


<p>CNR No. <b>MHJN070010942023</b></p> 	<p><b>ORDER PASSED BELOW EXH. 5</b> <b><u>IN Regular Civil Suit No. 154/2023</u></b></p> <p>Shobhabai Sahebrao Salve and Anr. <b>Vs.</b> Subhdrabai Kisan Kothalkar and ors.</p>
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This is an application under order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 (for the sake of brevity hereinafter referred as the CPC) for temporary injunction against defendants.

2] The property, which is more particularly mentioned in the claim clause and para no. 1 of plaint i.e. agricultural land admeasuring 03H 11R from Gat No. 215 situated at village Pasodi, Tal.Jafrabad is a subject matter of this suit (hereinafter referred as the suit property). The four boundaries of said property are as follows-

Towards east- land of Vishram Shenfad

Towards west- land of Motiram Chandawade

Towards north- land of Sanjay Haribhau Dhage

Towards south- land of Ratan Chatarsing and  
Shacormsing Chandwade

3] It is averred that; the suit property came to the share of plaintiffs by way of succession after death of Sahebrao Balaji Salave who is a deceased husband of plaintiff no. 1 and deceased father of plaintiff no. 2. The suit property was ancestral property of deceased Sahebrao and he was cultivating the same during his

lifetime. He died on 29/07/2012 and after his demise plaintiffs started cultivating in the suit property. The plaintiffs have taken corn and soyabean crops in the suit property. The suit property has been mutated to the name of plaintiffs by Revenue entry no. 1424/2014 on 27/11/2014 and the same has been allowed on 16/12/2014. The defendants have no concern with the suit property however in spite of that they are obstructing possession of plaintiff over the suit property. The plaintiffs have lodged complaints against defendants on 09/10/2023 and 12/10/2023. However, police did not take any action against defendants and asked plaintiffs to file civil suit as matter is of civil nature.

4] The plaintiffs further averred that, for few days defendants stopped troubling plaintiffs. However, on 13/10/2023 when plaintiffs have gone to the suit property for harvesting and cutting soyabean and corn crops, the defendant came there and threatened to the life of plaintiffs and asked them not to take crops from the suit property even if they have cultivated the same. The defendants and other 10-15 people threatened plaintiffs and drove them out of the suit property. Thereafter, plaintiffs again went to the suit property on the same day at about 5.30 pm. However, again defendants and other 10-15 people stopped plaintiffs from entering in the suit property. Therefore, plaintiffs went to the police to lodge complaint. However, Police asked them to get injunction order from the court. Hence, plaintiffs constrained to file present suit. It is averred by plaintiffs that; the crops are ready for harvesting and

cutting. If the plaintiffs does not get the crops they will have to suffer from starvation. They have taken personal loan for cultivation of the suit property and for buying seed. The plaintiffs were going to repay said loan from the yield in the suit property. The suit property has come to the name of husband of plaintiff no. 1 from the government as he was serving in the Army. The defendants are trying to make illegal encroachment on the suit property. Hence, they prayed to grant interim injunction against defendants.

5] The suit summons is served on defendants and they have appeared before the court. The defendants have filed their Written statement and Say at Exh.15. The defendants have denied all the averments in the plaint in toto. It is contended by the defendants that; the plaintiffs have not come before this court with clean hands. From the averments in plaint, it appears that plaintiffs themselves have stated that they are not in the possession of the suit property. According to defendants late Kisan Tulshiram Kothalkar who is a husband of Defendant no. 1 and father of defendant no. 2 and 3 has purchased suit property from late Sahebrao Balaji Salve for consideration of Rs. 55000/- by executing Visarpawati on 10/04/1996. He has paid earnest amount of Rs. 15000/- to Sahebrao on the day of execution of Visarpawati and on the same day possession of suit property is handed over by Sahebrao to Kisan by affixing boundary marks by way of stones and lime in presence of panch witnesses. The east-west cart way on the east side of suit property has also been

given to purchaser kisan at that time. Since then, suit property was in possession of Kisan and after his demise it came to the possession of defendants.

6] It is further contended by defendants that, on 10/04/1996 Sahebrao received Rs.15000/- from Kisan Kothalkar for his economic need and thereafter he received Rs.13000/- on 21/11/1996 and Rs. 22000/- on 21/03/1997. Accordingly, Sahebrao received total Rs. 50000/- from the Kisan Kothalkar and executed Bharna Pawati in his favor on 11/03/1997. As the suit property come under ceiling category, Sub divisional officer informed Sahebrao to obtain permission before selling the same to Kisan Kothalkar. Therefore, Sahebrao assured Kisan Kothalkar in front of witnesses that, he will obtain the required permission and will execute the registered sale deed in favor of Kisan by accepting remaining consideration amount. However, he could not obtain the permission and died on 29/07/2012.

