

MHCC010008632026



IN THE BOMBAY CITY CIVIL COURT AT GR. MUMBAI

NOTICE OF MOTION NO. 591 OF 2026

IN

SUIT NO.107 OF 2026

Rajendra Devji Kale

... PLAINTIFF

Versus

Santosh Devji Kale and another

... DEFENDANTS

APPEARANCES:

Ms. R. M. Kumar, learned advocate for the plaintiff.

Mr. Sushil Sharma, learned advocate for the defendant No.1.

CORAM: V. M. SUNDALE, ADHOC JUDGE
COURT ROOM NO.02

DATED: 08th MAY, 2026

ORDER

01. By this Notice of Motion, the plaintiff seeks temporary injunction restraining defendant No.1, his agents, servants or any person claiming through him from disturbing the plaintiff's peaceful possession of the suit premises viz. Room No.804, E Wing, 8th Floor, Mahalaxmi SRA Co-operative Housing Society Ltd., Pandurang Budhkar Marg, Opp. Mahendra Tower, Worli, Mumbai – 400030, and further seeks restraint against defendant Nos.1 and 2 from creating third party

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interest or alienating the suit premises pending the hearing and final disposal of the suit.

02. In brief, it is the case of the plaintiff that he has instituted the present suit seeking protection of his possession in respect of the suit premises. According to the plaintiff, he is residing in the suit premises along with his family members and has been in settled possession thereof since long. It is contended that the suit premises originally belonged to the family and that after redevelopment under the SRA Scheme, the flat came to be allotted in the name of the mother of the parties. The plaintiff contends that though defendant No.1 is his brother, disputes have arisen between them after the death of their mother. It is further alleged that defendant No.1 has threatened to forcibly dispossess the plaintiff from the suit premises without following due process of law. The plaintiff submits that he has independent possessory rights and cannot be evicted otherwise than by adopting legal procedure. It is his contention that the acts of defendant No.1 are illegal, arbitrary and intended to create pressure upon him. The plaintiff therefore submits that unless interim protection is granted, irreparable loss and injury would be caused to him. On these averments, the present Notice of Motion has been taken out seeking interim and ad-interim protection.

03. Defendant No.1 has filed affidavit in reply opposing the Notice of Motion. It is contended that the mother of the parties namely Smt. Laxmi Devji Kale was the exclusive owner and occupant of the suit premises and that she expired on 08.11.2022. According to defendant No.1, the original structure at Gopal Nagar, Worli was transferred in the name of their mother and thereafter she became eligible under the SRA

Scheme pursuant to which the suit premises came to be allotted in her favour. It is further contended that the plaintiff was independently residing at Bhayander in premises acquired by his father and was merely permitted to occupy the suit premises on account of inconvenience in travelling for employment purposes. Defendant No.1 submits that the plaintiff was never treated as owner or co-owner of the suit premises. It is further contended that the mother of the parties executed a registered Will dated 14.01.2020 bequeathing the suit premises in favour of defendant No.1. According to defendant No.1, after the death of the mother, the records of the society and SRA authority came to be transferred in his name. Defendant No.1 has further contended that the plaintiff has not sought declaration challenging the alleged transfer or Will and therefore the suit for simplicitor injunction is not maintainable. It is also alleged that the plaintiff has alternative accommodation at Bhayander and has filed the suit only with an intention to harass defendant No.1.

04. Defendant No.1 has thereafter filed additional affidavit in reply producing additional documents in support of his defence. In the said affidavit, defendant No.1 has reiterated that the mother of the parties executed a registered Will dated 14.01.2020 in his favour expressing her desire to transfer all rights in the suit premises to him. It is further stated that pursuant to the applicable SRA Government Resolution, the share certificate and society records have already been transferred in the name of defendant No.1. Defendant No.1 has also relied upon maintenance bills and electricity bills allegedly standing in his name in respect of the suit premises. It is further contended that he has filed Testamentary Petition No.37147 of 2025 before the Hon'ble

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High Court seeking grant of Letters of Administration with the Will annexed and the same is pending adjudication. Defendant No.1 submits that despite knowledge of transfer of records in his favour, the plaintiff has not challenged the same before any competent forum. It is contended that the plaintiff has only sought injunction without substantive declaratory relief and therefore no interim protection can be granted. Defendant No.1 has further submitted that he is in lawful occupation and management of the suit premises and is regularly paying all outgoings thereof. It is therefore prayed that the Notice of Motion be dismissed with costs.

05. Heard Mr. R.M. Kumar, learned advocate for the plaintiff and Mr. Sushil Sharma, learned advocate for defendant No.1. Perused Notice of Motion, reply affidavits and documents placed on record.

06. In view of the rival contentions and submissions advanced by both sides, the following points arise for my determination, and my findings thereon are recorded hereinafter with reasons.

