

MHAH080010162024

Dinesh Bhagwat Shinde



Vs.

**Sardar Sajjan Patel(deceased)
through L.R.'s Mukhtar Sardar
Patel etc.**

ORDER BELOW EXH. 23 IN R.C.S. NO. 461/2024

This is counter-claim 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.') filed by counter-plaintiffs (Original defendant no. 3 to 6) to restrain counter-defendants (Original plaintiff and original defendant no. 7 to 22) or their agent or any person on their behalf from obstructing counter-plaintiff's possession over the counter-claim properties. Application is well supported by an affidavit at (Exh.24)

Description of the Counter-claim Property-

2A. It includes an agricultural land bearing Gat No. 698/1, ad-measuring an area 1.25.25 HR (Pot kharaba-0.93 HR), having an assessment 0.91 pai, situated at village – Vankute, Tal. Sangamner, Dist. Ahmednagar which is more particularly described in para no. 1A of the Counter-claim. Boundaries are given as under-

At east	–	Out of Gat no. 698 pai Aslam Patel
At south	–	Gat no.697,715
At west	–	Gat no.698 Dnyandev Shelke
At north	–	Canal

B) It includes an agricultural land bearing Gat No. 698/1, ad-measuring an area 1.25 HR(Pot kharaba-0.93 HR), having an assessment 0.91 pai, situated at village – Vankute, Tal. Sangamner, Dist. Ahmednagar which is more particularly described in para no. 1B of the Counter-claim. Boundaries are given as under-

At east	–	Gat no. 698/1 pai Salim Patel
At south	–	Gat no.697
At west	–	Gat no.699
At north	–	Bandhara

C) It includes an agricultural land bearing Gat No. 698/1, ad-measuring an area 1.24HR (Pot kharaba-0.95 HR), having an assessment 0.91 pai, situated at village – Vankute, Tal. Sangamner, Dist. Ahmednagar which is more particularly described in para no. 1C of the Counter-claim. Boundaries are given as under-

At east	–	Gat no. 698/1 pai Aslam Patel
At south	–	Gat no.715
At west	–	Gat no.698/1 pai Shoukatali Patel
At north	–	Bandhara

D) It includes an agricultural land bearing Gat No. 698/1, ad-measuring an area 1.25HR, having an assessment 0.93 pai, situated at village – Vankute, Tal. Sangamner, Dist. Ahmednagar which is more particularly described in para no. 1D of the Counter-claim. Boundaries are given as under-

At east	–	Gat no. 698/2
At south	–	Gat no.715
At west	–	Gat no.698/1 pai Bhausahab and Ravindra Shelke
At north	–	Bandhara

[Hereinafter, referred in short as the ‘ Counter-claim Properties.’]

The pith and substance of Counter-plaintiffs’ case is -

3. The counter-plaintiffs have filed the present counter-claim seeking relief of declaration and permanent injunction in respect of the counter-claim properties. It is the case of counter-plaintiffs that counter-claim properties are their self -acquired properties. They are in possession of the same and not the counter-defendants. According to counter-plaintiffs, the old survey number of the gat no. 698/1 is survey no. 171/1. It possess an area 6.76HR, pot Kharaba 3.74HR, total area 10.50 HR having assessment 5.15 pai. Property out of gat no. 698/1 was in name of Dildar Sajan Patel being owner of it. He was in possession of the same till his life time. He died on on 28.04.1991. After his death, his property get transferred into names of his children namely Husen, Aslam, Salim, Shoukat, Allawalli, Akatarbano, Maleka being his legal L.R.’s by mutation entry no.223. The children of deceased Dildar are in possession of the said property after his death. Shoukat Ali Dildar Patel has filed civil suit bearing no. 349/2022 at Sangamner court. Compromise took place in the said suit. Accordingly, compromise decree passed on 30.07.2022. By the said decree, Shoukat Ali Dildar Patel, Husen Dildar Patel, Aslam Dildar Patel, Aslam Dildar Patel, Salim Dildar Patel have

received an area 1.25HR, (Kharaba 0.93HR), 1.25.25HR (Kharaba-0.93HR), 1.25HR (Kharaba-0.93HR), 1.24HR (Kharaba-0.95HR) out of Gat no.698/1. By the order of Tahsildar, Sangamner bearing no. Kavi.R.T.S.2312/2022 Dt. 11.07.2022 on the basis of compromise decree passed in RCS no.349/2022 mutation entry no. 1606 came into existence. ShoukatAli, Husen, Aslam, Salim were in possession of these properties. They were taking crops over there and earned profit out of it. Their names had been entered since prior into owner's column of the revenue record and crop inspection extract.

