

MHJN040022652025 	R.C.S. No.246/2025 Yusufkha Pathan Vs Jaidkhan Pathan
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ORDER BELOW EXH - 5
(Passed on 2nd May 2026)

The plaintiff has filed the present suit seeking declaration that he is the owner in possession along with consequential relief of permanent injunction in respect of agricultural land bearing Gat No. 106, total admeasuring 11 Hectare 31 R out of which 1 Hectare 39 R situated at Mouje Dungav, Taluka Ambad, District Jalna, four boundaries of which are as under:-

Towards East – Land of Ayyubkha Chandkha,
Towards West – Land of Bhingare,
Towards South – Land of Sahebkhya Chandkha,
Towards North – Domgav Shiv

(hereinafter referred to as “the suit property”),

2. It is the case of the plaintiff that the defendant is his grandson. The suit property is his self-acquired property and he is owner and in peaceful possession of the suit property. Plaintiff has three sons and two daughters. He has partitioned his all properties to his three sons in the year 2006 and kept the suit property for himself.

According to him, the defendant, who is his grandson, has created a false and fabricated partition document on stamp paper and, in collusion with revenue authorities, got mutation entry No.4489 effected in his name. The plaintiff contends that he has not executed any such document. It is further contended that the defendant is attempting to interfere with his possession and is likely to alienate the suit property. Hence, the present application is filed seeking temporary

injunction restraining the defendant from disturbing possession and from alienating or transferring the suit property.

3. The defendant admitted the relationship. However, the defendant has opposed the application contending that the suit property is not the self-acquired property of the plaintiff but is ancestral property. It is submitted that a valid partition was effected and pursuant thereto, the suit property has come to the share of the defendant through his father. It is further contended that mutation entry No.4489 has been effected lawfully on the basis of such partition and the same has not been challenged by the plaintiff till date. The revenue record reflects the name of the defendant.

4. The defendant has specifically contended that the suit property has been mortgaged with State Bank of India, and a loan has been availed by him by creating charge over the suit property. A letter issued by the bank to that effect is placed on record. It is further contended that the plaintiff has suppressed material facts and has filed the present suit only to harass the defendant.

5. In view of the rival contentions, the following points arise for my determination. Findings for them alongwith the reasons thereof are as under –

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff has prima facie case?	In Negative
2.	Whether balance of convenience lies in favour of the plaintiff ?	In Negative
3.	Whether the plaintiff will suffer irreparable loss, if temporary injunction is not granted in their favour?	In Negative
4.	What order?	Application is rejected.

REASONS

As to point no. 1 -

6. The plaintiff claims ownership and denies the partition document (वाटणीपत्र) as forged. However, it is an admitted position that mutation entry No.4489 stands in the name of the defendant. The plaintiff has not challenged the said mutation entry or the alleged partition document by seeking appropriate relief.

7. On perusal of mutation entry No.4489, it further appears that the same partition document has resulted in transfer of not only the suit property (Survey No. 106) in favour of the defendant, but also another property i.e. Survey No. 268 in favour of the plaintiff's son Ahemad Khan. The plaintiff has, however, challenged the transaction only in respect of Survey No. 106 and has not questioned the transfer of Survey No. 268 arising out of the same document. No explanation is forthcoming for such selective challenge. The plaintiff has not disclosed this material fact in the plaint or in the present application. Thus, it prima facie appears that the plaintiff has suppressed material facts and has not approached the Court with clean hands.

8. Further, the defendant has placed on record material to show that the suit property has been mortgaged with State Bank of India and that a loan has been availed by creating charge over the suit property, which shows that the property was in possession of the defendant.

9. The plaintiff has relied upon the judgment in ***Mansoor Saheb & Others vs. Salima (D) by LRs. & Others (Civil Appeal No. 4211 of 2009, Supreme Court)***. However, applicability of the said judgment involves disputed questions regarding nature of property and validity of partition, which cannot be adjudicated at this stage.

In view of the above, the plaintiff has failed to establish a prima facie case. Accordingly, point No.1 is answered as negative.

As to point No.2

10. The revenue record stands in the name of the defendant. The suit property is already mortgaged with a bank, and third-party interest in the nature of a charge is already created. In such circumstances, granting injunction would adversely affect the rights already created in favour of the bank, whereas refusal of injunction would not cause any greater prejudice to the plaintiff at this stage. Accordingly, point No.2 is answered as negative.

As to point No.3:

11. The plaintiff has not established that irreparable loss would be caused to him. On the contrary, the material on record indicates that the defendant has already created a charge over the property. Accordingly, point No.3 is answered as negative.

As to point No.4 :

12. The plaintiff has failed to establish the essential ingredients for grant of temporary injunction, namely prima facie case, balance of convenience and irreparable loss. The conduct of the plaintiff in suppressing material facts and selectively challenging the transaction also disentitles him from seeking interim relief. In view of findings to point No.1 to 3 application deserves rejection. Hence, to answer point No.4, following order is passed.

ORDER

The application is rejected

Date: 02.05.2026

Jt. Civil Judge Jr. Division,
Ambad

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original order.

Name of Steno : - S. M. Sapkal

Name of Court :- Jt.Civil Judge Junior Division,
Ambad.

Sd/-

Steno