

MHBU170009492022

**Order below Exhibit Nos. 5 and 15.**

Plaintiffs have made the application at Exhibit 5 under order XXXIX Rule 1 of Civil Procedure Code, 1908 seeking temporary injunction restraining defendants from creating obstruction in their possession over the suit property described in plaint para no. 1. Defendants have also made the application at Exhibit 15 under order XXXIX Rule 1 of Civil Procedure Code, 1908 seeking temporary injunction restraining plaintiffs from creating obstruction in their possession over the properties mentioned in counter claim (Exh.14) para no. 2 during pendency of the suit.

Case of plaintiff: -

2. Plaintiffs have instituted the suit for declaration of ownership and possession, for declaration to the effect that the sale deed no. 1334 dated 23/05/2022 executed by defendant no.1 in favour of defendant no.2 is not binding on plaintiffs, and for permanent injunction. The suit is in respect of following properties;

- A.** Land in Survey no. 30/1, Gat no. 203 admeasuring 00 Hector 23 Ares situated at village Khalegaon, Taluka Lonar, having following four boundaries,
- East - Land of Karbhari Kundlik Kayande
 - West - Kandali to Khalegaon road
 - North - Kandari to Khalegaon shiv road and Sanju Pawar
 - South - Land of Land of Karbhari Kundlik Kayande

B. Land in Survey no. 30/3, Gat no. 198 admeasuring 00 Hector 48 Ares situated at village Khalegaon, Taluka Lonar, having following four boundaries;

East - Land of Govinda Kisan Doijad
West - Land of Baburao Kisan Chate
North - Land of Baburao Kisan Chate
South - Land of Laxman Appaji Kayande

C. Land in Survey no. 30/3, Gat no. 198 admeasuring 00 Hector 47 Ares situated at village Khalegaon, Taluka Lonar, having following four boundaries;

East - Land of Govinda Kisan Doijad
West - Land of Govinda Kisan Doijad
North - Land of Jagan Arjun Budhwat
South - Land of Ramdas Hari Andhale

(Hereinafter above properties are referred as suit properties, and in this order these properties are mentioned as “suit properties in clauses A, B and C”.)

3. According to plaintiffs their father Ananda Saundaji Budhwat (hereinafter referred as “Ananda”) and Amruta Govinda Budhwant jointly purchased 3 acres land in Survey no. 30/1 situated in village Khalegaon from Daulat Hari Sanap. Ananda paid consideration for 46 R. land and Amruta paid consideration for remaining land of 1 Acre and 34 Ares. So, Ananda becomes owner of 46 R. land in Survey no. 30/1. After death of Ananda, being his legal heirs, plaintiffs become owner and possessors of the land. This 46 R. land is situated in two parts. The part-I of the land admeasuring 23 R. is the land mentioned in clause A of this order.

4. According to plaintiffs on 01/04/1959 their father Ananda, his (Ananda's) brother defendant no.1 and Amruta Govinda Budhwant jointly purchased 4 Acres 30 R. land in Survey no. 30/3 situated in village Khalegaon from Shriramkrushna Ramkaran Medani. Out of 4 Acres 30 R. land, 2 Acres 15 R. is purchased by Amruta Budhwant and 2 Acres 15 R. (95 R. land comprising suit properties in clauses B and C) is purchased by Ananda and his brother defendant no.1. This 2 Acres 15 R. land is partitioned among Ananda and defendant no.1 by oral partition. Ananda received 1 Acre 8 R. (48 R.) land. This land is

mentioned in clause B. Defendant no.1 received 1 Acres 7 R. (47 R.) land. This land is mentioned in clause C. The land in clause B was in possession of Ananda, and after his death it is in possession of plaintiffs.

5. That land in clause C was in possession of defendant no.1 after oral partition between him and Ananda. Thereafter, defendant no.1 sold 23 R. land out of suit property in clause C for consideration of Rs.1000/- on 17/05/1984 to Ananda. The defendant no.1 also delivered possession of the land to Ananda by executing agreement to sell. Defendant no.1 was given remaining 24 R. land out of suit property in clause C, on lease (ठोक्याने दिली) to Uttamrao Yeduji Kedar on 12/01/1983. This 24 R. land is redeemed (सोडवून घेतली) by Ananda on request of defendant no.1 by paying money to Uttam Yeduji Kedar. Defendant no.1 deliver possession of that 24 R. land to Ananda. It was agreed that the 24 R. land would remain in possession of Ananda till the payment of money (paid by Ananda to Uttam for redemption of land) by defendant no.1 to Ananada. Defendant no.1 has not paid that money to Ananda. Thus, the entire suit property in clause C is in possession of Ananda since 1984. After his death it is in possession of plaintiffs. Defendants have no concern with these properties. As per consolidation scheme survey no. 30/3 becomes Gat no.198.