7] It is further contended by the defendants that, on 08/10/2013 plaintiff no. 2 filed affidavit in front of Tahsildar, Jafrabd in the case of Sahebrao Vs. Subhadrabai and ors. and admitted the transaction between Sahebrao and Kisan and also admitted the possession of defendants over the suit property. He also admitted to execute sale deed in favor of defendants by obtaining permission of the District Collector. The husband of defendant no. 1 submitted Visarpawati and Bharnapawati in the revenue office and accordingly revenue office has permitted to record name of husband of defendant no. 1 on the 7B extract in

the year 2000-2001. Accordingly, name of Kisan Kothalkar has been mutated to the 7/12 extract of the suit property and after his demise name of defendant no. 2 is mutated to the 7/12 extract of the suit property being successor of Kisan Kothalkar.

8] It is further contended by defendants that, after demise of Sahebrao and Kisan the plaintiffs were duty bound to execute sale deed of suit property in favor of defendants as per decided transaction. However, they have not done the same. On the contrary they started obstructing possession of defendants by making false applications in revenue offices and demanding more money from them. Sahebrao has filed suit for possession of present suit property against Kisan Kothalkar having RCS no. 66/2008 and same has been dismissed for default by the court. The said decision of the court is in existence till today. The plaintiff no. 1 filed false Criminal M.A. no. 9/2022 against defendants and the same has been disposed off by the court on 06/03/2024. Therefore, it is evident that plaintiffs are unnecessarily harassing defendants. The defendants are owners and possessors of the suit property and they have taken Soyabean crops in 4 Acre 11 Gunthe land, Corn crops in 2 Acre land and cotton crops in 1 Acre land in the suit property. The husband of defendant no. 1 is in peaceful possession of the suit property since 10/04/1996 till today which is span of more than 27 years. Therefore, the defendants have become owners of the suit property by adverse possession.

9] It is further contended by defendants that, the plaintiffs have suppressed the fact from the court that plaintiff no. 1 has filed suit bearing R.C.S. no. 138/15 for declaration that she is a legally wedded wife of Deceased Sahebrao Salve against Parwatabai Ramaji Adhave and the same has been dismissed by the court on 15/03/2019. The court has observed that plaintiff no. 1 has failed to prove that she is a legally wedded wife of deceased Sahebrao. Therefore, it is evident that plaintiff no. 1 is neither a legally wedded wife of deceased Sahebrao and nor his legal heir. In the Adhar Card of plaintiff no. 1 her birth year mentioned as 1969 and in the Adhar Card of plaintiff no. 2 his birth date is mentioned as 01/01/1955. Therefore, it appears that plaintiffs have filed forged Adhar Cards on record. In the civil suit filed by Sahebrao against defendnats, they have prayed in their written statement to complete the transaction by accepting remaining consideration amount. The proclamation has been issued in the vicinity of Village Pasodi that plaintiffs have sought permission for sale of the suit property. The defendants came to know that plaintiffs have filed application to sought permission to sale the suit property in the office of Deputy Collector, General Administration, Jalna before filing of present suit. Moreover, plaintiffs have executed Visarpawati in favor of Nandabai Sangramsing Mirmot, R/o. Chandol, Tal. and Dist. Buldhana , Afsar Akbar Tadavi and Shameer Jilani Tadavi R/o. near Water Tank, Sidko, Aurangavbad and filed application to obtain

permission by creating false documents. Hence, the defendants prayed to reject the interim injunction application.

10] Heard Ld. Advocate Shri. G. R. Jamdhade for plaintiffs and Ld. Advocate Shri. S. A. Bhagyawant for defendants. The following points crop-up for my consideration on which I record my findings together with reasons there for as under -

<b>Sr. No.</b>	<b>Point For Determination</b>	<b>Findings</b>
1.	Whether the plaintiffs have prima-facie case?	No.
2.	Whether the plaintiffs would suffer irreparable loss if the order of injunction is not passed in her favour?	No.
3.	In whose favour the balance convenience lies?	Defendants
4.	What order?	Application is rejected.

### **REASONS**

11] In support of their case plaintiffs relied on following documents.

- (1) Copy of Adhar Card of Plaintiff no. 1 (Exh. 4/1).
- (2) Copy of Adhar card of Plaintiff no. 2 (Exh. 4/2).
- (3) 7/12 Extract of Gat no. 215 situated at village Pasodi (Exh. 4/3).
- (4) Certified copy Mutation Entry no. 1424 (Exh. 4/4)
- (6) Death Certificate of Sahebrao Salve (Exh. 4/5)
- (7) Copy of 8A Extract of property in Gat no. 215 (Exh. 4/6).

