



**Order below Exh.5 in Reg. Civil Suit No.198/2021**  
(C.N.R. No. MHAH05-000653-2021)

Plaintiffs suit is for declaration and perpetual injunction, wherein they have moved this application for interim injunction in respect of property bearing Gut no. 155, having old Gut no. 139, adm. 1H. 18Ares, situated at Mauje Kuranpur, Tal. Shrirampur, Dist. Ahmednagar(hereinafter referred as suit property). Perused application with its affidavit(Exh. 6). Perused plaint and deft nos. 1 to 4's written statement cum say(Exh. 14).

2. Plaintiffs aver that suit property having Old Survey no. 37/3, adm. 2Acre 37Ares, was owned by one Kasubai, w/o Tukaram Chitalkar, who was the mother of Khandu Tukaram Chitalkar, who was the father of deft nos. 1 to 3, 5 and 6 and husband of deft no. 5. The names of deft nos. 1 to 6 are entered in 7x12 extract of suit property. Kundlik Limbaji Parkhe was the father of Malhari Kundlik Parkhe, who was the husband of plff no. 2 and father of plff nos. 1, 3 and 4.

3. Plaintiffs aver that Kasubai had executed one registered mortgage-deed of suit property, bearing Reg. no. 1962, dtd. 29.08.1947, in favor of Kundlik Limbaji Parkhe. Kundlik Limbaji Parkhe has died on 28.12.1971. The original owner of suit property Khandu Tukaram Chitalkar has moved one suit bearing R. C. S. no. 454/1978 in the Court of Civil Judge, Junior Division, Shrirampur, for redemption of

mortgage and possession. This suit was dismissed on 29.07.1983, wherein it was held that the mortgage-deed was void *ab-initio* and that, Kundlik Limbaji Parkhe had never sought the possession of suit property. It was further held that the mortgage-deed was time barred.

4. Plaintiffs aver that since 06.10.1956, Kundlik Limbaji Parkhe, was in possession of suit property as its owner by denying the title of its original owner. Accordingly, he has executed one lease-deed in favor of one Bhagwant Kondiba Hivarkar on dtd. 06.10.1956. Based on this lease-deed, Bhagwant Hivarkar was in possession of suit property. On count of these facts, deceased Kundlik Limbaji Parkhe had become the owner of suit property by adverse possession. After demise of Kundlik Limbaji Parkhe, his son Malhari was in open and unobstructed possession of suit property.

5. Plaintiffs aver that on 29.05.1983, Khandu Tukaram Chitalkar was in possession of suit property. But, in view of the judgment in R. C. S. no. 454/1978, his possession was illegal. Thereafter, Malhari Parkhe came into possession of suit property. After his demise, his plaintiff legal heirs came into possession of suit property as its owner. Their possession was open and unobstructed and same was adverse to defendants title. Neither Khandu Tukaram Chitalkar, nor his defendant legal heirs have filed suit for possession of suit property against plaintiffs, within limitation, due to which, plaintiffs title has been perfected over suit property by adverse

possession.

6. On count of their settle possession over suit property, plaintiffs have constructed one R. C. C. building, consisting one bedroom, one hall, kitchen, toilet and bathroom therein. Next to this room there is one tin shed room adm. 20 x 12 fts.. This tin shed room has brick wall, having meson work. Said house property bears G. P. no. 150. and its tax was paid by deceased Malhari and after him by plff no. 1. Said house property has electric connection and its bill is paid by plff no. 1 to M. S. E. D. C. department. Said electricity connection stands in the name of plff no. 2. Since 29.07.1983, Malhari and his plaintiff legal heirs are staying on the suit property. They are having stable of 14 x 22 ft., used for cattle, which is constructed in year 2002. This fact is known to defendants.

7 On Northern direction of suit Gut no. 155, lies plaintiffs Gut no. 154, adm. 1H. 14Ares, wherein there is plaintiffs ancestral Well, which is used for irrigation of suit property, for which, plaintiffs have taken underground 2.5 inches P. V. C. pipeline since year 1992, which till date is under use and is 200 ft. in length. Since 29.07.1983, plaintiffs are in continuous possession of suit property and it was never objected by Khandu Tukaram Chitalkar. While being in possession, plaintiffs used to cultivate Wheat, Soyabin, Corn, Grass and Sugarcane Crop in the suit property and they used to give the Sugarcane harvest to Dr. Vitthalrao Vikhe Patil

Sahkari Sakhar Karkhana. Plaintiffs father Malhari, was the member of Sugar Factory and plff no. 1 has taken steps to enroll him as the member.