Sr.No.	POINTS	FINDINGS
01.	Whether the plaintiff has established a prima facie case in support of the Notice of Motion?	Yes
02.	Whether the balance of convenience lies in favour of the plaintiff?	Yes
03.	Whether the plaintiff would suffer irreparable loss and injury if temporary injunction is not granted?	Yes
04.	What order?	As per final order

REASONS

AS TO POINT NO. 1:

07. The plaintiff has sought temporary injunction pending the hearing and final disposal of the suit. The settled principles governing grant of temporary injunction require the Court to examine whether the applicant has established a prima facie case, whether the balance of convenience lies in his favour and whether refusal of relief would result in irreparable loss and injury. At the interlocutory stage, the Court is not expected to conclusively adjudicate disputed questions relating to title, succession or ownership but is only required to ascertain whether the applicant has shown a bona fide and arguable case requiring protection till final adjudication. The purpose of temporary injunction is to preserve the subject matter of the suit and maintain status quo so that the final adjudication does not become ineffective. The Court is therefore required to examine the nature of possession, the conduct of parties and the surrounding circumstances placed on record. It is also well settled that while considering interim relief, the Court may examine whether any party is attempting to alter the existing position by use of force or otherwise than by adopting due process of law. The pleadings, affidavits and documents placed on record are therefore required to be appreciated on the touchstone of these settled principles. It is in this background that the rival submissions and material produced by both sides are required to be considered.

08. In the present matter, it is not seriously disputed that the plaintiff is presently residing in the suit premises. Defendant No.1 himself has admitted in the affidavit in reply that the plaintiff was permitted to occupy the suit premises and has been residing therein

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since several years. Thus, the actual physical possession of the plaintiff over the suit premises stands prima facie established from the material on record. The defence of defendant No.1 is principally that the plaintiff was merely allowed to occupy the premises on account of family arrangement and convenience and that he has no independent right, title or interest in the suit premises. Defendant No.1 has further relied upon a registered Will allegedly executed by the mother of the parties on 14.01.2020 and subsequent transfer entries in society and SRA records in his favour. Defendant No.1 has also placed on record photocopies of consent deed dated 13.01.2005 allegedly executed by deceased Devaji Ganpat Kale in favour of Smt. Laxmi Devji Kale along with identity card and water tax receipts in support of his claim. However, all these documents merely raise disputed questions regarding title, succession and entitlement which can be conclusively adjudicated only after recording evidence at the trial. At this interlocutory stage, the Court is not expected to finally determine the legality or effect of the alleged Will, transfer entries or other documents relied upon by either side.

09. It is pertinent to note that after hearing arguments of both sides, the matter was fixed on 07.05.2026 for passing orders. However, on 07.05.2026, learned advocate for the plaintiff cited the judgments of the Hon'ble Supreme Court in **Krishna Ram Mahale Vs Mrs. Shobha Venkat Rao, AIR 1989 SC 2097** wherein it has been held that even a licensee cannot be dispossessed forcibly by the licensor otherwise than by due process of law and recovery of possession can be sought by such person notwithstanding expiry of licence during pendency of proceedings. Reliance was also placed upon the judgment of the Hon'ble Supreme Court in **Rame Gowda Vs. M. Varadappa Naidu, AIR 2004 SC**

4609, wherein it has been reiterated that settled possession deserves protection against forcible dispossession even when title remains disputed. The learned advocate for the plaintiff further relied upon the judgment of the Hon'ble Bombay High Court in **Gaurav Sri Kalyan Vs Ram Naresh Singh** in support of the proposition that a person in settled possession cannot be removed by force and the parties are required to take recourse to lawful procedure. On the other hand, learned advocate for defendant No.1 relied upon the judgment of the Hon'ble Supreme Court in **Samarpan Varishtha Jan Parishar & Ors. Vs Rajendra Prasad Agrawal & Ors., C.A. No. 3520 of 2022, decided on 05.05.2022** wherein it has been observed that a person holding premises gratuitously or in the capacity of caretaker or servant does not acquire any independent right or interest merely on account of long possession. The said judgments cited by both sides are therefore required to be appreciated in the factual background of the present matter.

10. Upon consideration of the aforesaid material and legal position, it appears that the plaintiff has approached this Court primarily seeking protection against forcible dispossession. The judgments relied upon by the plaintiff clearly recognize the principle that even a person whose possession originated permissively cannot be dispossessed by use of force and recourse to due process of law is mandatory. Though defendant No.1 has contended that the plaintiff is merely a permissive occupant having no independent legal right in the suit premises, such contention by itself would not authorize defendant No.1 to forcibly evict the plaintiff during pendency of the proceedings. At the same time, the judgment relied upon by defendant No.1 in **Samarpan Varishtha Jan Parishar (cited supra)** also lays down that

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gratuitous occupation or occupation in the capacity of caretaker does not create ownership or proprietary rights. In the considered opinion of this Court, the said judgment would become relevant while adjudicating the final rights and entitlement of the parties at the stage of trial. However, at the present interlocutory stage, this Court is only required to ascertain whether the plaintiff who is admittedly residing in the suit premises is entitled to limited protection against dispossession otherwise than by due process of law. The rival claims regarding ownership, validity of Will, succession, transfer entries and nature of occupation remain triable issues which cannot be conclusively adjudicated at this stage. The plaintiff has therefore succeeded in establishing existence of a bona fide and substantial dispute requiring adjudication in the suit. Consequently, the plaintiff has established a prima facie case for limited interim protection regarding his possession over the suit premises. Hence, Point No.1 is answered in affirmative.