6. That due to increase in value of lands, defendant no.1 in order to grab the suit properties, made application before Tahsildar, Lonar for correction of mutation entry. Tahsildar, Lonar on 28/08/2018 ordered to take mutation entry as per sale deed dated 01/04/1959 and as per copies of 9 (3), 9 (4). As per the order, mutation entry no. 1924 is taken. However, it is not mentioned in the order dated 28/08/2018 that the mutation entry about suit property in Gat no. 203 (suit property in clause A) be taken. The order is only in respect of land in Gat no. 198. However, wrongly mutation entry no. 194 is taken in respect of both lands in Gat no. 198 and 203 that is suit properties in clause A and C. The mutation entry is false and not binding of plaintiffs.

7. That defendant no.1 without having any right only on the basis of false mutation entry no.1924, sold the suit property in clause A to defendant no.2 on 30/05/2022 by executing false sale deed in favour of defendant no.2. The sale deed is bearing no. 1334/2022. The sale deed is

void and not binding on plaintiffs. In fact, the suit properties are in possession of plaintiffs. On 25/09/2022, plaintiffs were cultivating suit property in clause A. Defendant nos. 1 and 2 came there and told plaintiffs that the suit property in clause A belongs to them. Defendant no. 2 told that the suit property is purchased by him. Defendant no. 1 demanded to deliver possession of land in Gat no. 198. He threatened that he would forcibly take possession of land in Gat no. 198. Thus, defendants obstructed possession of plaintiffs over suit properties. Therefore, plaintiffs have instituted the present suit. Plaintiffs have made this application for temporary injunction restraining defendants from creating obstruction to their possession over suit properties in clause A, B and C till disposal of this suit. It is contended that plaintiffs have prima facie case, balance of convenience lies in their favour, and they will suffer irreparable loss, if temporary injunction is not granted in their favour.

Case of defendants: -

8. The defendants contested the suit and the application for temporary injunction made by plaintiffs by filing their written statement and say at Exh.13. It is admitted that on 01/04/1959 Ananda, defendant no.1 and Amruta Govinda Budhwant jointly purchased 4 Acres 30 R. land in Survey no. 30/3 situated in village and taken possession of this land. However, it is denied that Ananda and defendant no.1 orally partitioned the land purchased by them in Survey no. 30/3. Rest of contentions in plaint are denied.

9. Defendants have made counter claim (Exh.14) is in respect of following properties;

A. Land in Gat no. 198 admeasuring 00 Hector 46 Ares situated at village Khalegaon, Taluka Lonar, having following four boundaries;

East	- Land of Govinda Kisan Doijad
West	- Land of Govinda Kisan Doijad
North	- Land of Jagan Arjun Budhwat
South	- Land of Ramdas Hari Andhale

B. Land in Gat no. 203 admeasuring 00 Hector 23 Ares situated at village Khalegaon, Taluka Lonar, having following four boundaries,

East - Land of Karbhari Kundlik Kayande

West - Kandali to Khalegaon road

North - Kandari to Khalegaon shiv road and Sanju Pawar

South - Land of Land of Karbhari Kundlik Kayande

(Hereinafter above properties are referred as counter claim properties, and in this order these properties are mentioned as “counter claim properties in clauses A and B”.)

10. The counter-claim property in clause A is the suit property in clause C. However, in plaint of plaintiffs it is shown as 47 R., but in counter-claim of defendants it is shown as 46 R. The counter claim property in clause B is the suit property in clause A.

11. According to defendants, the counter claim property in clause A is purchased by defendant no.1 through joint sale deed dated 01/04/1959. The counter claim property in clause B is ancestral property of defendant no.1. The counter claim properties were in possession of defendant no.1. Defendant no.1 sold, the counter claim property in clause B to defendant no.2 through sale deed bearing no. 1334/2022. Plaintiffs have no concern with the counter claim properties. After execution of the sale deed in favour of defendant no.2, plaintiffs are obstructing possession of defendant no.2 over the counter claim property in clause B. Plaintiffs were demanding defendant no.1 since last 6 to 7 years to sold counter claim properties to them for meagre consideration. Defendant no.1 denied to sold the counter claim properties to plaintiffs. Therefore, plaintiffs are creating obstruction to possession of defendants over counter claim properties.

