



: ORDER BELOW EXH. 05 IN CIVIL M.A. NO.269/2025:

The application has filed as per Order 39 Rule 1 and 2 of C.P.C. there by seeking defendants shall not create any third party interest in respect of Gut No.55/3 of Village Kherda, Tal. Paithan, Dist. Ch. Sambhajinagar.

02. It is the contention of the plaintiff that suit property has purchased by his father by registered sale deed dated 07.11.1978. Due to some personal difficulties, he could not cultivate the suit property. On 30th December, 2024, plaintiff become owner of the suit property by way of gift deed executed by his father. As per revenue record, plaintiff is the owner of the suit property. Defendants have encroached in the suit property and constructed their house illegally. Plaintiff have applied for removal of encroachment, but Revenue Authority asked the plaintiff to approach before the Civil Court. Hence, he has filed this present suit.

03. It is the contention of the plaintiff that defendants have no documents for their possession over the suit property. They have illegally encroached in the suit property by using force and constructed house on the suit property. He has filed the suit for possession and removal of encroachment. During pendency of suit, he prayed for not to create any third party interest in respect of suit property by the defendants.

04. Defendants appeared and filed their written statement and oppose all the contentions in the plaint. They denied all the contents in respect of an ownership and

possession of the plaintiff in respect of a suit property. They submitted that predecessors and defendants have agreed to purchase the land from Ahemad Bhai. Accordingly, they have entered in the agreement.

05. Due to want of permissions from Revenue Authority, sale deed could not executed in time, since 1972 they are in possession and they have constructed the house over the suit property. Defendants specifically came with the case that suit is time barred. They specifically mentioned that father of the plaintiff have filed RCS No.45/1987 for possession. In which defendants deny title and possession of the plaintiffs father. The said suit has dismissed in default on 03.09.1997. Thereafter, present suit has filed. The suit is hopelessly time barred. Plaintiff have not claim the relief of possession on the basis of title in time. Therefore, time barred relief cannot be considered. Accordingly, prayed for rejection of the present application.

06. Admittedly, in this application, plaintiff is seeking only relief in respect of, not to create third party interest by the defendants. Considering the reliefs sought in the present application. Prima facie, it has to be considered, whether plaintiff is owner of the suit property. Defendants in their written statement have admitted the ownership of the plaintiff in respect of the suit property. Admittedly title of the suit property has transferred from father of the plaintiff on the basis of gift deed. Father of the plaintiff have title of suit property on the basis of registered sale deed. Hence, prima facie plaintiff has established his title over the suit property.

07. Plaintiff admitted the possession of the defendants over the suit property. So far as the delay is concerned, the issue of limitation has to be considered on the basis of facts and evidences of the parties. At this stage, it cannot be held that suit is time barred. Plaintiff being owner of the suit property, he has legal right to seek relief of possession of the suit property. Hence, prima facie plaintiff have case to seek relief of possession. So far as balance of convenience is concerned. Admittedly, plaintiff is the owner of the suit property and defendants are in possession over the suit property. Whether plaintiff is entitle for possession or not will be decided after the evidence of the parties. At this stage, the issue of limitation is not material one and cannot be decide. Therefore, while deciding the present application for not to create third party interest during pendency of suit, issue of limitation cannot be considered in full strain. It appears that father of the plaintiff has filed suit for possession against the defendants or his forefathers. The earlier suit filed by the father of the plaintiff has dismissed for want of prosecution.

08. Thereafter, present suit has filed after long delay. But, the relief of possession on the basis of title can be claimed within 12 years from denial of possession. Therefore, in the present case, it has to be considered and decided on the basis of evidence, whether defendants are claiming their adverse possession or not. Prima facie, defendants have pleaded about the adverse possession but, it is not sufficient. They have to specifically plead and accordingly, sought relief for title on the basis of adverse possession. On today, considering the pleading of plaintiff and defendants on the basis of convenience lies on favour of plaintiff.

09. Admittedly, plaintiff is an owner. Defendants have no documents to show that they have permissible possession or adverse possession against the plaintiff over the suit property. It is the contention of the plaintiff that defendants have constructed house on the ground provided by the Government under the scheme of Gharkul Yojana. If defendants create third party interest, it will create multiplicity of proceeding. If injunction has prayed is granted, not prejudice will be cause to the defendants as on today. Plaintiff have admitted the possession of the defendants over the suit property. At this stage, plaintiff is no seeking any relief as an interim relief in respect of possession of the defendants. By granting relief not to create their party interest, no irreparable loss will be cause to the defendants. Considering above facts and circumstances, plaintiff is entitled for interim relief as sought. Hence, proceed to pass following order:

ORDER

1. Application is allowed.
2. Defendants shall not create any third party interest in respect of construction over the suit property, till the decision of the present suit.

Paithan,

(H.D. Deshinge)

Date : 15.09.2025

Jt. Civil Judge (Jr.D.), Paithan

CERTIFICATE

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

Name of Stenographer : K. V. Bayas

Court : Jt.C.J.J.D.at Paithan

Date Order signed by the : 15.09.2025

Presiding Officer on : 15.09.2025

Order uploaded on : 16.09.2025