

MHJN040026532024



R.C.S. No.333/2024  
Sudhakar Vs Tirtharaj  
& Ors.

**ORDER BELOW EXH - 5**

(Passed on 13<sup>th</sup> January 2025)

1. The Plaintiff has preferred this application under Order XXXIX Rule 1 & 2 for grant of temporary injunction to restrain the defendants from causing obstruction to the possession of plaintiff in respect of land bearing Gat No.286, total area 12 H. 59 R, out of which the land admeasuring 3 H. 56 R, assessment Rs.43 Rs. 40 Paise situated at Village Taka, Taluka Ambad, District Jalna. Four boundaries of which are as under.-

- Towards East** - Land of Baliram Dattu Mhaske.  
**Towards West** - Land of Sudarshan Vasant Mhaske  
**Towards South** - Land of Dadabhau Rambhau Jaykar  
**Towards North** - Land of Kalyan Bhausahab Mhaske

(Hereinafter referred to as the “suit property”)

2. The present suit is filed for declaration of ownership and possession of suit property and for permanent Injunction. According to the plaintiff, suit property is his ancestral property and he is cultivating the same since generations. It is submitted that the plaintiff has 500 sweet lime trees in the suit property. It is also pleaded that the defendants have sown Sorgham (Jowar) crop in some portion of the suit property. However, the defendants have forcefully taken away 25 quintals of Cotton from the field of the plaintiff. It is further submitted that the defendants are obstructing the possession of the palintiff and threatening the plaintiff to life. Therefore, he has given complaints to police station.

3. The plaintiff requested the defendants not to obstruct his peaceful possession. However, the defendants denied his request and continued to obstruct the possession of the plaintiff. If the defendants are not restrained, it will be difficult for the plaintiff to cultivate his field. Hence, present application.

4. The defendants have filed say at Exh.15 and strongly objected the application. They have refuted the allegations made by the plaintiff. It is submitted that the plaintiff is trying to grab the property on the basis of false allegations. Description of suit property i.e. four boundaries are incorrect. It is specifically stated that the defendants are in possession since 2003, without any interruption in land admeasuring 8 Acres in Gat No.286. The father of the plaintiff namely Asmanrao Mhaske was the original owner of the suit property and he had orally agreed to sale land admeasuring 8 Acres for legal necessity for consideration amount of Rs.2,25,000/- to the defendant No.1. Accordingly, the defendnat No.1 paid Rs.1,00,000/- on 04.04.2002 and thereafter, Rs. 1,25,000/- on 25.03.2003 before the witnesses Machindra and Suryakant. After receiving consideration amount father of the plaintiff delivered possession of 8 Acre land from Gat No.286.

5. Due to cordial relationship, sale deed has not been executed by the father of the plaintiff. However, plaintiff promised to execute registered sale deed in favour of defendant No.1 and executed agreement to sell wherein brother of the plaintiff- Haribhau signed as consenting party. The defendant No.1 time and again requested the plaintiff to repay the bank loan and execute sale deed. However, plaintiff avoided to do so. The defendant No.1 made application before Tahsildar for entering his name in Gat No.286 to the extent of 8 Acres. The defendant claimed his possession over 8 acre land in Gat No.286 and prayed to reject application.

6. Perused application and documents. Heard Both sides. Following points arose for determination and I have recorded findings alongwith the reasons for them as under: -

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether the plaintiffs have 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 his favour?	In Negative
4.	What order?	Application is rejected

### **REASONS**

#### **AS TO POINT NO. 1 TO 4 -**

7. Heard both sides. The plaintiff has relied upon 7/12 extract of Gat No.286, FIR in crime No.312/2024, copy of complaint in RCC No. 391/2024 and affidavit of witnesses. On the contrary, defendant has relied upon 7/12 extract of Gat No.286, copy of order in Anticipatory Bail Application No.351/2024, application filed by defendant No.1 before Tahsildar, Ambad, statements recorded therein alongwith affidavit of witnesses and certified copy of plaint in RCS No.329/2024. Both parties have relied upon list of citations which are dealt in foregoing paragraphs.

