

MHGA050006572018



ORDER BELOW EXH – 38
(Passed On 28th Day of August-2025)

The suit is for permanent injunction. The subject matter of the suit is property bearing Survey No.440, admeasuring about 0.83 HR land situated at Mauza Chop, Tah: Desaiganj, Dist: Gadchiroli, the same is bounded as towards East- survey No. 439, West- Survey No. 441, North- Survey No. 472 and South- Road. The defendants filed counter claim in the said suit for declaring him as owner by way of adverse possession and permanent injunction to restrain the original plaintiffs from disturbing their possession over the suit property. The said property hereinafter be referred as ‘the suit property’ for the sake of brevity. The said property hereinafter be referred as ‘the suit property/counter-claim property’ for the sake of brevity. The counter-claimant filed the present application under Order 39 Rule 1 & 2 of Civil Procedure Code.

Contention of Counter-claimants in nutshell is as under:

2. The suit property was originally owned by father of plaintiffs i.e. Shri Narayan Kashiram Kuthe. Shri Narayan Kuthe in the year 1991-1992 orally agreed to sale the suit property to them and the amount of Rs.3,000/- was paid by them to him towards earnest money. Since then they are in possession of the suit property. In the year 1992-1993 the mental condition of said Narayan was not good therefore he was behaving like as lunatic. Therefore, plaintiff No.1 ad 2 entered into an agreement to sale out the suit property to them for the Rs.37,000/- i.e. at the rate of Rs.18,500/- per acre and towards the earnest money they paid Rs.24,000/- to the them and as such till that date they had paid Rs.27,000/- (Rs.3,000/- + Rs.24,000/-) to the plaintiffs. It was decided to pay remaining Rs.10,000/- in installment and after full payment they

will execute the sale deed of the suit property in favor of the plaintiffs. The said agreement was occurred in presence of Uncle of plaintiff No.1 to 4 i.e. Yadav Kuthe.

3. They further submitted that Narayan Kuthe left the village in the year 1992-1993 and never came back. The plaintiff No. 1 to 4 received remaining amount of sale consideration of Rs.10,000/- time to time in order to search their father. In such manner as decided by oral agreement the entire sale consideration of Rs. 37,000/- paid by them to the plaintiffs. Thereafter, they time to time requested the plaintiffs to execute the sale deed, but till date they did not execute the sale deed by giving different reasons one pretext or the other.

4. The names of plaintiffs are mutated in the revenue record in the place of Narayan Kuthe. On 06.07.2018 the plaintiffs spread poisonous pesticide over the crops of them sowed by them in the suit field and also run tractor on standing crop of paddy. Hence, cause of action aroused, and they filed the suit for permanent injunction bearing RCS NO. 21 of 2018 (Dadaji and others vs Gopal and others) before the Court of Civil Judge Junior Division Desaiganj, District Gadchiroli thereby directing the plaintiffs not to disturb their possession from the suit property. The said suit is dismissed and they filed the appeal bearing No.40 of 2024 before the District Court Gadchiroli. The plaintiffs are taking the disadvantage of the judgment passed in RCS. 21 of 2018 and trying to disturb their possession over the suit property. Hence, they prayed for temporary injunction against them.

5. The plaintiffs filed their reply to the injunction application vide Exh.46. In which they denied entire allegation made against them. They have admitted the fact of passing judgment in the suit bearing NO.21/2018. They contended that the injunction suit of counter-

claimant is already dismissed which was filed against them. They further contended that as usual their crops are in the suit field. Hence, they prayed for rejection of the application.

6. Considering the assertions and relief sought, following points arise for my determination. The findings are recorded and reasons are stated hereunder ;

Sr. No.	Points	findings
1	Whether there is a prima-facie case in favour of counter-claimant ?	In Negative
2	Whether balance of convenience tilts in favour of counter-claimant ?	In Negative
3	Whether irreparable loss will be caused to counter-claimant?, if relief sought is not granted?	In Negative
4	What order ?	Application rejected as per final order

REASONS

As to point No. 1 to 3 :-

7. As the points No. 1 to 3 are very interconnected and interrelated, the reasons for the same are discussed conjointly.

8. The defendant in the present suit has filed counter-claim seeking declaration of ownership on the basis of adverse possession. They have moved the present application under Order XXXIX Rule 1 & 2 of the Civil Procedure Code praying for temporary injunction restraining the plaintiffs from disturbing their alleged possession over the suit property.

9. It is admitted position that the defendants were the plaintiffs in RCS No. 21/2018, wherein they sought permanent injunction in respect of the same suit property. By judgment and decree dated 12.11.2015 , the said suit came to be dismissed after trial. The appellate proceeding against the said decree is pending before the competent Court. The issue relating to possession and entitlement to injunction between the same parties in respect of the same property have thus already been adjudicated in RCS No.21/2018. In view of Section 11 of the Civil Procedure Code, the principle of res-judicata and issue of estoppel applies, and the defendants/counter-claimant cannot be permitted to seek the same relief indirectly in the form of temporary injunction in his counter-claim.

10. Apart from that to grant temporary injunction, the applicant must establish a prima facie case, the balance of convenience, and irreparable loss. In light of findings in RCS No.21/2018, the defendants/counter-claimants have failed to show prima facie right to possession. Balance of convenience is also not tilt in their favor, as granting injunction would amount to reversing the effect of a decree passed after full fledged trial, which is impermissible at this stage. The proper forum for seeking interim protection is in the pending appeal which is filed against the judgment passed in RCS No.21 of 2018. Hence, I answer the issue No.1 to 3 in negative and record my findings accordingly.

As to Point No. 4 :-

11. In view of negative findings to issue No.1 to 3 the application devoid of merit and is liable to be rejected. The defendants/counter-claimants are attempting to obtain indirectly, through their counter-claim and temporary injunction application, the

same relief that was denied to them in their own suit. Such conduct amounts to an abuse of process of law. The Hon'ble Supreme Court in the ruling of Ramrameshwari Devi Vs Nirmala Devi (2011) 8 SCC 249, has held that courts must prevent abuse of process of law by imposing realistic and deterrent costs. In view of the above, fact and circumstance, and exercising powers under Section 35, 35A and 151 of the CPC, this court deems fit to impose costs of Rs.1,000/- on the defendants/counter-claimants, payable to the plaintiffs, to compensate for the unnecessary expenses and to deter such frivolous and repetitive applications. Hence, I pass following order:

Order

Application is rejected with costs of Rs.1,000/- payable to the plaintiffs.

Desaiganj:
Dt. 28.08.2025

(Satish Gopalrao Gore)
Civil Judge Junior Division,
Desaiganj
JO Code MH 2902