

MHAH080000532024

Kashinath Bhavu Dhokare



Vs.

Sopan Dashrath Pawar etc.

ORDER BELOW EXH. 5 IN R.C.S. No. 43/2024

This is suit for declaration and permanent injunction along with an application for interim injunction under order XXXIX rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter in short referred as 'C.P.C.') to restrain defendant no. 1 or his agent or any person on his behalf from obstructing plaintiff's possession over the suit property. Application is well supported by an affidavit at (Exh.6)

Description of the suit property -

2. The agricultural land bearing Gat No. 437/1, ad-measuring total area 1.55 HR (Pot kharaba-0.15R), having assessment 2.50 pai, out of it an area 0.41R delivered to defendant no.1 by plaintiff vide gift deed bearing no. 3378/2022 dt. 30.08.2022 situated at village – Vankute, Tal. Sangamner, Dist. Ahmednagar which is more particularly described in para no. 1 of the plaint. An area 0.41 R out of gat no.437/1 is divided into two sub-area 0.33R and 0.08R. Boundaries of an area 0.33 R are given as under-

At east	–	Gat no.441
At south	–	Gat no.442
At west	–	Gat no.437/1 pai
At north	–	Gat no.438

Boundaries of an area 0.08 R are given as under-

At East- Gat no.437/2

At South-Gat no.438

At West- Gat no. 438, 437/1 pai

At North- Gat no.437/2

[Hereinafter, referred in short as the 'Suit Property.']

The pith and substance of plaintiff's case is -

3. The plaintiff has filed the present suit seeking relief of declaration and permanent injunction in respect of the suit property. The suit property is self acquired property of plaintiff's family. The old survey number of the suit property is survey no.93/8. Original predecessor of plaintiff's family Jairam Hanmanta Dhokare has purchased the suit property on 20.11.1948 from Radhabai. Bhau Hanmanta Dhokare and Shankar Bhikaji Kokate from plaintiff's family have again purchased the suit property on 27.07.1960. Accordingly, mutation entry no.1397 came into existence. Person namely Dashrath Krishna Pawar from family of defendant no.1 has no concern with the suit property. Dasharath Pawar has wrongly shown that survey no.93/5 has been minimized from name of plaintiff into gat scheme and get transferred into name of plaintiff. According to plaintiff, defendant no.1 has fraudulently executed gift deed bearing no. 3378/2022 in his favour from plaintiff with respect to the suit property. Accordingly, mutation entry no. 1598 came into existence. Subsequently, name of defendant no.1 has been mutated to revenue entries of the suit property. The said gift deed is bogus, illegal, void. It liable to be canceled. There is strong possibility that defendant no.1 does any illegal act by taking disadvantage of

entry of his name into revenue record of the suit property. Plaintiff is in threat that defendant no.1 or his agent or any person on his behalf will obstruct possession of plaintiff over the suit property, he will alienate the suit property to third party by creating interest therein by way of gift, mortgage, lease or in any other manner. Hence, plaintiff constrained to file present suit. It will take much time to decide the suit finally. If injunction is not granted in favour of plaintiff, it will cause ir-repairable loss to him and the vice-versa. Plaintiff has prima facie case. Balance of convenience lies in his favour. Hence, plaintiff prayed to grant temporary injunction in his favour. Hence, the application.

4. Defendant no. 1 and 2 have appeared in the suit and filed their common say and written statement at Exh. 26. At the same time, they have filed counter-claim along with their written statement. They both contested the application on ground that, grounds in the application are false and imaginary. According to them, suit is not tenable. They admitted the relation between parties. The suit is hit by non-joinder of necessary parties and properties. Plaintiff has no cause of action arose to file the present suit. Plaintiff does not come with clean hands. He has suppressed real facts from the court. Suit of plaintiff is vague. In order to cause suffering to defendants, plaintiff has filed present false suit. Plaintiff has no prima-facie case. Balance of convenience lies in the favour of defendants. Therefore, defendants have prayed to dismiss the application.

5. Heard argument of advocate for plaintiff Shri. D.B. Jadhav and advocate for defendants Shri.V. B. Gunjal, at length.

6. On rival contentions raised by both parties in their pleadings and documentary evidence produced on the record, argument advanced by both advocates, following points arise for my determination and I have recorded my findings along with reasons are as follows;

Sr.No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether plaintiff has made out prima-facie case ?	Yes.
2.	Whether the balance of convenience lies in favour of plaintiff?	Yes.
3.	Whether plaintiff will suffer irreparable loss, if the order of injunction is not granted in his favour ?	Yes.
4.	What order ?	: The application is Partly allowed.

REASONS

7. Ld. Advocate for the plaintiff has relied on original copy of gift deed no. 3378/2022 dated 30.08.2022, copies of 7/12 extracts of Gat No. 437/1 and Survey No. 93/8 of village – Vankute, Tal. Sangamner, certified copies of Mutation Entry No. 789, 1307, 1397, 1679, 1680, 94 of village – Vankute, Tal. Sangamner, copy of extract of Gat Scheme map of Survey No. 93/5, certified copy of sale deed No. 3377/2022 dated 30.08.2022, copies of 7/12 extracts of Gat No. 437/1, 437/2, 437/3 of village – Vankute, Tal. Sangamner, filed along list Exh. 3 and 42.

8. On the contrary, advocate for defendant no. 1 and 2 has relied on original sale deed No. 1954/2000 dated 03.05.2000, true copy extract of Account No. 72 lying into rights prior to consolidation of gat register including entries of Gat No. 93/5 and 93/7, filed along list Exh. 38 and 44.