**12]** The defendants have filed the following documents in support of their defense along with Exh. - 16

- (1) Original copy of Visar Pawati executed in favor of Kisan Kothalkar (Exh.16/1)
- (2) Copy Bharna Pawati executed by Sahebrao Salave (Exh.16/2)
- (3) Xerox copy of affidavit filed by plaintiff no. 2 before Tahsildar, Jafrabad (Exh. 16/3)
- (4) Xerox copy of 7B extract in the name Kisan regarding Gat no.215(Exh. 16/4)
- (5) 7/12 extract of Gat no. 215 of the year 2002-2003 to 2015(Exh.16/5)
- (6) 7/12 extract of Gat no. 215 of the year 2023 (Exh.16/6)
- (7) Copy of Exh.1 of RCS no. 66/2008 (Exh.16/7)
- (8) Copy of order below Exh.1 of RCS no. 66/2008 (Exh.16/8)
- (8) Copy of order in Cr.M.A. no. 9/2022 (Exh.16/9)
- (10) Receipts Krushi seva kendra. 2022 (Exh.16/10)
- (11) Copy of Judgment in RCS no. 138/2015 (Exh.16/11)
- (12) Certified Copy of application made to obtain certified copies of Exh.1 along with order, written statement, issues and evidence in RCS no.66/2008 (Exh.16/12)
- (13) The documents obtained by defendants under Right to Information Act from the office of District Collector (Exh.16/13).

**Admitted Facts-**

**13]** It is admitted that suit property was owned by Sahebrao Salave and the property comes under ceiling category. The suit property is mutated in the name of plaintiffs on the 7/12 extract of the suit property.

**As to Point Nos. 1 to 3.**

As reasoning of all these points is dependent on each other I have discussed them under one head.

**14]** The plaintiff is mainly relying on 7/12 extract of Gat no. 215 filed at Exh. 4/3. According to said 7/12 extract the suit property is mutated in the name of plaintiffs. Moreover, as per mutation entry no. 1424 names of plaintiffs is recorded on revenue record of suit property being Successors of Sahebrao Balaji Salave. Said mutation entry appears to be taken as per heirship certificate issued by the court on 26/08/2014. In the namuna no. 8 of the suit property also names of plaintiffs are mutated. The revenue record clearly goes to show that suit property is in the name of plaintiffs. On the basis of said revenue record, ld. Advocate for plaintiffs argued that plaintiffs are owners and possessors of the suit property. However, it is well settled law that, an entry in revenue records does not confer title on a person whose name appears in record-of-rights. "Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. Therefore, the burden is on plaintiffs to

prove their ownership and possession over the suit property apart from revenue entries.

**15]** According to plaintiffs, suit property came to their possession by way of succession after demise of Sahebrao Balaji Salave. The revenue record also goes to show the same. On the contrary according to defendants, the suit property has been sold by Sahebrao Salave in his lifetime to Kisan Tulshiram Kothalkar who is a late husband of defendant no.1 and father of defendant no. 2 and 3. The said transaction took place by execution of Visar Pawati dated 10/04/1996 for consideration of Rs. 55,000/-. Out of said consideration amount Sahebrao received amount of Rs. 15,000/- from Kisan and on the same day gave possession of suit property to him. The defendants have filed on record the Visar Pawati executed by Sahebrao in favor of Kisan at Exh. 16/1. According to said Visar Pawati the possession of suit property has been handed over to Kisan on 10/04/1996 itself. The defendants also have filed on record Bharna Pawati at Exh. 16/2 which goes to show that Sahebrao has received Rs. 13000/- on 21/11/1996 and Rs. 22,000/- on 21/03/1997 from Kisan towards the consideration of sale transaction agreed between them.

**16]** It is admitted fact the suit property comes under the ceiling category of land as it was given by government to Sahebrao for his service in the military. According to defendants Sahebrao has agreed to execute registered sale deed of suit property after obtaining required permission for the sale. However, unfortunately Sahebrao died before obtaining

permission on 29/07/2012. According to defendants. Plaintiff no. 2 filed an affidavit before Tahsildar on 08/10/2013 and agreed to complete the sale transaction after obtaining required permission for sale. The defendants have filed on record said affidavit along with Exh. 16/3. From bare perusal of said affidavit it appears that plaintiff no.2 has admitted possession of defendants over the suit property.

**17]** According to plaintiffs, defendants have no concern with the suit property. However, the defendants have filed on record copy of Exh. 1 of RCS no. 66/2008 and order below it at Exh. 16/7 and 16/8 respectively. From bare perusal of copy of Exh.1 of said suit it appears that it has been filed by deceased Sahebrao against present defendants for recovery of possession of present suit property. From order below Exh. 1 of said suit it appears that said suit has been dismissed for the default on 11/08/2015. All these circumstances go to show that since the life time of deceased Sahebrao the suit property is in possession of defendants. Whether said possession is legal or not that can only be decided after the trial and hearing evidence of both sides. However, prima facie the Visar Pawati on record and the suit filed for recovery of possession of suit property against defendants goes to show that it is defendants who are in possession of the suit property and not the plaintiffs.

