


<p><u>ORDER BELOW EXH.5 IN R.C.S. No.362/2025.</u> (Dattatray Narayan Kurhat & Ors. Vs. Bhausahab Sitaram Zine & Ors.)</p>	<p>MHAH140005682025</p> 
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The plaintiff has filed the present application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunction restraining the defendants from transferring or creating any third-party interest in the suit property.

Description of suit property:

2. Agricultural land situated at Malichinchora, Tal. Newasa, Dist. Ahmednagar.

Sr. No.	Gat No.	Admeasuring		Four Boundaries			
		H	R	West	South	East	North
1.	182/1E	0	44	Gat No. 164	Out of Gat.	Gat No. 183	Out of Gat.

(For the purpose of brevity hereinafter called as 'Suit Properties'.)

In brief, the case of the plaintiffs is as under:

3. The plaintiffs have stated that, the suit property was originally allotted by the Government to Sitaram Asaraji Zine, who is father of Defendant No. 1 and husband of Defendant No. 2, by virtue of Order No. S/R/40/2002 passed by the Tahsildar, Newasa. Thereby the name of Sitaram Zine is mutated in the revenue records vide Mutation Entry No. 9341 in the 7/12 extract of the suit property. Further, actual physical possession of the suit property was handed over to Sitaram Zine on 16/01/2003. After his death on 21/05/2003, the names of the Defendants came to be recorded in the revenue records as his legal heirs by way of Mutation Entry No. 9474.

4. The Defendants and the Plaintiff's deceased father, Narayan Pandharinath Kurhat, shared cordial relations. The Defendants had entrusted the suit property to the Plaintiff's father for cultivation and management. Since the suit property was inconvenient for the Defendants to personally cultivate, they requested the Plaintiff's father to purchase the same. The Plaintiff's father agreed to purchase the property and accordingly on 06/10/2008 the Defendants executed an agreement for sale on a stamp paper of Rs.100/- before a Notary. On the same day, the Plaintiff paid the entire sale consideration amounting to Rs.2,00,000/- to the Defendants in the presence of witnesses. Prior thereto, possession of the suit property had already been delivered to the Plaintiff.

5. As the suit property was originally allotted by the Government, prior permission of the competent Revenue Authority was required for execution of a registered Sale Deed. For this purpose, on 06/10/2008, the Defendants executed a General Power of Attorney in favour of the Plaintiff's father, authorizing him to obtain such permission. Thereafter, the Defendants applied to the Sub-Divisional Officer, Rehabilitation, Ahmednagar, seeking permission to transfer the suit property in the name of Plaintiff No. 2. Accordingly, such permission was granted on 13/06/2024. After that, the Plaintiffs repeatedly requested the Defendants to execute a registered Sale Deed; however, the Defendants avoided compliance. Consequently, the Plaintiffs issued a legal notice through an advocate on 20/01/2025, which was duly served upon the Defendants on 04/02/2025. Despite receipt of the said notice, the Defendants failed and neglected to execute the Sale Deed, thereby constraining the Plaintiffs to file the present suit.

6. The Plaintiffs further stated that, the Defendants are attempting to illegally transfer the suit property to third parties. If defendants transferred suit property, it would result in multiplicity of litigation and proceedings, causing irreparable loss to the Plaintiffs. Hence, the Plaintiffs have prayed for a temporary

injunction restraining the Defendants, pending final disposal of the suit from transferring or creating any third-party interest in the suit property.

7. The Defendants have filed their written statement and say to the present application at Exh. 13. They have contended that, the suit filed by the Plaintiff is barred by limitation. The suit suffers from misjoinder and non-joinder of necessary parties. Defendant submits that Plaintiff No. 2 was not personally present at the time of the alleged transaction, nor has she signed any of the documents, and therefore the suit is bad for misjoinder of necessary parties. It is also contended that, the Plaintiffs have failed to mention the four boundaries of the suit property in the plaint. The suit property was originally granted to the father of Defendant No. 1 as a landless agricultural labourer, and after his demise the names of Defendants have been entered in the revenue records as his legal heirs. As of today, the Defendants are in possession and are deriving income from the suit property.