4. Counter-plaintiff no.1 has purchased an area 1.25HR Kharaba 0.93HR out of gat no.698/1 of village Vankute from Shoukat Ali Dildar Patel on 18.12.2023 for consideration amount of rs. 6,75,000/- by executing registered sale deed bearing no.7592/2023. Accordingly, Mutation entry no.1746 came into existence. Counter-plaintiff no.1 has purchased an area 1.24HR, pot kharaba 0.95R out of gat no.698/1 from Salim Dildar Patel on 18.12.2023 for the consideration amount of Rs. 6,75,000/- by executing registered sale deed bearing no.7593/2023. Accordingly, Mutation Entry no. 1747 came into existence. Counter-plaintiff no. 2 and 3 have purchased an area 1.25.25HR, pot Kharaba 0.93HR out of gat no.698/1 on 16.04.2024 from Husen Dildar Patel by executing registered sale deed bearing no. 2500/2024 for the consideration amount of Rs.6,75,000/-. Accordingly, Mutation Entry no.1773 came into existence. Counter-plaintiff no.1 to 3 are owners and in possession of the counter-claim properties mentioned into para no. 1A to 1C of the counter-claim. Counter-plaintiff no.4 is owner and in possession

of the counter-claim property mentioned into para no.1D of the counter-claim. Counter-defendants have no concern with it. In order to obstruct possession of counter-plaintiffs over the counter-claim properties, counter-defendants have filed false suit bearing no.461/2024. On 04.07.2024 when counter-plaintiff no.1 is cultivating the properties by tractor, counter-defendants have obstructed possession of counter-plaintiffs over the counter-claim properties. Subsequently, counter-plaintiff no.1 has filed complaint at Ghargaon police station.

5. Counter-defendants have never challenged sale deeds of counter-plaintiffs with respect to the counter-claim properties. These sale deeds have never been canceled by any competent court. Also, they never challenged mutation entry no.1606. Counter-plaintiffs are owners and in possession of the counter-claim properties. Counter-defendants are not in possession of the counter-claim properties and they are not the owners of the same. In order to grab the property belongs to counter-plaintiffs, counter-defendants have filed the false suit bearing no.461/2024. Counter-plaintiffs does not come with clean hands. They have suppressed real facts from the court. Suit of counter-defendants is vague and misconceived. In order to cause suffering to counter-plaintiffs, counter-defendants have filed false suit bearing no.461/2024. Hence, counter-plaintiffs have constrained to file the 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 counter-plaintiffs. Counter-plaintiffs have prima facie case. Balance of convenience lies in their favour and not in favour of counter-

defendants. Hence, counter-plaintiffs prayed to grant temporary injunction. Hence, the application.

6. Counter-defendants have filed their common say and written statement at Exh. 36. According to them counter-claim is not tenable. They have denied description of the counter-claim properties. They have admitted that old survey no. of gat no. 698/1 is survey no. 171/1. It is known previously as Khandobachamal. Name of predecessor of counter-defendants namely Mukinda Bapu Mahar (Shinde) has been entered into crop inspection extracts of the counter-claim properties since the year 1954. Entry of name of Mukinda Mahar has been minimized by concerned office without giving notices to his L.R.'s. Sale deeds executed by counter-plaintiffs with respect to the counter-claim properties are void ab-initio. They have executed sale deeds without consent of counter-defendants. These sale deeds have been executed during pendency of the suit. Counter-plaintiffs have deprived rights of counter-defendants. Counter-plaintiffs are not in possession of the counter-claim properties whereas, counter-defendants are in possession of the same. Counter-plaintiffs have not sought relief of possession in their counter-claim. Counter-plaintiffs have no prima-facie case. Balance of convenience lies in the favour of counter-defendants. Therefore, counter-defendants have prayed to dismiss the application.

7. Read the written notes of argument filed by learned advocate for counter-plaintiffs Shri. S.M Jondhale and learned advocate for counter-defendants Shri. A. B. Sahane at Exh. 52 and 57, respectively. Heard oral argument of advocate for counter-plaintiffs Shri. S. M. Jondhale at length.

8. 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 have 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

9. Learned advocate for counter-plaintiffs has relied on copy of 7/12 extracts of Gat No. 698/1 of village – Vankute, Tal. Sangamner, copies of registered sale-deeds dated 18.12.2023 bearing deed no. 7592/2023, 7593/2023 and sale deed dt.16.04.2024 bearing deed no.2500/2024 executed by defendant no. 4 to 6, copies of extracts of Mutation Entry No. 1606, 1746, 1747 and 1773 of village – Vankute, Tal. Sangamner, copies of power of attorney dated 07.08.2024, 01.02.2017, copy of NCR bearing No. 373/2024 dated 04.07.2024 registered at Ghargaon

Police Station, copy of 7/12 extracts of Gat No. 698/1 for the period 2016 to 2026 of village – Vankute, Tal. Sangamner, copy of ‘C’ sheet application dt.28.01.2025 for boundary fixation and measurement of Gat No. 698 of village – Vankute, Tal. Sangamner issued by the Deputy Superintendent of Land Record Office, Sangamner dated 28.01.2025, filed along list Exh. 26 and 56.