9. **It is not in a dispute that -**

- a. Relation between parties.
- b. Description and boundaries of the suit property.

AS TO POINT NO.1 TO 3 -

10. All points are interlinked, hence, in order to avoid repetition of facts all points taken for discussion altogether.

11. It is not in dispute that, defendant no.1 and 2 are real brothers. Defendant no. 3 to 5 are siblings of plaintiff. Description and boundaries of the suit property are not in dispute. According to him, defendant no.1 has fraudulently made executed registered Gift Deed bearing no. 3378/2022 on 30.08.2022 with respect to the suit property i.e 0.41 R out of gat no.437/1 in his favour by committing fraud with plaintiff and his family. Subsequently, name of defendant no.1 has been get mutated into revenue record of the suit property vide Mutation Entry No. 1598. According to him, said gift deed is illegal, bogus and void. Defendant no.1 will do any illegal act by taking disadvantage of entry of his name into revenue record of the suit property. In support of plea, plaintiff has filed copy of 7/12 extract of the Gat No. 437/1, Survey No. 93/8,

certified copy of registered Gift Deed dt. 30.08.2022, extracts of mutation entries no. 1307, 1397 etc, extract of gat scheme map of survey no. 93/5 of village – Vankute, Tal. Sangamner on the record. Upon perusal of 7/12 extract of gat no.437/1 prima-facie it appears that name of defendant no.1 has been entered against an area 0.41R into the occupier column vide mutation entry no.1598, whereas name of plaintiff has been entered against an area 1.32R into occupier column of the revenue record. Therefore, it reveals that defendant no.1 is in possession of the suit property and not the plaintiff. Copy of 7/12 extract of survey no. 93/8 reveals the name of father of plaintiff namely Bhau Hanmanta Dhokare has entered against an area 0.42R of the revenue record. Therefore, prima-facie case exists in favour of defendant no.1.

12. However, it is settled law that the 7/12 extract is being public document, it carries presumption of genuineness as per section 157 of the Maharashtra Land Revenue Code, 1966. On the other hand, plaintiff has not put forth any rebuttal documentary evidence on the record which shows that, the entry upon 7/12 extract is false or he is in possession of the suit property. However, 7/12 extract of the Gat no.437/1 reveals that plaintiff, defendant no.1 and others are also co-sharers of gat no.437/1.

13. Add to this, upon perusal of copy of registered gift deed dt.30.08.2022 bearing deed no. 3378/2022, it appears that it is executed by plaintiff with respect to the suit property in favour of defendant no.1 for no consideration. According to plaintiff, the said gift deed has been fraudulently made executed by defendant no.1 in his favour. The said gift deed is bogus and illegal. The alleged gift deed is in question. The question as to legality of

alleged gift deed is matter of trial. The alleged gift deed reveals the some sort of right and interest of defendant no.1 lying into the suit property.

14. So far as, objection taken by defendant no.1 with respect to non-joinder of necessary parties and properties are concerned, it is matter of trial. It will be decided at the flag end of the suit after giving opportunities to both parties to lead evidence.

15. It is settled law that the present stage as being the interim one, one has to see that, which party is in possession of the suit property; issue of ownership or title over the suit property, it is matter of concern for trial. In my view, plaintiff has failed to establish the prima-facie case about his possession over the suit property. It prima-facie appears from documentary evidence that, defendant No. 1 is in lawful possession of the suit property. Therefore, it is duty of the court to protect lawful possession of defendant no. 1 over the suit property. However, plaintiff has succeeded to establish the prima facie case about some sort of his right and interest lying into the suit property. Therefore, plaintiff is entitled to get relief of temporary injunction with respect to alienation of the suit property only and not with respect to the obstruction to possession against defendant no.1. If such injunction is not granted in favour of plaintiff, the very object of the suit will frustate. It will cause multiplicity of proceeding. Hence, i am of the opinion that, plaintiff will be liable for hardship in case temporary injunction with respect to alienation of the suit property has been not granted in his favour and the vice-versa. Therefore, balance of convenience lies in favour of plaintiff. By allowing this application partly, defendant no.1 will not suffer any

loss. On the contrary, if application is dismissed in whole, plaintiff will suffer greater loss. Therefore, I have answered point no. 1 to 3, accordingly.

AS TO POINT NO.4 -

16. The plaintiff has succeeded to establish the golden rules i.e. prima facie case, balance of convenience and ir-repairable loss which are required for issuance of temporary injunction against defendant no.1 with respect to alienation of the suit property only. Therefore, application is deserves to be partly allowed. Cost of this application shall follow the event. Hence, in answer to point no. 4, I pass the following order -

ORDER

1. The application (Exh.5) is partly allowed.
2. The defendant no.1 is hereby temporarily restrained from alienating the suit property by creating third party interest therein by way of gift, sale deed, lease, loan, mortgage or in any other manner till final disposal of the suit.
3. The prayer of plaintiff of temporary injunction with respect to obstruction to possession over the suit property is hereby dismissed.
4. Costs in cause.

Sangamner.
Date : 10.07.2026.

(K. K. Patil)
2nd Jt. Civil Judge, Jr. Dn.,
Sangamner.

C E R T I F I C A T E

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

Name of the Stenographer	:	A. M. Polade
	:	2nd Jt. CJJD & JMFC
		Court, Sangamner.
Order Dated	:	10.07.2026.
Order signed by the		
Presiding Officer on	:	10.07.2026.
Order uploaded on	:	10.07.2026.