



Vs.

Sopan Dashrath Pawar etc.

ORDER BELOW EXH. 28 IN R.C.S. No. 43/2024

This is counter-claim for permanent injunction and for other reliefs 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.') filed by counter-plaintiffs (Original defendant no. 1 and 2) to restrain counter-defendants (Original plaintiff and Original defendant no.5) or their agent or any person on their behalf from obstructing counter-plaintiffs' possession over the counter-claim property. Application is well supported by an affidavit at (Exh.29)

Description of the Counter-claim 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 (includes one well) 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 Counter-plaintiffs' case is -

3. The counter-plaintiffs have filed the present suit seeking relief of permanent injunction in respect of the counter-claim property. Original defendant no. 1, 3 to 5 have purchased their land by way of sale-deed. Counter-plaintiffs have ancestral agricultural land bearing old survey no. 93/5 having an area 0.41R and old survey no. 93/7 having an area 1.49 HR, total area 1.90 HR. During gat scheme for the year 1982-83, survey no. 93/5 get converted into survey no. 93/6/B. Its area become 0.23R while survey no. 93/7 get converted into survey no. 93/7/B. Its area become 1.22 HR. Both survey numbers having total area 1.45 HR. An area of 0.45 R has been minimized from the account of counter-plaintiffs during gat scheme for the year 1982-83. Original plaintiff and defendant no. 3 to 5 have agreed to return possession of excess area 0.45 area to counter-plaintiffs, which is get included into their account. Counter-defendants have executed sale-deed of an area 0.45 R in favour of counter-plaintiffs. The boundaries of the counter-claim property in the said sale-deed are wrong. Therefore, counter-plaintiffs made request to counter-defendants to execute fresh sale-deed with respect to counter-claim property along with correct boundaries

in their favour. Counter-defendants neglected to do the same. Counter-plaintiffs made complaint before panchas of village forum. Thereafter, counter-defendants agreed to return the possession of excess area 0.45 R by executing fresh sale-deed along with correct boundaries in favour of counter-plaintiffs. Thereafter, on 30.08.2022 counter-defendants have executed gift deed bearing no. 3378/2022 with respect to an 0.41R out of gat no. 437/1 in favour of counter-plaintiffs. To the said gift deed original defendant no. 3 and 4 have given their consent. The prices of agricultural land have been increased. On 11.12.2023 counter-defendants with malafid intention requested counter-plaintiffs to cancel the said gift deed dated 30.08.2022 and made request for return of an area 0.41R. Orinally an area of 0.45R out of gat no. 437/1 is belongs to counter-plaintiffs. Counter-defendants threatened counter-plaintiffs to disposes them from the counter-claim property. On 27.08.2024 counter-defendants have obstructed counter-plaintiffs from cultivating the counter-claim property with the help of the tractor. They used to abuse, beat and threaten counter-plaintiffs. If alleged act of counter-defendants will continue, counter-plaintiffs get deprived from their right and interest lying into counter-claim property. Hence, counter-plaintiffs constrained to file present counter-claim. It will take much time to decide the counter-claim finally. If injunction is not granted in favour of counter-plaintiffs, it will cause ir-repairable loss to them and the vice-versa. Counter-plaintiffs have prima facie case. Balance of convenience lies in their favour. Hence, counter-plaintiffs prayed to grant temporary injunction in their favour. Hence, the application.

4. Counter-defendants have filed their common say and written statement at Exh. 32. According to them counter-plaintiffs have to give description of the counter-claim property based on gat scheme. Counter-plaintiffs have made executed alleged gift deed in their favour by committing fraud with counter-defendants. The said gift deed is liable to canceled. Counter-defendants never threatened counter-plaintiffs. They made request to counter-plaintiffs to return excess area which get transferred into their name. But, counter-plaintiffs have refused their request. Counter-plaintiffs did not file any N.C. or complaint with respect to alleged beating, abusing and threatening. Counter-defendants are in possession of the counter-claim property and not the counter-plaintiffs. In order to cause suffering to counter-defendants, counter-plaintiffs have filed present counter-claim. No cause of action arose to filed counter-claim. Counter-claim is not tenable. Counter-plaintiff has no prima-facie case. Balance of convenience lies in the favour of counter-defendants. Therefore, counter-defendants have prayed to dismiss the application with compensatory costs.