8. Defendants further contended that, the father of Plaintiff No. 1, namely Narayan Pandharinath Kurhat, had intended to purchase lands from various farmers situated adjacent to Gat No. 182 and to provide them alternative lands at a convenient location. Accordingly, the adjoining landholders sold their lands to Narayan Kurhat. In the same manner, the Defendants also agreed to transfer the suit property to Narayan Kurhat and on 06/10/2018, Narayan Kurhat got executed an agreement for Sale in favour of Plaintiff No. 1. On the same day, Narayan Kurhat also obtained a General Power of Attorney from the Defendants in respect of Gat No. 182/1 admeasuring 44 R, for the purpose of exchange of land. However, thereafter, Narayan Kurhat neither showed nor provided any alternative land to the Defendants for such exchange. Despite repeated requests made by the Defendants, Narayan Kurhat failed to arrange or allot any alternative land, thereby cheating the Defendants.

9. It is further contended that Narayan Kurhat expired during the period 2020–2021, which fact has been deliberately suppressed by the Plaintiffs. This clearly indicates that the Plaintiffs have filed the present false suit on the basis of fabricated and illegal documents in order to obtain a Sale Deed. The Defendants further submit that, the Plaintiffs issued a false legal notice only to create evidence. The said alleged notice calling upon the Defendants to remain present before the Sub-Registrar on 03/02/2025, was received by the Defendants on 04/02/2025, thereby making it impossible for them to comply within time. This shows that the notice was intentionally sent in such a manner so as to prevent the Defendants from attending within the stipulated time. The Defendants categorically deny having received any sale consideration from the Plaintiffs and contend that the alleged payment of Rs.2,00,000/- shown in the agreement for sale is false. It is also contended that, the Plaintiffs have failed to provide any alternative land to the Defendants as agreed, and therefore, there is breach of the terms of the agreement. Hence, the Defendants submit that the suit filed by the Plaintiffs is false, baseless, and liable to be dismissed, and therefore, the present application deserves to be rejected.

10. I have heard learned advocate for both sides and perused the record. On hearing and on perusal of the record, the following points arise for my determination, on which I have recorded my findings for the reasons stated thereunder.

Sr. No.	Points	Findings
1.	Whether the plaintiffs have made out prima-facie case ?	Yes.
2.	Whether the balance of convenience is in favour of the plaintiffs ?	Yes.
3.	Whether the plaintiffs will suffer irreparable	Yes.

	loss in the event of refusal of temporary injunction ?	
4.	What order?	Application is allowed.

REASON

11. In support of the suit and interim application, the Plaintiff has placed the following documents on record:

1. 7/12 extract of Gat no. 182/1E situated in Malichinchora, Tal. Newasa.
2. 8-A extract of Gat no. 182/1E situated in Malichinchora, Tal. Newasa.
3. Agreement of Sale dated 06/10/2008.
4. Power of Attorney dated 06/10/2008.
5. Copy of letter from Collector Officer regarding permission to sale suit property.
6. Notice to defendant through Advocate.
7. Postal receipt.
8. Tracking report of Notice.
9. Affidavits of witnesses.
10. Letter of Tahsildar, Newasa.

12. On the other hand, in support of the suit and interim application, the defendants have placed the following documents on record:

1. Affidavit of witnesses.
2. Mutation entry no. 9630.
3. Mutation entry no. 9631.
4. 7/12 extract of Gat no. 182/1 ₹ situated in Malichinchora, Tal. Newasa.

5. 7/12 extract of Gat no. 182/1 ऋ situated in Malichinchora, Tal. Newasa.

6. 7/12 extract of Gat no. 182/1 ई situated in Malichinchora, Tal. Newasa.

7. 7/12 extract of Gat no. 182/1 उ situated in Malichinchora, Tal. Newasa.

13. Heard both sides. Perused the documents. In support of application plaintiff relied upon following citations.

(i) Milind Madhusudan Alsundekar Vs. Ajay Prabhakar Rawat, 2016 (2) Mh.L.J.

(ii) Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde, 2008(2) Mh.L.J.

(iii) Chamelibai Baburao Nhavi & Ors. Vs. Brijlal Eknath Patil. 2021 (4)ABR 159.

(iv) Kalandi Baburao Raut & Anr. Vs. Dattu Damu Thakare, 2008(6) ALL MR 327.

(v) Baban Anantrao Naik Vs. Pramila Uttamrao Yenare & Anr.,2011(6)ALL MR 15.

I have carefully gone through above citations.

As to Point No. 1 to 3

14. All these points are interlinked and based on common evidence hence, in order to avoid the repetition of appreciation of evidence these points are taken together for discussion.