12. That defendant no.1 resides in Gujrat. Plaintiffs taking undue advantage of this fact, prepare false 7/12 extract in his favour about the counter claim properties. Therefore, defendant no.1 make application for correction of mutation entry about the counter claim properties in his favour before Tahsildar, Lonar. The application is allowed and mutation entry is taken in favour of defendant no.1. Plaintiffs have made appeal against the order of Tahsildar, Lonar before Sub-divisional Officer, Mehkar. The appeal is rejected. So, the mutation entry about the counter

claim properties is in favour of defendant no.1. Thus, revenue record is in favour of defendant no.1. Defendants are in possession of counter claim properties. Plaintiffs in order to grab counter claim properties, are creating obstruction in possession of defendants over counter claim properties. Therefore, defendants have made counter claim. Defendants have made the application for temporary injunction (Exh.15) restraining plaintiffs from creating obstruction to their possession over counter claim properties in clause A and B till disposal of this suit. It is contended that defendants have prima facie case, balance of convenience lies in their favour, and they will suffer irreparable loss, if temporary injunction is not granted in their favour.

Reply of plaintiffs to counter claim (Exh.14) and application for temporary injunction (Exh.15) of defendants: -

13. Plaintiffs contested the counter claim (Exh.14) and application for temporary injunction (Exh.15) of defendants by submitting their written statement and say at Exh.22. It is admitted that defendant no.1 has purchased counter claim property in clause A through joint sale deed. Rest of contentions in counter claim are denied. Plaintiffs reproduced their pleadings in plaint in their written statement and denied all claims of defendants and prayed to reject the counter claim (Exh.14) and application for temporary injunction (Exh.15).

14. I have heard learned advocate for plaintiffs Shri. B. N. Vighne and learned advocate for defendants Shri. S. S. Palwe. I have also gone through written arguments submitted by learned advocate for plaintiffs Shri. S. B. Mundhe.

15. Considering pleadings and rival submissions of parties, following points arise for my determination. I have recorded my findings thereon for the reasons mentioned thereunder;

Sr. No.	Points for determination	Findings
1	Whether plaintiffs have prima facie case in their favour?	Yes, but only in respect of the suit property mentioned in clause A and B.
2	Whether balance of convenience	Yes, but only in respect of the

	lies in favour of plaintiffs?	suit property mentioned in clause A and B.
3	Whether irreparable loss will be caused to plaintiffs, if temporary injunction is not granted?	Yes, but only in respect of the suit property mentioned in clause A and B.
4	Whether defendants have prima facie case in their favour?	Yes, but only in respect of the suit property mentioned in clause C (counter claim property mentioned in clause A).
5	Whether balance of convenience lies in favour of defendants?	Yes, but only in respect of the suit property mentioned in clause C (counter claim property mentioned in clause A).
6	Whether irreparable loss will be caused to defendants, if temporary injunction is not granted?	Yes, but only in respect of the suit property mentioned in clause C (counter claim property mentioned in clause A).
7	What order?	Applications (Exh.5 and 15) are partly allowed.

REASONS

16. Learned advocate for plaintiffs Shri. B. N. Vighne reiterated contents of pleadings of plaintiffs. He submitted that out of the suit property in clause C, defendant no.1 sold 23 R. land to Ananda and executed agreement to sell in favour of Ananda. The possession of 23 R. land was delivered to Ananda. However, the sale deed is not executed. Photocopy of agreement to sell is produced on record. He further submitted that plaintiffs have produced on record 7/12 extract Gat no. 198 at village Khalegaon. of suit properties in clause B and C. As per 7/12 extracts of Gat no. 98 submitted by plaintiffs 00 H. 95 R. land is

owned by Ananda. Other submissions are discussed at relevant places. Learned advocate for plaintiffs relied on following rulings

1. Natthu Baliram Nichat and others v Rajendra Tukaram Madankar reported in 2022 (4) Civil LJ 832.
2. Baburao Namdev Nalwade and others v Tukaram Keshav Nalwade Civil Application No. 274/2014, reported in 2015 (2) Mh.L.J.912.
3. Prataprai N. Kothari v John Braganza decided by Hon'ble Supreme Court on 04/05/1999

He submitted plaintiffs have prima facie case, balance of convenience lies in favour of plaintiffs and they will suffer irreparable loss, if injunction as prayed by them is not granted.

17. I have gone through the judgments or rulings on which learned advocate for plaintiffs relied on. Facts in Baburao Namdev Nalwade and others v Tukaram Keshav Nalwade Civil Application No. 274/2014, reported in 2015 (2) Mh.L.J.912 and in Prataprai N. Kothari v John Braganza decided by Hon'ble Supreme Court on 04/05/1999 are different than fact in the present case. So, these rulings or judgment are not applicable in the present case. The ruling or judgment in Natthu Baliram Nichat and others v Rajendra Tukaram Madankar reported in 2022 (4) Civil LJ 832 is considered in deciding the present applications.

