

MHAH070000502025



**ORDER BELOW EXH. 7 IN R.C.A. NO. 4/2025**  
**(Balveer Adhikari and another Versus Sunanda Vaishnav & Ors)**

The appellants have filed present application to stay the injunction order passed by Ld. Trial Court.

2. It is submitted by the appellant that, respondent no.1 is plaintiff in Regular Civil Suit No. 547/1996 while the appellants are defendant in said suit. The suit properties are ancestral properties of appellant Balveer and his two brother Laxman and Purushottam. The respondent no.1 has taken disadvantage of the fact that appellant and his brother Purushottam were residing out of the village for service purpose. In order to grab the suit property, she has filed suit against appellant and Legal heirs of Purushottam. The Ld. Trial Court without considering the evidence properly and ignoring the fact that suit properties owned by all the three brother passed injunction order against appellant and other. Due to said order, injustice has been caused to the appellant. Therefore, it is necessary to stay said injunction order till final decision of the appeal. Otherwise, appellant and others would be restrained from enjoyment of the property, respondent no.1 will take possession of entire suit property and restrain the appellants. On these grounds, it is prayed to stay the injunction order passed by the Ld. Trial Court.

3. The respondent no.1 opposed the application vide reply exhibit 28. It is submitted that, the application is illegal and not tenable. Respondent no.1 had filed Regular Civil Suit No. 547/2016 against appellants and others in respect of Block No. 417 and 418 of village Dhandarphal Budruk for the relief of perpetual injunction etc. The appellant had admitted that, suit property was possessed by respondent no.1 since long. Therefore, the Ld. Trial Court has passed injunction order against the appellants and the others. As such, present application is not tenable. If the application is allowed then it will amount to allowing the appeal itself. The appellant has not claimed relief of partition. Unless partition is claimed, he cannot be allowed to trespass in suit property. The appellant is residing at Nashik. The suit properties were given to the possession of respondent no. 1 by consent. In affidavit exhibit 91 it is specifically mentioned that, since 07.01.1994 suit properties was given to the possession of respondent no.1. During the trial of the suit, possession of respondent no.1 over suit properties is proved. The appellant has admitted that, by ownership suit properties were given to the possession of respondent no.1. She is possessing the suit properties and cultivating it. Therefore, it is prayed to reject the application.

4. Heard the Ld. Advocates for the parties. It is undisputed that, present respondent no. 1 had filed R.C.S. 547/2016 in the court of Jt. Civil Judge Senior Division, Sangamner. It was suit for declaration of title, perpetual injunction etc. Present appellant were defendant no. 1 and 2 in said suit. The Ld. Trial Court after considering the oral and documentary evidence on record, partly decreed the suit and issued injunction against present appellant and respondent no. 2 retaining them from obstructing the plaintiff's possession over suit properties till obtaining possession by lawful means and dismissed the counter-claim. The

appellants have produced the certified copy of the judgment exhibit 5 in R.C.S.547/2016. Similarly, photocopies of oral evidence of plaintiff, Madhav Bhikaji Torkadi and defendant no.1 in said suit are produced vide list exh. 42.

5. It is seen that, relationship between the parties is undisputed. Further, it is undisputed that, suit properties are the ancestral properties of parties. It was owned by original member Rupdas who had three sons namely Laxman, Bhaudas @ Purushottam and Balaji @ Balveer. Plaintiff Sunada who is respondent no. 1 and Madhav who is respondent no. 2 are the children of deceased Laxman while defendant nos.2,7,8,9 are the legal heirs of Purushottam. It is undisputed that, present appellants are residing out of the Dhandarphal village since long due to service purpose. After going through the cross-examination of appellant no.1 it is seen that, he has admitted that, since 1992 plaintiff i.e. respondent no. 1 is cultivating the suit property. He has admitted the contents of affidavit exhibit 91 . However, copy of said affidavit is not produced on record. The appellants have filed written statement-cum-counter-claim in the suit. They had prayed for perpetual injunction restraining the plaintiff and defendant nos. 3 to 6 from alienating the suit property. It is seen that, in entire written statement they have not claimed that, they are possessing the suit property. They have not claimed partition of the suit property.

6. The Ld. Trial Court has held that, plaintiff i.e. respondent no. 1 has proved her possession over suit property and that appellants are obstructing her possession. Consequently, injunction is passed against them. In view of above stated oral evidence, prima facie finding of Ld. Trial Court appears to be legal and proper. The appellants have not produced any documentary evidence to

show their possession at this stage. As stated above they have admitted possession of plaintiff over suit property. Therefore, there is no reason at this stage to stay the impugned order passed by Ld. Trial Court. Thus, the application has no substance and liable to be rejected. Therefore, following order is passed.

**: ORDER :**

The application is rejected.

**Date : 17/03/2026.**  
Sangamner.

**( M. M. Shaikh)**  
Ad-hoc District Judge -1,  
Sangamner.