit properties. It is settled legal position that purchaser of joint share cannot be put in possession unless there is partition by meets and bounds. Surprisingly, in this case none of the defendants have opposed the application. Hence, though defendants have alienated part of the suit properties, the possession of the same needs to be taken as per the legal procedure.

18] Plaintiffs have filed on record copy of police complaint dated 21/03/2022 which prima facie supports their contention of attempt to damage the compound wall and obstruct their possession. One of the photographs filed by plaintiffs shows the stone board having mentioned survey No. 26/4B (part) Undri. Admittedly, it is the survey number of suit property 1B. This photographs prima facie supports the contention of demolition of boundary wall. But, at this stage there is nothing on record to ascertain that the said act is done by defendants. Even then, the photographs prima facie supports the contention that attempts are made to break the wall compound. As discussed earlier, the possession cannot be taken without following due process of law.

19] Documents on record i.e. mutation entries and copies of index-II further prima facie supports the contention of plaintiffs about creation of various third party interest in the suit properties. In such circumstances, if the defendants or their agents, transferees, beneficiaries, successors, legal heirs or any one

claiming through them further alienates suit property or obstruct the possession of plaintiffs without following due process of law, will result into frustration of suit. In that scenario plaintiffs will suffer irreparable loss. Hence, balance of convenience lies in favour of plaintiffs. Therefore, I have recorded my affirmative findings to point Nos. 1 to 3. Resultantly, I pass following order for point No.4:-

ORDER

1. The application is allowed.
2. Defendants, except defendant No. 14, 15, and 20 a,b,c, either by themselves or through agent, servant or any other person claiming through them are temporarily restrained from creating obstruction to the possession of the plaintiffs over the suit properties, in any manner without following due process of law till disposal of the suit.
3. Defendants, except defendant No. 14, 15, and 20 a,b,c, either by themselves or through agent, servant or any other person claiming through them are temporarily restrained from creating third party interest over the suit properties, in any manner till disposal of the suit.
4. Costs in cause.

[Dictated and pronounced in open Court]

(M. K. Kothule)
2nd Add. Judge, Small Causes Court &
Jr. Civil Judge S.D., Pune.

Date : 10/08/2026.

: CERTIFICATE :

“I affirm that the contents of this P. D. F. File are same word for word as per original order/ judgment.”

Name of the Stenographer : B. M. Salve (Stenographer Grade - II)

Name of the Court : M. K. Kothule

2nd Addl. Small Causes Court &

Jt. C.J.S.D., Pune.

Dictated on : 10/08/2026

Transcribed on : 10/08/2026

Judgment checked & signed

by Presiding Officer on : 10/08/2026

Judgment uploaded on : 10/08/2026