18. Learned advocate for defendants Shri. S. S. Palwe reiterated contents of application (Exh.15). He further submitted that father of defendant no.1 Saudaji had purchased 00 H. 46 R. land in Survey no. 203 at village Khalegaon jointly with Amruta Govinda Budhwat. He submitted that the 46 R. land was purchased by Saudaji in the name of Ananda. At the time of execution of the sale deed Ananda was only 12 years old, so, he was not having independent source of income. The consideration was paid by Saudaji. Saudaji partitioned this 46 R. land between Ananda and defendant no.1. Each of them received 23 R. land. The 23 R. land which is the suit property in clause A or counter claim property in clause B is given to defendant no. 1. Since then, it was in possession of defendant no. 1. In respect of counter claim property in clause B, he submitted that defendant no.1, Ananda and Amruta Govinda Budhwat jointly purchased total 4 Acres 30 Ares land in

Survey no. 30/3 at village Khalegaon from Shriramkrushna Ramkaran Medani. He emphasis that this fact about jointly purchasing of 4 Acres and 30 Ares land is also admitted by plaintiffs. He submitted that out of 4 Acres and 30 Ares land, Amruta purchased 2 Acre 15 Ares, and Ananda and defendant no.1 jointly purchased 2 Acres and 15 Ares land. Out of this 2 Acres and 15 Ares land 46 R. land is purchased by defendant no.1. Since then, it is in possession of defendant no.1. Thus, the counter claim properties in clause A, and B were in possession of defendant no.1. The counter claim property in clause B is sold by defendant no. 1 to defendant no.2 by executing sale deed 1334/2022. Therefore, it is now in possession of defendant no.2. Thus, counter claim properties are in possession of defendants. He submitted that plaintiffs taking undue advantage of the fact that defendant no.1 resides in Gujrat, get counter claim properties mutated in his name. So, defendant no.1 made application before Nayab Tahsildar, Lonar for correction of mutation entry. The application is allowed, and mutation entry no. 2924 is sanctioned in favour of defendant no.1. Now, as per revenue record, counter claim properties in clause A and B are in the name and possession of defendant no.1. The counter claim property in clause B is sold by defendant no.1 to defendant no.2. Thus, counter claim properties are in possession of defendants. So, defendants are having prima facie case, balance of convenience lies in favour of defendants and they will suffer irreparable loss, if injunction restraining plaintiffs from obstructing their possession over counter claim properties is not granted in their favour. He prayed to reject the application of plaintiff at Exh.5 and prayed to allow the application of defendants at Exh.15.

AS TO POINTS NOS. 1 TO 7

19. In order to avoid repetition of discussion, these points are discussed together.

20. In order to seek temporary injunction, the plaintiffs have to show that they have prima facie case, balance of convenience is in their favour, and they will suffer irreparable loss in the event of refusal to grant temporary injunction. When after considering pleadings of the

parties and material on record, its prima facie appears that there is greater chance that the plaintiffs will win the case, then it can be said that the plaintiffs have prima facie case in their favour. Balance of convenience is said to be in favour of plaintiffs, when granting injunction in favour of them is necessary to maintain balance of interest between the parties and the injunction will also not cause inconvenience, loss or legal damage to the party against whom it is granted. A loss which cannot be compensated in terms of money can be said as irreparable loss.

21. In the present suit, plaintiffs are seeking declaration of their ownership and possession over the suit properties, they are further seeking permanent injunction restraining defendants from obstructing their possession over the suit property. Plaintiffs are claiming to be in possession of the suit property. On the contrary, defendants have made counter claim seeking permanent injunction restraining plaintiffs from obstructing their possession over the counter claim properties. Defendants are claiming to be in possession of counter claim properties. Therefore, the plaintiffs have to prima facie show that they are in possession of the suit properties. Similarly, defendants have to show that they are in possession of counter claim properties. For the convenience, the discussion can be divided on the basis of different suit and counter claim properties.

Discussion about the suit property in clause A and counter claim property in clause B.

22. According to plaintiffs their father Ananda and Amruta Govinda Budhwant jointly purchased 3 acres land in Survey no. 30/1 situated in village Khalegaon from Daulat Hari Sanap. Ananda paid consideration for 46 R. land and Amruta paid consideration for remaining land of 1 Acre and 34 Ares. So, Ananda becomes owner of 46 R. land in Survey no. 30/1. After death of Ananda, being his legal heirs, plaintiffs become owner and possessors of the land. This 46 R. land is situated in two parts. The part-I of the land admeasuring 23 R. is the land mentioned in clause A of this order. On the contrary, defendants are also claiming to be in possession of this property.