8. The plaintiff is claiming ownership over the suit property. In support of his claim, he has relied upon old 7/12 extract for the year 2012-2015, 2023 and 7/12 extract therein as of 10.01.2025. Perusal of 7/12 extract shows that the plaintiff is shown as owner of the suit property. So far as his possession over the suit property is concerned, he

has relied upon cultivation column. At this juncture, Ld. Advocate for the defendants argued that the plaintiff had executed agreement to sale on 27.03.2018, wherein, it was agreed by the plaintiff that his father had orally agreed to sale 8 Acre land in Gat No.286 and received consideration amount of Rs.2,25,000/-. The defendant has filed affidavit of witnesses namely Macchindra Raut and Pandit Jaykar. Witness Macchindra Raut is also witness to the agreement dated 27.03.2018.

9. To counter the arguments, Ld. Advocate for the plaintiff submitted that the Plaintiff had never executed such agreement dated 27.03.2018. Such unstamped and unregistered agreement can not be considered as valid for transfer of the immovable property or its possession. He relied upon following Judgments -

- i) Balwantgir Giri Vs Mansi Construction (2007 (1) Bom.C.R. 212)*
- ii) Greater Bombay Co-op. Bank Vs Nagraj Ganeshmal Jain (2017 (3) Apex Court Judgment 128 (SC).*
- iii) Avinashkumar Vs Vijay Mishra (2009 (1) Civil Court cases 735 (SC)*
- iv) Mool Chand Mundhra Vs Smt. Indubala (2012 (3) BCJ 203 (OHC).*
- v) Indu Vs Narsingh Das (2013 (2) Civil Court cases 003 (Rajasthan).*

10. Perused judgments. It is seen that above judgments are in respect of admissibility and evidentiary value of unstamped or unregistered document to consider transfer of immovable property. However, it is pertinent to note that the defendant has filed previous suit being R.C.S. no. 329 of 2024, for specific performance of sale agreement dated 27.03.2018, which is pending. Issue in the present application is very limited to the extent of proving prima facie case, irreparable injury and balance of convenience, which the plaintiff has to prove independently. Hence, above citations are not useful to the plaintiff at this stage.

11. Ld. Advocate of the defendant relied upon Judgment of *Hon'ble Supreme Court in Kishorkumar Vs Pravinkumar 2006 (2) Apex Court Judgments (SC) 257 and Judgment of Hon'ble Bombay High Court in Arreda Homes Private Ltd. Vs Veena Developers 2022 (2)* and argued that the plaintiff has not come with clean hands before the Court. It is to be noted that admittedly Plaintiff's brother Haribhau appeared in the previous suit and thereafter, present suit came to be filed. However, the plaintiff nowhere whispered about pendency of R.C.S. No. 329 of 2024 filed by the defendants herein, which shows that the plaintiff has not come with clean hands before the court. Hence, I found substance in the argument advance on behalf of the defendants.

12. It is also to be noted that the plaintiff is making contrary statement in documents and in his pleadings. So far as pleadings are concerned, the plaintiff himself has stated in the plaint that the defendant have sown crop of Sorgham (jowar) in the portion of the suit property, which makes it clear that the defendant is having possession over some portion of the suit property. The plaintiff contended that he has cultivated sweet lime in the suit property. However, in FIR No. 312 of 2024, the plaintiff has nowhere stated about cultivation of Sweet lime. Similarly, 7 x 12 extract which was filed at the time of argument, also did not show entry of Sweet limes. Suddenly, on the date of passing present order, the plaintiff filed cultivation documents which shows entry in respect of Sweet limes for the year 2024-2025. Hence, entry of Sweetlime crops, appears only an after thought.

13. So far as affidavits of witnesses are concerned, it is seen that the plaintiff has filed affidavit of himself, his brother – Haribhau and 2 other witnesses who deposed that the plaintiffs are in possession. However, the defendants have also filed affidavit of witnesses who also deposed that the defendant is in possession. In such circumstances, none

of the witnesses from either side can be relied upon at this stage. Whatever deposed by the witnesses of both sides, has to be scrutinized at the time of trial. Hence, filing of affidavits of witnesses, is of no use to the plaintiff in proving prima facie case.

14. Coming to the point of irreparable loss, it is pertinent to note that the the plaintiff has mentioned that if the defendant continued to obstruct, the plaintiff will suffer irreparable loss. However, where the plaintiff failed to make out prima facie case, question of other factors to consider interim relief, does not arise. Accordingly, point No.1 to 3 are answered in negative and to answer point No.4, following order is passed -

**-ORDER-**

- i) Application is rejected .
- ii) Parties to bear their own cost.

Date: 13.01.2025

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.

PDF Date :- 15.01.2025

Sd/-  
**Steno**