8. Plaintiffs allege that despite of their open and unobstructed possession over suit property, on 31.07.2021, when plff no. 1 was harvesting Grass for his cattle, at that time deft nos. 1 to 3, came on the suit property and obstructed plaintiff in his harvesting work. They threatened him. On count of threatening given by deft nos. 1 to 3, having apprehension of interference and obstruction over the suit property, plaintiffs are constrained to move the suit with present application for interim injunction, restraining deft nos. 1 to 3 from interfering and obstructing in plaintiffs possession over suit property, with further restraint order that they should not create third party interest over it, on count of their entries in revenue records of suit property.

9. Defendants in their say(Exh. 40), have denied plaintiffs allegations. They admit Kasubai Tukaram Chitalkar's title over suit property. They admit their relationship with her. They admit of execution of registered mortgage deed by Kasubai in favor of Kundlik Limbaji Parkhe, in respect of suit property, for loan amount of Rs.100/-. While admitting the fact of execution of mortgage-deed, defendants deny that Kasubai has handed over the possession of suit property to Kundlik Limbaji Parkhe. They specifically contend that Kundlik Limbaji Parkhe was never in possession of suit

property, and that, he was relative of Kasubai.

10. Defendants contend that Kasubai was in possession of suit property and she cultivated the same. After her demise, suit property was cultivated by her son Khandu Tukaram Chitalkar and his defendant wife Tarabai. Prior to Khandu's demise, and after his demise, deft nos. 1 to 4 were and are in possession of suit property as its owner. Plaintiffs have no concern with the suit property. The loan amount of Rs.100/- has been repaid by Kasubai to Kundlik but, the mortgage-deed was not redeemed. By taking disadvantage of this fact, plaintiffs have effectuated false entries in crop register of the suit property, when factually they were not in its possession.

11. Defendants contend that vide Mutation Entry bearing no. 2391, their names have been entered in revenue records on 07.08.2010, being the legal heirs of Khandu Tukaram Chitalkar. The name of Khandu Tukaram Chitalkar was on revenue records of suit property, which was never objected by plaintiffs or by their ancestors.

12. Defendants admit about the suit bearing R. C. S. no. 454/1978, and the verdict therein. Defendants assert that plaintiffs have never sought the possession of the suit property based on the mortgage-deed. Defendants contend that Malhari Kundlik Parkhe had filed one suit bearing R. C. S. no. 105/1991, against Khandu Tukaram Chitalkar. Said suit was dismissed. As per defendants, the lease-deed dtd. 06.10.1956,

executed by Kundlik Limbaji Parkhe in favor of Bhagwant Kondiba Hivarkar, has been canceled. Defendants contend that said Hivarkar was never in possession of suit property. Defendants allege that plaintiffs ancestors, in collusion with revenue authorities, have tried to seek false entries in their name in revenue records of suit property, which has resulted into disputes between plaintiffs and defendants family.

13. Defendants admit that the suit Gut no. 155, is adjacent to Gut no. 154. Defendants alleged that plaintiffs and their ancestors have sought false entries in the Sugar Factory. Defendants submit that being in possession of suit property, they are cultivating it. Defendants further submit that irrespective of the fact that they are having the possession of the suit property, if the Court comes to the conclusion that plaintiffs are in possession of the suit property, defendants alternatively claim for its possession for which, they have moved counter claim in the suit. By contending that neither plaintiffs nor their ancestors have denied defendants title over suit property, by denying plaintiffs claim of title over suit property by adverse possession, defendants pray for rejection of the application.

14. Considering above rival pleadings of both plaintiffs and defendants, following points arise for my determination towards which in view of documents on record and arguments laid by their Learned Advocates, I have recorded my findings with reasons thereto.

No.	Points	Findings
1	Whether plaintiffs have <i>prima-facie</i> case ?	Affirmation
2	Whether balance of convenience lie in their favor ?	Affirmation
3	Whether plaintiffs would suffer irreparable loss if their application is rejected	Affirmation
4	What order ?	Application Allowed.