23. Plaintiffs have produced certified copies of consolidation planning sheet (एकत्रीकरण योजना पत्रक) (documents at serial nos. 5 and 6 along with list at Exhibit no. 4). As per these documents, Survey no. 30/3 is made Gat no. 198 and Survey no. 30/1 is made Gat no. 203. This fact is also not denied by defendants.

24. The plaintiffs have produced certified copy of registered sale deed (document at serial no.1 along with list at Exh.04). On perusal of the sale deed, it appears that Ananda and Amruta Govinda Budhwant have jointly purchased 3 acres land in Survey no. 30/1 at village Khalegaon, Taluka Lonar. It is mentioned in the sale deed that Amruta Govind Budhwant paid consideration of Rs.400/- and Ananda paid consideration of Rs.200. Plaintiffs have also produced on record certified copy of Index-II in respect of the sale deed (document at serial No. 2 along with list at Exh.04). On perusal of this document also, it appears that Amruta Govind Budhwant and Ananda have purchased 3 acres land in Survey no. 30/1 at village Khalegaon by registered sale deed on 28/04/1950. So, these documents are supporting to the contentions of plaintiffs that Ananda and Amruta Budhwant purchased property in Survey no. 30/1. Plaintiffs have also produced on record certified copy of 7/12 extract of Survey no. 30/1 (document at serial No.9 along with list at Exh.04). On perusal of this 7/12 extract, it appears that there is 00 H. 23 R. land in names of plaintiffs in Survey no. 30/1 at village Khalegaon, Taluka Lonar.

25. According to defendants, the suit property in clause A (the counter claim property in clause B) is ancestral property of defendant no.1. It was in possession of defendant no.1. Defendant no.1 has sold this property to defendant no. 2 by executing sale deed no. 1334/2022. However, defendants have not disclosed as to how defendant no.1 or his ancestor become owner of this property. There is no pleading to this effect.

26. Learned advocate for defendants Shri. S. S. Palwe submitted that Saudaji Budhwant (father of defendant no.1 and Ananda) had purchased 00 H. 46 R. land in Survey no. 203 at village Khalegaon. He submitted that the 46 R. land was purchased by Saudaji in the name of Ananda. The consideration was paid by Saudaji. Saudaji partitioned this 46 R.

land between Ananda and defendant no.1. Each of them received 23 R. land. The 23 R. land which is the suit property in clause A or counter claim property in clause B is given to defendant no. 1. Since then, it was in possession of defendant no. 1. It is pertinent to note that, there is no pleadings of defendant to this effect. On the contrary, defendant have denied that the land in Survey no. 30/1 was belonging to Daulat Hari Sanap, and 3 acres land was purchased by Ananda and Amruta Buudhwant. Learned advocate for defendants Shri. S. S. Palwe submitted that at the time of execution of the sale deed Ananda was only 12 years old, so, he was not having independent source of income. In support of his contention, he produced on record verified photocopy of school leaving certificate of Ananda. The date of birth of Ananda mentioned in this certificate is 02/08/1934. So, as per this document, on the date of the sale deed dated 28/04/1950, the age of Ananda would be more than 15 years. Further, as already discussed, it is mentioned in the sale deed that the consideration of Rs.200/- is paid by Ananda. Therefore, the contention of defendants is not acceptable at this stage. Therefore, Plaintiffs seems to have prima facie in possession of the suit property in clause A.

27. Plaintiffs in support of their application for temporary injunction (Exh.5) submitted affidavits of two witnesses namely Ramesh Mahadu Kayande and Ravindra Subhash Budhwant both R/o Kandari, Taluka Lonar, District Buldhana at exhibits 23 and 24. Both the witnesses depose in their affidavits that they know plaintiffs and defendants. They further depose that 46 R. land which is in two parts in Gat no. 203 at village Khalegaon is in possession of plaintiffs. On the contrary, defendants have also submitted an affidavit of one witness Sanjay Ranjit Pawar R/o Kandari, Taluka Lonar in support of application of temporary injunction made by defendants (Exh.15). This witness deposes in his affidavit that he knows plaintiffs and defendants. He further deposes that the suit property in clause A is purchased by defendant no.2 from defendant no.1 and it is in possession of defendant no.2.

