

CNR-MHBU010000192021



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 Duration : Ys. Ms. Ds.

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Exhibit No. _____.

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, BULDANA,
AT BULDANA.

(Presided over by S. D. Jagmalani)

Miscellaneous Civil Appeal No.2 of 2021

(CNR : MHBU010000192021)

Gajanan Pralhad Parihar,

Aged 48 years, Occupation - Agriculturist,
 R/o Ancharwadi,
 Tq. Chikhli, Dist. Buldana.

... **Appellant.**
 (Plaintiff)

Versus

1. **Kisan Bhagwan Shingane,**
Aged 50 years, Occupation - Agriculturist,
2. **Smt. Kamal Dagdu Chavan,**
Aged 59 years, Occupation - Agriculturist,
3. **Santosh Dagdu Chavan,**
Aged 34 years, Occupation - Agriculturist,
4. **Bhagwat Dagdu Chavan,**
Aged 24 years, Occupation - Agriculturist,
5. **Sau. Asha Prabhakar Sarkate,**
Aged 39 years, Occupation - Agriculturist,
6. **Sau. Sharada Ganesh Gaikwad,**
Aged 32 years, Occupation - Agriculturist,
7. **Sau. Sarla Ramesh Kale,**
Aged 29 years, Occupation - Agriculturist,
Nos.1 to 4 and 6 R/o. Ancharwadi,
Tq. Chikhli, Dist. Buldana.
No.5 R/o. Wazar Sarkate,
Tq. Mantha, Dist. Jalna,
No.7 R/o. Dholwadi,
Tq. Otur, Dist. Ahamadnagar.

... **Respondents.**
 (Defendants)

Appearance :

Mr. S. R. Sonalkar, Advocate for the appellant,
Mr. S. A. Salwe, Advocate for respondent No.1,
Mr. A. T. Mule, Advocate for respondent Nos.2 to 7.

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J U D G M E N T

(Delivered on this 2nd day of May, 2026)

1) Appellant named above has filed present appeal challenging the legality and correctness of an order dated 09.12.2020 passed by the learned Trial Court in R.C.S. No.52/2018 below Exh.5 thereby rejected the temporary injunction application filed by the appellant.

Facts of the case, in brief, are as under :-

(The parties hereinafter referred to as per their status before the learned Trial Court.)

2) On dated 13.01.2016, plaintiff had purchased the agricultural land admeasuring 1 H. 21 R. from Block No. 248 situated in the village Ancharwadi Part-I, Tq. Chikhli, Dist. Buldana (hereinafter referred to as “the suit property”) from defendant Nos.2 to 7 and got possession. Thereafter, plaintiff came to know that execution proceeding bearing No.17/2011 was pending in the Trial Court and after making inquiry, he found that on the basis of decree passed in R.C.S. No.244/1992, the said execution proceeding was filed.

3) According to the plaintiff, learned Trial Court has passed the exparte decree in R.C.S. No.244/1992 against Dagdu Shripat Chavan, the predecessor of defendant Nos.2 to 7 and Dagdu Shripat Chavan was not given opportunity of hearing to defend the suit. Therefore, the plaintiff stepped in the shoes of judgment debtor and

constrained to file suit for declaration that defendant No.1 had obtained the ex parte decree in R.C.S. No.244/1992 which is against the principle of natural justice. Pending the suit, plaintiff has filed an application (Exh.5) under Order 39 Rule 1 and 2 read with Section 151 of Code of Civil Procedure, to restrain the defendant No.1 from prosecuting the execution proceeding bearing No.17/2011 till final decision of the suit.

4) Defendant No.1 filed his written statement, thereby denied the claim of plaintiff in the suit property. It was submitted that plaintiff was not a party to the suit bearing R.C.S. No.244/1992. Therefore, he has no locus standi to file the present suit. It was further submitted that in the execution proceeding bearing No.17/2011, defendant No.1 has already got possession of the suit property and he is in the peaceful possession, therefore, it was submitted that temporary injunction application deserves to be rejected.