### REASONS

15. While substantiating their prayer for interim injunction, plaintiffs with list(Exh. 3), have relied on 7x12 extracts of Gut nos. 155, 154, certified copy of mortgage-deed dtd. 29.08.1947, certified copy of lease-deed, certified copy of judgment in R. C. S. no. 454/1978, certified copy of Namuna no. 8A extract of one house property standing in the name of Malhari Kundlik Parkhe, situated in Gut no. 155.

16. With list(Exh. 23), plaintiffs have relied on 7x12 extracts of suit property, from years 1979 to 1990, from 1992-1993 to 2010-2011, certified copy of judgment in R. T. S. no. 20/2014, Mutation Entries bearing nos. 000112, 000113, Namuna 8A extract of suit property, 7x12 extract of Survey no. 37/3 from year 1930-1931 to 1941-1942, from 1952-1953 to 1954-1955, from 1942-1943 to 1957-1958, from 1958-1959 to 1975-1976, 1977-1978, certified copy of order passed by S. D. O. in R. T. S. Appeal no. 154/2016, 7x12 extract of

Gut no. 139 from year 1977-1978 to 1978-1979, 7x12 extract of Gut no. 154 from year 1977-1978 to 1978-1979, 7x12 extract of Gut no. 155/1 from year 1977-1978 to 1978-1979.

17. With list(Exh. 28), defendants have relied on xerox copy of Mutation Entries bearing no. 1018, 1226, 889, xerox copy of Exh.1 in R. C. S. no. 105/1991, xerox copy of written statement therein, xerox copy of Exh.1 with order in R. C. A. no. 110/1984, xerox copy of retirement pursis in R. C. A. no. 110/1984, xerox copy of notice in crop verification case no. 2054/14, xerox copy of application before Circle Officer, Shrirampur, xerox copy of plaintiffs cross-examination in crop verification case.

18. In order to avoid repetition of facts and its discussion, in view of the relied documents and arguments laid by plaintiffs and defendants Lrnd. Advocates, all points for determination are collectively discussed.

**As To All Point Nos. 1 to 4 :-**

19. Plaintiffs assert that defendants ancestor Kasubai Chitalkar had executed one registered mortgage-deed in favor of their ancestor Kundlik Limbaji Parkhe on dtd. 29.08.1947. Said mortgage-deed was observed to be void *ab-inito* by the Court in Khandu Tukaram Chitalkar's suit bearing R. C. S. no. 454/1978, which was for redemption of mortgage and possession. Said suit was dismissed. In said suit, it was observed that Kundlik Limbaji Parkhe had never sought the possession of suit property. Irrespective of this fact, plaintiffs

assert that their ancestor Kundlik Limbaji Parkhe, was in possession of suit property since 06.10.1956 and accordingly, he had executed one lease-deed in favor of one Hivarkar. Based on these facts, plaintiffs assert that being in possession of suit property, they have become its owner by adverse possession, by denying defendants title over the same.

20. Against these averments, while admitting the mortgage-deed, defendants contend that they are in continuous possession of suit property and have been cultivating the same, having their names entered in revenue records of suit property on 07.08.2010, vide M. E. no. 2391, after demise of their ancestor Khandu Chitalkar.

21. Whether plaintiffs have become the owner of suit property by adverse possession, is the issue that has to be considered after going through evidence, which the parties would lead at the time of hearing in the proceeding. Considering the nature of this application, we have to see that who is in the possession of the suit property and having *prima-facie* case with balance of convenience in his favor.

22. Both plaintiffs and defendants submit to be in continuous possession of suit property by admitting mortgage-deed of year 1947. Defendants contend that they are in possession of suit property and that plaintiffs have no concern with it. In view of their contention, on perusal of the judgment given in R. C. S. no. 454/1978, it has been observed by the Court as under ;

*“ its the plaintiffs i.e. Khandu Chitalkar, case that the suit land was mortgage to the father of defendants i.e. Kundlik Limbaji Parkhe, for Rs.100/-, but, he never took its possession till 1968 as the suit land was in possession of one tenant. Plaintiff has further pleaded that the father of defendant had filed suit to recover rent against tenant and after inquiry under Ceiling Act, the possession of land was taken out from the tenant and given to plaintiff i.e. Khandu Chitalkar, who has given it to defendant i.e. Malhari Kundlik Parkhe. It means, the plaintiffs case show that it was a possessory mortgage but, actual possession of land is not given to the father of defendant i.e. Kundlik Parkhe, but, it was in possession of tenant. Apart, considering the nature of the mortgage and in view of the provisions of Section 59 of the Transfer of Property Act, the alleged mortgage transaction itself is not legal and valid and therefore, the question of redemption does not arise ”.*