28. Learned advocate for defendants Shri. S. S. Palwe submitted that the witnesses of plaintiffs are not resident of village Khalegaon. Further their names are not mentioned in four boundaries of the suit property in

clause A. Witness Ravindra is son of plaintiff no. 2. So, affidavits of these witnesses cannot be considered. He submitted that as per description of the suit property in clause A in plaint there is land of the witness Sanjay Ranjit Pawar towards northern side of the suit property in clause A. So, the affidavit of this witness can be considered.

29. As discussed earlier, documents on record are in support of the contention of plaintiffs that they are in possession of the suit property in clause A. Under such circumstances, oral statements made on affidavits without any support of document cannot be considered to decide the application for temporary injunction. Documents on record are supporting the contention of plaintiffs in respect of the suit property in clause A. Therefore, even though affidavits of witnesses of plaintiffs are not considered, plaintiffs have established their prima facie case in respect of the suit property in clause A.

30. According to defendants, defendant no.1 resides in Gujrat. So, Ananda taking undue advantage of this fact, get mutated the suit property in clause A (counter claim property in clause B) in his favour. It is contended that defendant no.1 applied for correction of mutation entry before Nayab Tahsildar, Lonar. The application is allowed, and mutation entry no. 2924 is sanctioned in his favour. Plaintiffs also produced certified copy of mutation entry no. 2924 (document at serial No.15 along with list at Exh.04). On perusal of the mutation entry, it appears that 00 H. 46 R. land in Gat no. 198 and 00 H. 23 R. in Gat no. 203 is mutated in the name of defendant no.1 by order of Nayab Tahsildar, Lonar and Sub-divisional Officer. Plaintiffs have also produced on record orders of Sub-divisional Officer and Nayab Tahsildar Lonar (documents at serial nos. 13 and 14 along with list at Exh.04). On perusal of order of Nayab Tahsildar, Lonar dated 28/08/2018, it appears that it was directed to take mutation entry in favour of defendant no.1 on the basis of sale deed dated 01/04/1969. However, on perusal of record and contentions of parties, it appears that there is typing mistake in the order and the date of sale deed is mentioned as 01/04/1969 instead of 01/04/1959. Thus, in order dated 28/08/2018 it was directed to take mutation entry in favour of defendant no.1 as per sale deed dated 01/04/1959. The sale deed dated 01/04/1959 is in respect of land in

Survey no. 30/3 that is Gat no.198. But, on perusal of mutation entry no.2924, it appears that the mutation entry is taken in respect of both lands in survey No. 30/3 (Gat No.198) and Survey No. 30/1 (Gat No. 203). However, it is not mentioned in the order of Nayab Tahsildar to take mutation entry in respect of land on Survey No. 30/1 (Gat No. 203). Further, on perusal of pleadings and contentions of parties, the mutation entry is under challenge. Therefore, Plaintiffs seems to have prima facie case in respect of the suit property in clause A, and so, the balance of convenience in respect of this property lies in favour of plaintiffs. So, plaintiffs will suffer irreparable loss, if temporary injunction is not granted in their favour. Therefore, I have answered points nos. 1 to 3, in respect of the suit property in clause A, in favour of plaintiffs and recorded my findings accordingly.

Discussion about the suit property in clause B.

31. According to plaintiffs, Ananda, defendant no. 1 and Amruta jointly purchased 4 Acres 30 Ares land in Survey No. 30/3 situated in village Khalegaon from Shriramkrushna Medani. Plaintiffs have produced on record photocopy of sale deed dated 01/04/1959 (document at serial no. 3 in list at Exh.4). On perusal of this document, it appears that Ananda, defendant no. 1 and Amruta purchased 4 Acres 30 Ares land in Survey No. 30/3 at village Khalegaon from Shriramkrushna Medani. It is further contention of plaintiffs that out of this 4 Acres 30 Ares land, 2 Acres 15 Ares land is purchased by Ananda and defendant no. 1. They partitioned the said land. Ananda received 1 Acre 8 Ares (48 R.) land (which is the suit property mentioned in clause B) and defendant no.1 received 1 Acres 7 Ares (47 R.) land (which is the suit property mentioned in clause C). Defendants also admitted in their statements that Ananda, defendant no.1 and Amruta purchased 4 Acres 30 Ares land in Survey No. 30/3 on 01/04/1959 by registered sale deed. Defendants have also made counter claim in respect of 46 R. land in Survey no. 30/3, Gat no. 198 at village Lonar (counter claim property in cluse A). On perusal of four boundaries, it appears that the counter claim property in clause A and the suit property in clause C is same. However, according to plaintiffs it is 47 R, and according to defendants it is 46 R.