5. Heard argument of advocate for counter-plaintiffs Shri. V.B.Gunjal and advocate for counter-defendants Shri. D. B. Jadhav 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 counter-plaintiffs has made out : prima-facie case ?	Yes.
2.	Whether the balance of convenience lies : in favour of counter-plaintiffs?	Yes.
3.	Whether counter-plaintiffs will suffer : irreparable loss, if the order of injunction is not granted in their favour ?	Yes.
4.	What order ?	The application is allowed.

REASONS

7. Ld. Advocate for counter-plaintiffs 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.

8. On the contrary, Ld. Advocate for the counter-defendants 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.

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, counter-plaintiffs are real brothers. Counter-defendants are siblings. Description and boundaries of the suit property are not in dispute. According to them, they are in possession of the counter-claim property. The counter-claim property belongs to them. It is their case that, counter-defendants have returned excess area 0.41R to them by way of gift deed, which get transferred into name of counter-defendants during gat scheme for the year 1982-83. According to them, counter-defendants have obstructed them from their peaceful possession over the counter-claim property and cultivating the same.

12. In support of plea, counter-plaintiffs have filed documents on record with list at Exh. 38 and 44. Record also shows that counter-defendants have filed documents including 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 counter-plaintiff no.1 has been entered against an area 0.41R into the occupier column vide mutation entry no.1598, whereas name of counter-defendant no. 1 has been entered against an area 1.32R into occupier column of the revenue record. Therefore, it reveals that counter-plaintiff no.1 is in possession of the counter-claim property and not the counter-defendants. Copy of 7/12 extract of survey no. 93/8 reveals the name of father of counter-defendant no. 1 namely Bhau Hanmanta Dhokare has entered against an area 0.42R of the revenue record. Therefore, prima-facie case exists in favour of counter-plaintiffs.

13. 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, counter-defendants have put forth copy of 7/12 extract of survey no. 93/8 reveals the name of father of counter-defendant no. 1 namely Bhau Hanmanta Dhokare has entered against an area 0.42R of the revenue record. Therefore, counter-defendants have not putforth any rebuttal documentary evidence on the record which shows that, the entry upon 7/12 extract is false or they are in possession of the counter-claim property.

14. 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 counter-defendant no. 1 with respect to the counter-claim property in favour of counter-plaintiff no.1 for no

consideration. According to counter-defendant no. 1, the said gift deed has been fraudulently made executed by counter-plaintiff 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 counter-plaintiff no.1 lying into the counter-claim property.

15. It is settled law that at the present stage as being the interim one, one has to see that, which party is in possession of the counter-claim property; issue of ownership or title over the counter-claim property, it is matter of concern for trial. In my view, counter-plaintiffs have succeeded to establish the prima-facie case about their possession over the counter-claim property. It prima-facie appears from documentary evidence that, counter-plaintiffs are in lawful possession of the counter-claim property and not the counter-defendants. Therefore, it is duty of the court to protect lawful possession of counter-plaintiffs over the counter-claim property. Therefore, counter-plaintiffs are entitled to get relief of temporary injunction as sought against counter-defendants. If such injunction is not granted in favour of counter-plaintiffs, the very object of the counter-claim will frustate. It will cause multiplicity of proceeding. Hence, i am of the opinion that, counter-plaintiffs will be liable for hardship in case temporary injunction has not been granted in their favour and the vice-versa. Therefore, balance of convenience lies in favour of counter-plaintiffs and not the counter-defendants. By allowing this application, counter-defendants will not suffer any loss. On the contrary, if application is dismissed, counter-plaintiffs will

suffer greater loss. Therefore, I have answered point no. 1 to 3, accordingly.

AS TO POINT NO.4 -

16. The counter-plaintiffs have succeeded to establish the golden rules i.e. prima facie case, balance of convenience and irreparable loss which are required for issuance of temporary injunction against counter-defendants. Therefore, application is deserves to be 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.28) is allowed.
2. The counter-defendants are hereby temporarily restrained from obstructing possession of the counter-plaintiffs over the counter-claim property of village - Vankute, Tal.Sangamner, Dist. Ahmednagar, particularly mentioned into para no.16a of the counter-claim till final disposal of the Counter-claim.
3. 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.