23. In view of these observations, it is to be noted that defendants in their written statement have admitted about one lease-deed dtd. 06.10.1956, in favor of Bhagwat Kondiba Hivarkar, which was canceled. In view of this admission, on perusal of lease-deed, in favor of Hivarkar, same has been executed by Kundlik Limbaji Parkhe, in respect of suit property, who has come in its possession by mortgage-deed of year 1947.

24. Further, in view of above observations in the judgment, its the plaintiff i.e. Khandu Chitalkar i.e. present defendants ancestor's case that after seeking possession from tenant, suit property was given by him to defendant i.e. the father of present plaintiffs. In view of this observed fact, and its inference, defendants contention of being in continuous

possession of suit property, do not sustain.

25. While unfolding their ancestor Kundlik Parkhe's continuous possession over suit property, plaintiffs have relied on series of 7x12 extracts of suit property, which reflect that since year 1950, Kundlik Limbaji Parkhe's name is in 7x12 extract of suit property and to be more particular in its crop register. Irrespective of the fact that the property stood in the name of defendants ancestor Khandu Chitalkar, the crop register reflects that the property has been continuously cultivated by Kundlik Limbaji Parkhe and subsequently, by his legal heirs.

26. Though defendants assert that they are in possession of suit property, they appear to be confused in its regard, because they alternatively claim for possession of suit property, if the Court assumes or comes to the conclusion that plaintiffs are in possession of suit property.

27. Considering the relevant documents on record, after admitted mortgage-deed in favor of plaintiffs ancestor Kundlik Limbaji Parkhe, he appears to be in possession of suit property based on which, he had executed one lease-deed in favor of one Hivarkar from whom, in view of observation in the suit, defendants ancestor Khandu has sought the possession of suit property and handed over it to defendants ancestor Malhari Parkhe.

28. Further, irrespective of the fact that the defendants assert that no possession was handed over to

Kundlik Limbaji Parkhe, on perusal of admitted mortgage-deed on record it *prima-facie* appears that it was the possessory mortgage-deed, by which the possession of suit property was handed over to Kundlik Limbaji Parkhe, for the term of five years, by which he was permitted to cultivate the land, till Kasubai repays the mortgage amount of Rs.100/- and in case of her failure, Kundlik was at liberty to sale the property and recover the amount and if less amount is fetched from the sale proceeds, she had agreed to pay deficit amount and if more amount is fetched, Kundlik has agreed to pay excess amount to Kasubai.

29. In view of above discussed facts, based on documents on record, plaintiffs succeed to unfold that since year 1947, when the mortgage-deed was executed, their ancestor was in possession of the suit property and it continued till his legal heirs i.e. plaintiffs, having their house property on suit Gut no. 155, vide Namuna 8A extract of the property bearing G. P. no. 150, standing in the name of Malhari Kundlik Parkhe, and that of their cultivation activities on the suit property in view of crop register entries on record.

30. At this initial stage of the suit, on count of their continuous possession over the suit property, plaintiffs unfold their *prima-facie* case, which tilts balance of convenience in their favor, and if this application is rejected, they would suffer irreparable loss.

31. Accordingly, by giving my finding towards point

nos. 1, 2 & 3 in affirmation and towards point no. 4, I pass following order.

**ORDER**

1. Application is allowed.
2. Defendants are temporarily restrained from interfering and obstructing in plaintiffs possession over the suit property.
3. They are restrained from creating third party interest over suit property in any manner, till final disposal of the suit.
4. Considering the interest of the parties involved in the suit property, both parties are directed to proceed in the suit expeditiously.
5. No order as to costs.

**Date : 24.02.2023**

**( Vinay B. Kamble )  
Jt.Civil Judge, Senior Division  
Shrirampur.**

**CERTIFICATE**

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

Name of the Court : Jt. Civil Court, Senior Division,  
Shrirampur, Dist.Ahmednagar.

Name of Stenographer : Ajinath A. Padalkar,  
Stenographer (Grade-II)

Date of order : 24.02.2023