Defendants contending that defendant no. 1 purchased the counter claim property in clause C by joint sale deed dated 01/04/1959 out of land in Survey No. 30/3 at village Khalegaon. So, the contention of defendants is also supporting the contentions of plaintiffs that Ananda and defendant no. 1 along with Amruta purchased 4 Acres and 30 Ares land in Survey No. 30/3. Though defendants denied partition of 2 Acres and 15 Ares land between Anand and defendant no. 1, they have not pleaded in detail as to how 46 R. land is received by defendant no.1. Further, defendants have claimed any right over the 48 R. land claimed by plaintiffs in their possession which is suit property mentioned in clause B. The suit property in clause B is not included in counter claim by defendants. Therefore, it prima facie appears that plaintiffs are in possession of the suit property in clause B also. Therefore, plaintiff have prima facie case in respect of the suit property in clause B, the balance of convenience in respect of the suit property in clause B lies in favour of plaintiff, and so, plaintiffs will suffer irreparable loss if temporary injunction in respect of the suit property in clause B is not granted in their favour. Therefore, I have answered points nos. 1 to 3, in respect of the suit property in clause B, in favour of plaintiffs and recorded my findings accordingly.

Discussion about the suit property in clause C, and counter claim property in clause A.

32. Ananda, defendant no. 1 and Amruta jointly purchased 4 Acres 30 Ares land in Survey No. 30/3 situated in village Khalegaon from Shriramkrushna Medani. Out of this land, 2 Acres 15 Ares land is purchased by Ananda and defendant no. 1. They partitioned the said land. Ananda received 1 Acre 8 Ares (48 R.) land (which is the suit property mentioned in clause B) and defendant no.1 received 1 Acres 7 Ares (47 R.) land (which is the suit property mentioned in clause C). It is further contention of plaintiffs that out of 47 R. land (suit property in clause C) defendant no. 1 sold 23 R. land to Ananda for consideration of Rs.1000/- pm 17/05/1984. The plaintiffs in support of their contention, produced on record photocopy of an agreement to sell appears to be executed on bond of Rs.5/- (document at serial no. 4 in list at Exh. 4).

On perusal of this document, it appears that defendant no. 1 executed an agreement to sell in favour of Ananda. However, the document is unregistered. Further, the execution of this document is specifically denied by defendants. The documents though contain recital about delivery of possession, it is not registered as per required by law. It is only agreement to sell. On perusal of document, it seems that it was agreed to execute the sale deed as per will of Ananda. Plaintiffs have not produced any sale deed on record to show that defendant no. 1 has sold 23 R. land out of the suit property in clause C to Ananda. So, this photocopy of unregistered document cannot be considered at this time to prima facie hold that defendant no. 1 sold 23 R. land out of the suit property in clause C to Ananda. Therefore, the contention of plaintiffs that defendant no. 1 sold 23 R. land to Ananda is not acceptable, at least at this stage. So, no question arises to prima facie hold that the suit this 23 R. land has come in possession of plaintiffs after death of Ananda.

33. It is the contention of plaintiffs that out of the suit property in clause C 24 R. land was given on lease to Uttamrao Yeduji Kedar (ठोक्याने दिली) on 12/01/1983. This 24 R. land is redeemed (सोडवुन घेतली) by Ananda on request of defendant no. 1 by paying money to Uttam Yeduji Kedar. Defendant no. 1 delivered possession of that 24 R. land to Ananda. It was agreed that this land would remain in possession of Ananda till payment of money (paid by Ananda to Uttam for redemption of land) by defendant no. 1 to Ananda. Defendant no. 1 not paid money, so, the 24 R. land remain in possession of Ananda. The pleading of plaintiffs in respect of this 24 R. land seems to be vague. Though it is contended that defendant no. 1 out of suit property in clause C given 24 R. land on lease (thokyane) to Uttamrao, it is not mentioned in detailed about the nature of transaction. Further, it is not mentioned by plaintiffs as to what amount is paid by Ananda to redeem the 24 R. land from Uttamrao. Therefore, the above contention of plaintiffs is also not acceptable.