15. In order to succeed, the plaintiff has to prove the three essential ingredients that is prima-facie case in his favour, balance of convenience lies in his favour and irreparable loss likely to be caused, if injunction is not granted in his favour.

16. In present suit it is an admitted position between the parties that the suit property was originally allotted by the Government to Sitaram Asaraji Zhine, the father of Defendant No. 1 and husband of Defendant No. 2, as a landless agricultural labourer. After the death of Sitaram Zhine, the suit property devolved

upon the defendants by way of inheritance.

17. According to the Plaintiffs, on 06/10/2008, the Defendants executed an agreement for sale in respect of the suit property in favour of the Plaintiff on a stamp paper of Rs. 100 and also delivered actual possession thereof. It is further contended that on the same day, the Plaintiff paid a total consideration of Rs. 2,00,000/- to the Defendants. Since prior permission of the competent authority was required for transfer of the suit property, the Defendants executed a power of attorney dated 06/10/2008 in favour of the Plaintiff's deceased father for the purpose of obtaining such permission.

18. The Defendants have admitted the execution of the agreement for sale dated 06/10/2008. However, they have contended that as per the said agreement, it was agreed that there would be an exchange of land, and the Plaintiff had undertaken to provide an alternative and suitable land to the Defendants. It is further their case that the said power of attorney was executed only for that purpose. However, the Plaintiff failed to show or provide any alternative land to the Defendants. Thus, from the above contention of Defendants it clearly emerges that the execution of the agreement for sale dated 06/10/2008 in respect of the suit property between the Plaintiffs and the Defendants is admitted by Defendants.

19. The Plaintiffs have produced on record a copy of the agreement for sale dated 06/10/2008 along with Exh. 3. However, that agreement to sale is neither registered nor sufficiently stamped. It is executed on Rs. 100 bond paper and notarized. It shows that possession of suit property is delivered in favour of the plaintiffs. Therefore, Section 35 of Indian Stamp Act would come into play which mandates that,

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless instrument is duly stamped.

20. Also, the Hon'ble Supreme Court in case of **Avinash Kumar Chauhan versus Vijay Krishna Mishra, 2009 AIR SCW 97**, observed that,

where possession of property has been transferred under any instrument, in absence of payment of stamp duty, such instrument cannot be admitted even for collateral purpose or to corroborate oral evidence. There is total and absolute bar as to admission of unstamped instrument, unless there is compliance with requirements of proviso to section 35.

21. Hence, from Section 35 and above citation it is clear that unstamped and unregistered documents cannot be used even for collateral purposes. However, in the present case the execution of agreement to sale dated 6/10/2008 is admitted by Defendants. The Plaintiffs stated that on the same date possession of suit property was handed over to them. In order to show their possession Plaintiffs relied upon affidavits of two witnesses which stated that suit property is in possession of Plaintiffs. On the other hand, Defendants denied delivery of possession to the Plaintiff and payment of consideration. They also relied upon affidavits of two witnesses. However, the last paragraph from the affidavits of Defendants witnesses show the possession of Plaintiffs over the suit property. Therefore, even if the contents of agreement to sale are ignored for want of its admissibility, but the above stated facts prima facie shows the existence of

agreement to sale between the parties and possession of the Plaintiffs over the suit property.

22. The Defendants dispute the nature of agreement contending that it was decided between parties that the Defendants will sell suit property to the Plaintiffs and the Plaintiffs will find another land for Defendants. But the execution of agreement to sale is not denied by Defendants. Also, the proof of terms and conditions of the document are a matter of trial. The process of impounding document will be started during the course of trial. However, at this stage it appears that existence of agreement to sale is admitted by Defendants. Prima facie the Plaintiffs have possession over the suit property. The 7/12 extract of suit property shows the name of Defendants. In such situation by taking advantage of this fact if Defendants transferred and created third party interest in the suit property it will cause multiplicity of litigation. Therefore, plaintiffs will suffer irreparable loss if temporary injunction is not granted and balance of convenience lies in favour of plaintiffs. Hence, I answer point no. 1 to 3 in affirmative and in answer to point no. 4 I proceed to pass following order.

ORDER

1. The application is allowed.
2. The Defendants are temporarily restrained from creating third party interest on suit property by way of transfer till the final disposal of the suit.
3. No Order as to Costs.

Sd/-

Place: Newasa.

(Smt.Sandhya Y. Sul)

Date: 24/03/2026.

2nd Jt. Civil Judge, Junior Division,
Newasa, Dist. Ahmednagar.