5) Defendant No.3 filed his written statement and contended that on 30.11.1969, Dagdu Shripat Chavan, the predecessor of defendant Nos. 2 to 7 had purchased the suit property. After the death of Dagdu Shripat Chavan, mutation in the name of defendant Nos. 2 to 7 came to be recorded. On 13.01.2016, defendant Nos. 2 to 7 had sold the suit property to plaintiff and at the time of sell, plaintiff was made known about pending litigation in respect of the suit property. On the basis of sale-deed executed on 13.01.2016, mutation in the name of plaintiff was recorded and since then, plaintiff is in possession of the suit property as owner thereof.

6) Upon appreciating the rival submissions and considering the documentary evidence placed on record, the learned trial Court has been pleased to find that defendant No.1 has filed R.C.S. No.244/1992 against Dagdu Shripat Chavan for setting aside the alienation and possession of the suit property. It is alleged that on 30.11.1969 Dagdu Shripat Chavan got executed the sale-deed of the suit property from Bhagwan Balaji Shingane, the father of defendant No.1. The said sale-deed was executed nominally for the consideration of Rs.500/- and without legal necessity and Bhagwan Balaji Shingane had no authority to sell the suit property, which was Joint Hindu Family Property. Therefore, the said sale-deed dated 30.11.1969 be declared null and void. In the said suit, Dagdu Shripat Chavan was served with suit summons, but he failed to appear before the learned Trial Court. Upon considering the rival submissions, the learned Trial Court has decreed the said suit on 27.08.1993 holding that the sale-deed dated 30.11.1969 in respect of the suit property was not binding upon the plaintiff therefore Dagdu Shripat Chavan shall deliver the peaceful possession of the suit property to defendant No.1.

7) It is further observed that thereafter, Dagdu Shripat Chavan had filed MJC No.11/1994 for setting aside the exparte decree, which came to be rejected by the learned Trial Court. Thereafter Dagdu Shripat Chavan had also filed appeal bearing RCA No.80/1997 challenging the aforesaid judgment and decree. The said appeal also came to be dismissed on dated 19.08.2004 and against the said order, Dagdu Shripat Chavan or his legal heirs i.e. defendant Nos.2 to 7 have not filed second appeal before the Hon'ble High Court. Therefore, the decree passed in RCS No.244/1992 had attained finality. Thus, the learned Trial Court was of the view that

no prima facie case has been made out by the plaintiff and no balance of convenience lies in his favour. He will not suffer irreparable loss, if the injunction as sought is refused. Thus, the learned Trial Court has recorded the findings against the plaintiff and in the result, learned Trial Court has rejected the application (Exh.5) vide order dated 09.12.2020, which is impugned in the present appeal.

8) Heard the learned Advocate Shri. Sonalkar appearing for the plaintiff. He has also placed on record written notes of arguments (Exh.21). Heard learned Advocate Shri. Kasture appearing for defendant No.1. He has also filed written notes of arguments (Exh.23) on record.

9) After considering the respective submissions made by respective parties and going through the record, following points arise for my determination, to which, my findings with reasons thereon are as follows :-

Sr. No.	Points	Findings
1.	Whether the plaintiff has made out prima facie case and balance of convenience lies in his favour?	<u>...In negative.</u>
2.	Whether the plaintiff will suffer irreparable loss if the injunction as prayed is refused ?	<u>...In negative.</u>
3.	Is the impugned order legal, proper and correct ?	<u>...In affirmative.</u>
4.	Is it necessary to interfere with the impugned order ?	<u>...In negative.</u>
5.	What order ?	<u>As per final order.</u>

As to point Nos.1 and 2 :-

10) It is well settled principles of law that grant or refusal to grant injunction is covered by three well established principles viz -

- [i] whether the plaintiff has made out a *prima facie* case;
- [iii] whether the balance of convenience lies in his favour and
- [ii] whether the plaintiff will suffer irreparable loss, if the injunction as sought is refused.