34. Learned advocate for plaintiffs submitted that mutation entries in respect of suit properties in clause B and C are in favour of plaintiffs. He pointed out that 7/12 extracts of land in Gat no. 198 at village Khalegaon shows 95 R. land in the name of Ananda. Plaintiffs have

produced on record 7/12 extract of Gat no. 198 of the year 2016-17 to 2018-19 (document at serial no. 8 with list at Exh.4) and 7/12 extract of Gat no. 198 of the year 2014-15 (document at serial no. 12-A with list at Exh.4) on record. These documents shows that there is 95 R. land in Gat no. 198 in the name of Ananda. In support of his contention learned advocate for plaintiffs relied on the judgement of Hon'ble Bombay High Court, Bench at Nagpur in Natthu Baliram Nichat and others vs Rajendra Tukaram Madankar reported in 2022 (4) Civil LJ 832. I have gone through this judgment. In this case Hon'ble Bombay High Court confirm the order of the hon'ble sessions court granting temporary injunction in favour of original defendants on the ground that revenue records are favour of defendants. In short, the Hon'ble Bombay High Court held that revenue record can be considered to prima facie held that who is in possession of property. However, in the present case the revenue entry is already challenged by defendants. As already discussed earlier, as per order of Nayab Tahsildar Lonar, mutation entry no. 2924 is taken in favour of defendant no.1 and out of 95 R. land 46 R. land in Gat no. 198 is made in the name of defendant no.1. Certified copy of this entry is also produced on record by plaintiffs (document at serial no. 15 with list at Exh.4). On perusal of this document, it appears that out of 95 R. land in Gat no. 198 46 R. land is made in the name of defendant no.1. The mutation entry appears to be taken on 01/12/2021. So, it cannot be said that the revenue record is in favour of plaintiffs. Therefore, the plaintiffs not prima facie seems to be in possession of the suit property in clause C.

35. It is pleaded by plaintiffs that Ananda, defendant no.1 and Amruta purchased land in Survey no. 30/3, and out of that land Ananda and defendant no. 1 purchased 2 Acres and 15 Ares land. It is further pleaded that defendant no. 1 and Ananda partitioned this 2 Acres 15 Ares land, and out of this land defendant no. 1 received 47 R. land which is the suit property in clause C. As already discussed, plaintiffs failed to show prima facie that defendant no. 1 sold 23 R. land to Ananda. Plaintiffs also failed to show prima facie that remaining 24 R. land came in possession of Ananda. Therefore, its prima facie appears that the suit property in clause C, or the counter claim property in clause A is in possession of defendant no. 1. Further, the witness Sanjay Ranjit Pawar

supported the contention of defendants that the suit property in clause C or the counter claim property in clause A is in possession of defendant no.1. Thus, defendants have prima facie case in respect of the suit property in clause C or the counter claim property in clause A, the balance of convenience in respect of this property is also lies in favour of defendants, and defendants will suffer irreparable loss if injunction in respect of this property is not granted in their favour. Therefore, I have answered point nos. 4 to 6 in respect of the suit property in clause C or counter claim property in clause A in favour of defendants.

36. Considering above discussion, plaintiffs have established their prima facie case only in respect of suit property in clauses A and B, and defendants have established their prima facie case only in respect of the suit property in clause C or the counter claim property in clause A. Therefore, both applications of plaintiffs and defendants (Exh. 5 and 15) are required to be allowed partly. Hence, in answered to point no. 7 the upcoming order becomes necessary;

Order

1. Applications at Exh.5 and 15 are partly allowed.
2. Defendants are temporary restrained till disposal of the suit, from creating obstruction in possession of plaintiffs over suit properties mentioned in clause A and B of this order that is;
 - A.** Land in Survey no. 30/1, Gat no. 203 admeasuring 00 Hector 23 Ares situated at village Khalegaon, Taluka Lonar, having following four boundaries,
 - East - Land of Karbhari Kundlik Kayande
 - West - Kandali to Khalegaon road
 - North - Kandari to Khalegaon shiv road and Sanju Pawar
 - South - Land of Land of Karbhari Kundlik Kayande; and
 - B.** Land in Survey no. 30/3, Gat no. 198 admeasuring 00 Hector 48 Ares situated at village Khalegaon, Taluka Lonar, having following four boundaries;
 - East - Land of Govinda Kisan Doijad
 - West - Land of Baburao Kisan Chate
 - North - Land of Baburao Kisan Chate
 - South - Land of Laxman Appaji Kayande, described in plaint para no.1.

3. Plaintiffs are temporary restrained till disposal of the suit, from creating obstruction in possession of defendants over suit properties mentioned in clause C, or the counter claim property in clause A of this order that is;

C. Land in Survey no. 30/3, Gat no. 198 admeasuring 00 Hecter 46 Ares situated at village Khalegaon, Taluka Lonar, having following four boundaries;

East - Land of Govinda Kisan Doijad

West - Land of Govinda Kisan Doijad

North - Land of Jagan Arjun Budhwat

South - Land of Ramdas Hari Andhale, described in Counter claim (Exh.14) para no.2.

Date: 04/01/2024

Place: Lonar

(Ganesh S. Khupse)
Jt. Civil Judge Junior Divison,
Lonar.