AS TO POINT NO. 2:

11. So far as the balance of convenience is concerned, the same also tilts in favour of the plaintiff. The plaintiff is admittedly residing in the suit premises and disturbance of such possession during pendency of the suit would result in serious hardship and multiplicity of litigation. Preservation of the existing state of affairs till final adjudication would therefore be necessary in order to avoid irreversible consequences. On the contrary, by granting limited protection against forcible dispossession, no serious prejudice would be caused to defendant No.1 because such protection neither creates nor recognizes any final ownership rights in favour of the plaintiff. Defendant No.1 would continue to remain at liberty to establish his alleged rights on the basis of the Will, transfer entries and other documents during trial and may

also adopt appropriate legal proceedings permissible in law for recovery of possession, if so advised. The relief sought by the plaintiff is confined only to protection against forcible dispossession otherwise than by due process of law. If interim protection is refused and the plaintiff is dispossessed during pendency of the proceedings, restoration of possession at a later stage may itself become difficult and may lead to further complications. On the other hand, continuation of the present arrangement would not deprive defendant No.1 of any substantive remedy available to him under law. The comparative inconvenience is therefore greater on the side of the plaintiff. In these circumstances, the balance of convenience lies in favour of the plaintiff. Hence, Point No.2 is answered in affirmative.

AS TO POINT NO. 3 AND 4:

12. The plaintiff has also established likelihood of irreparable loss and injury in the event interim protection is refused. The dispute pertains to residential premises where the plaintiff is admittedly residing and forcible dispossession from such premises cannot be adequately compensated merely in terms of money. Once possession is disturbed during pendency of the suit, the plaintiff may suffer loss of shelter and peaceful occupation which cannot be conveniently restored by monetary compensation alone. The apprehension expressed by the plaintiff regarding forcible dispossession cannot be brushed aside particularly in view of the strained relationship between the parties and the serious dispute regarding entitlement over the suit premises. The purpose of temporary injunction is to prevent such irreversible consequences and preserve the subject matter of litigation pending adjudication. At the same time, the limited protection granted herein

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does not finally determine any right, title or interest of either party and all rival contentions are expressly kept open for adjudication during trial.

13. Insofar as the relief restraining creation of third-party rights is concerned, the plaintiff has not placed sufficient material on record to demonstrate any immediate or concrete attempt by defendant No.1 to alienate or transfer the suit premises. Mere apprehension unsupported by cogent material is not sufficient to grant a blanket restraint against alienation. Moreover, any transfer effected during pendency of the suit would remain subject to the doctrine of lis pendens and would abide by the final outcome of the proceedings. The principal grievance of the plaintiff pertains to protection of his possession and the same is adequately safeguarded by restraining defendant No.1 from dispossessing the plaintiff otherwise than by due process of law. The plaintiff has therefore failed to establish a separate prima facie case warranting wider relief restraining alienation or creation of third-party rights. Grant of such wider relief in absence of supporting material would unnecessarily curtail the rights claimed by defendant No.1 before adjudication of the suit. The discretionary relief of temporary injunction must therefore be confined only to the extent necessary for preserving the subject matter of the litigation. In view of the foregoing discussion and findings, Point No.3 is answered in affirmative and in reply to Point No.4, the following order is passed.

ORDER

1. The Notice of Motion No. 591 of 2026 in Suit No. 107 of 2026 is allowed.
2. Pending the hearing and final disposal of the suit, defendant No.1, his agents, servants or any person claiming

Order

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Notice of Motion No. 591 of 2026
In S.C. Suit No.107 of 2026

through him are restrained from forcibly dispossessing the plaintiff from the suit premises viz. Room No.804, E Wing, 8th Floor, Mahalaxmi SRA Co-operative Housing Society Ltd., Pandurang Budhkar Marg, Opp. Mahendra Tower, Worli, Mumbai – 400030, otherwise than by due process of law.

3. Costs shall abide the final result of the suit.
4. The Notice of Motion No. 591 of 2026 in Suit No. 107 of 2026 is accordingly disposed of.

Date: 08.05.2026

(V. M. Sundale)
Ad-hoc Judge
Bombay City Civil Court,
Gr. Mumbai

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“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”		
08.05.2026	05.00 p.m.	Shilpa P. Pawar
UPLOAD DATE	TIME	Stenographer - Grade I

Name of the Judge (With Court Room No.)	H. H. Adhoc Judge Shri. V. M. Sundale Court Room No.2
Date of Pronouncement of ORDER	08.05.2026
ORDER signed by P. O. on	08.05.2026
ORDER uploaded on	08.05.2026