11) With the above parameters, the burden to prove these three necessities lies on the person seeking an injunction. The Court has to see whether the claim is bonafide and whether there is a fair and substantial question is to be tried. Thus, the Rule is that at the time of considering the temporary injunction application, the Court must satisfy itself that plaintiff has *prima facie* case.

12) At the outset it has to be stated that, suit property was originally belonged to Bhagwan Balaji Shingane, the father of defendant No.1. It is alleged that Bhagwan Balaji Shingane had bad voice and for satisfying the said bad voice, on dated 30.11.1969, he had executed nominal sale-deed of the suit property in favour of Dagdu Shripat Chavan, the predecessor of defendant Nos.2 to 7. According to defendant No.1, his father had executed the sale-deed without legal necessity and said sale-deed was not binding upon him, therefore, he had filed R.C.S. No.244/1992 against Dagdu Shripat Chavan and others for setting aside the said alienation and for the possession of the suit property.

13) It appears from the record that learned Trial Court had decreed the suit bearing R.C.S. No.244/1992 on dated 27.08.1993,

thereby set aside the said alienation dated 30.11.1969 made in respect of the suit property and declared that it was not binding upon defendant No.1. It is further ordered that Dagdu Shripat Chavan shall deliver the peaceful possession of the suit property to defendant No.1.

14) It reveals from the record that after passing the decree in R.C.S. No.244/1992, Dagdu Shripat Chavan had filed R.M.J.C. No.11/1994 for setting aside the said ex parte decree, however, said R.M.J.C. came to be rejected by the learned Trial Court on 22.04.1997.

15) It further reveals from the record that thereafter Dagdu Shripat Chavan had filed appeal bearing R.C.A. No.80/1997 challenging the aforesaid order. However, the District Court had also dismissed the said Civil Appeal. Against the said order, either Dagdu Shripat Chavan or his legal heirs such as defendant Nos.2 to 7 have not filed second appeal before the Hon'ble High Court. Therefore, it was submitted that the decree in R.C.S. No.244/1992 had attained finality.

16) It is well settled that at this stage, the material placed on record is required to be examined *prima facie* on horizontal level. Therefore, while deciding this appeal as a matter of fact, this Court does not incline to probe in detail discussing pros and cons of the case. There should not be any whisper of prejudice to either side who have to face trial of the suit before the learned Trial Court. It is well settled principle of law that, at the stage of deciding

temporary injunction application, the Court is not required to go into the merits of the case.

17) In the present case, it appears that defendant No.1 has filed the execution proceeding in accordance with law, therefore prima-facie, as per sec.41 (a) of Specific Relief Act, no such injunction can be granted to restrain a person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought. Thus, it appears from the record that, plaintiff has not made out prima facie case and no balance of convenience lies in his favour. He will not suffer irreparable loss, if the injunction as prayed is refused. Hence, I answer point Nos.1 and 2 in negative.

As to point Nos.3 and 4:-

18) It is well settled that, in an appeal against interim injunction order, the Appellate Court will not interfere with the exercise of discretion of the learned Trial Court, except where the learned Trial Court has ignored the well settled principles of law regulating grant or refusal of interim application.

19) It is further to be noted that Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the learned Trial court. If the discretion has been exercised by the learned Trial Court reasonably, the Appellate Court may not justify interference with the discretion exercised by the learned Trial Court.

20) In the instant case, it appears from the record that, learned Trial Court has rightly passed the impugned order after

considering the rival submissions and material placed on record. I do not find any error in passing the impugned order passed by the learned Trial Court. Therefore, it does not require any interference. Hence, I record findings to the point No.3 in affirmative and No.4 in negative.

As to point No.5 :-

21) In view of aforesaid findings, the appeal deserves to be dismissed. Hence, I proceed to pass the following order :-

ORDER

- 1] The appeal stands dismissed.
- 2] In peculiar facts of the case, parties to bear their own costs.
- 3] M.C.A. No. 2/2021 is disposed of accordingly.

(Dictated, delivered and pronounced in an open Court).

Date :- 02/05/2026.

Buldana.

(**S.D. Jagmalani**)
Principal District Judge, Buldana.