10. On the contrary, learned advocate for the counter-defendants has relied on certified copies of 7/12 extracts of Gat No. 698/1, 697/2, 697/3, 697/1, 699, 699/1 of village – Vankute, Tal. Sangamner, copy of map of Gat No. 697, 697 issued by the Land Record Office, Sangamner, true copies of extract of crop inspection register for the period 1946 to 1966 of Survey No. 171/1 of village – Vankute, Tal. Sangamner, true copies of extracts of Mutation Entry No. 1210, 623 of village – Vankute, Tal. Sangamner filed along list Exh. 3 and 50.

11. It is not in a dispute that -

- a. Gat No. 698/1 of village - Vankute Tal. Sangamner, Dist. Ahmednagar bears old survey no.171/1.
- b. Shoukat Ali Patel has filed civil suit bearing R.C.S.No.349/2022 in which which compromise took place.

AS TO POINT NO.1 TO 3 -

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

13. It is not in dispute that, the old survey no. of gat no.698/1 i.e.the Counter-claim properties is survey no.171/1. It is the case of counter-plaintiffs that they are owners and in possession of the counter-claim properties. According to them, counter-defendants have no concern with the counter-claim properties. According to counter-plaintiffs, counter-defendants are obstructing possession of counter-plaintiffs over the counter-claim properties. In support of plea, plaintiff has filed copy of 7/12 extract of the counter-claim property i.e Gat no.698/1, copies of registered sale-deeds dated 18.12.2023 bearing deed no. 7592/2023, 7593/2023 and sale deed dt.16.04.2024 bearing deed no. 2500/2024 executed by defendant no. 4 to 6, copies of extracts of Mutation Entry No. 1606, 1746, 1747 and 1773 of village – Vankute, Tal. Sangamner of village – Vankute, Tal. Sangamner on the record. Upon perusal of 7/12 extract of gat no. 698/1 for the period 2016-2026 filed with list at Exh. 56/1, prima-facie it appears that name of counter-plaintiffs have been entered into the occupier column of 7/12 extract of Gat No. 698/1 against their respective shares. Also, it reveals that, names of counter-defendants have nowhere entered into 7/12 extract of the counter-claim properties. Therefore, it reveals that counter-plaintiffs are in possession of the counter-claim properties and not the counter-defendants. Therefore, prima facie case exists in favour of counter-plaintiffs.

14. 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 true copy of

extract of crop inspection register for the period 1946 to 1966 of Survey No. 171/1 on the record which reveals the name of Dilawar Sajan since the year 1940. It reveals neither name of predecessor Bapu Mukinda nor name of counter-defendants mentioned over there since the year 1940. Hence, counter-defendants have not put forth 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 properties.

15. Add to this, copies of registered sale-deeds dated 18.12.2023 bearing deed no. 7592/2023, 7593/2023 and sale deed dt.16.04.2024 bearing deed no.2500/2024 executed by defendant no. 4 to 6 with regard to the suit property and copy of extract of Mutation Entry No. 1606, reveals that son namely Shoukat, Salim and Husen of deceased Dildar Sajan have executed sale deed in favour of defendant no. 4 to 6 with respect to respective areas mentioned against their names into 7/12 extract of gat no.698/1 of village Vankute. On the same date, possession of the respective areas out of gat no. 698/1 have been handed over to defendant no. 4 to 6. Also, copy of extract of mutation entry no. 1746, 1747 and 1773 reveals that names of defendant no. 4 to 6 have been mutated into revenue record of gat no. 698/1 against their respective areas. Therefore, it also prima-facie appears that counter-plaintiffs have some right and interest into the counter-claim properties.

16. 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 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 properties. It prima-facie appears from documentary evidence that, counter-plaintiffs are in lawful possession of the counter-claim properties. Therefore, it is duty of the court to protect possession of counter-plaintiffs over the counter-claim properties. I am of the opinion that, counter-plaintiffs will be liable for hardship in case temporary injunction has not been granted in favour of counter-plaintiffs 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, the counter-plaintiffs will suffer greater loss. Therefore, I have answered point no. 1 to 3, accordingly.

AS TO POINT NO.4 -

17. The counter- plaintiffs have succeeded to establish the golden rules i.e. prima facie case, balance of convenience and irreparable loss only 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.23) is allowed.
2. The counter-defendants are hereby temporarily restrained from obstructing possession of

counter-plaintiffs over the counter-claim properties of village Vankute, Tal. Sangamner, Dist. Ahmednagar particularly mentioned into para no.1A to 1D of the counter-claim till final disposal of the counter-claim.

3. Costs in cause.

Sangamner.
Date : 09.07.2026.

Sd/-
(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	:	09.07.2026.
Order signed by the		
Presiding Officer on	:	09.07.2026.
Order uploaded on	:	09.07.2026.