**18]** The ld. Advocate for defendants argued that the plaintiff is not a legally wedded wife of deceased Sahebrao, therefore, she has no right in the suit property. He has filed on

record copy of judgment in RCS n. 138/15 which has filed by plaintiff no. 1 against one Parwatabai Ramji Adhave for declaration that she is a legally wedded wife of late Sahebrao Salave. I have carefully gone through said judgment. The said suit has been dismissed by the court on the ground that Parwatabai is a first wife of late Sahebrao. However, the present suit is regarding injunction restraining defendants from causing obstruction to plaintiffs from the use of suit property. Here, at this prima facie stage it is necessary to see whether plaintiffs are in possession of the suit property or not and not whether plaintiff no. 1 is a legally wedded wife of late Sahebrao or not.

**19]** As discussed above apart from pleading of both sides, from the documentary evidence on record it has prima facie come on record that the it is the defendants who have possession of the suit property and not plaintiffs. However, it also necessary to see who will suffer the irreparable loss and in whose favor balance of convenience lies if the injection is granted or refused. According to plaintiffs as defendants were causing obstruction to their peaceful possession over the suit property they filed complaint with police on 09/10/2023 and 12/10/2013 against them. However, the plaintiffs have not filed on record copy of any of such complaints. According to plaintiff on 13/10/2022 when they have been to the suit property for cultivation of Soybean and corn crops defendants came there and threatened to kill them if they try to take produce in the suit property. On the same day at about 5.30 pm accused again obstructed plaintiff from entering in the

suit property. Therefore, plaintiff went to police station, however police asked to file the suit for injection. However, apart from words of plaintiffs, there is no prima facie evidence on record to show that defendants caused obstruction to plaintiffs for entering in suit property and they complained about the same to police.

**20]** The plaintiffs had an option to file affidavit of any adjoining land owner to prove their prima facie possession over the suit property and obstruction at the hands of defendants. However, they have chosen to not to do so in spite of having opportunity. The plaintiffs also have not shown any apprehension of property being damaged or alienated at the hands of defendants. The plaintiffs also have not mentioned whether they will receive any irreparable loss if the injunction is not granted. Therefore, I hold that no irreparable loss would be suffered by plaintiffs if injunction is not granted.

**21]** It is argued by ld. Advocate for plaintiffs that livelihood of plaintiffs is dependent on the suit property. If the injunction is not granted plaintiffs won't be able to take yield from the suit property and they will have to suffer from starvation. He also argued that, the plaintiffs have taken loan for cultivation of the suit property and they were going to repay said loan from the yield in the suit property. Therefore, he prayed to grant the interim injunction in favor of plaintiffs. On the contrary the ld. Advocate for defendants argued that, suit property is in possession of defendants and they have taken crops in it. The defendants have filed on record receipts of purchase of cotton

seeds, soybean seeds and other seeds to show that they are the one who are cultivating in the suit property. The Ld. Advocate for defendants argued that the plaintiffs are not in need of suit property for the cultivation purpose but they are about to sale the suit property. He placed his reliance on the documents obtained under Right to Information Act which are filed along with Exh. 16/13.

**22]** I have carefully gone through said documents. It appears that, the plaintiffs have applied for obtaining permission to sale the suit property. The public notice regarding the same has been issued. There is medical certificate along with said documents which shows that the plaintiff no.1 is not medically fit for farming. Moreover, there are non-objection certificates of people who have interest in the suit property. Plaintiff no. 2 has given his consent letter to plaintiff no.1 for the sale of the suit property. There is one possession Visar Pawati along with said documents regarding suit property, executed by plaintiffs in favor of persons namely Afsar Akbar Tadavi and Sameer Jilani Tadavi. The said transaction has been taken place before filing of the present suit, however the plaintiffs have not uttered a word regarding the same in their plaint. All these documents prima facie shows that the plaintiff has not come before this court with clean hands. The documents at Exh. 16/13 prima facie shows that plaintiffs have intentions to sale the suit property and they are not in need of the same for the cultivation purpose. On the contrary nothing is on record to show that defendants are not

cultivating in the suit property and there is some danger to the nature of suit property at the hands of defendants. Therefore, in my opinion the balance of convenience lies in favor of defendants.

23] The plaintiffs have no prima-facie case. In such a situation, the plaintiff would not suffer irreparable loss if injunction is not granted in their favor. For the same reasons balance of convenience lies in favor of the defendants. Therefore, I answer the point nos. 1 and 2 in the negative and the point no. 3 in the favor of defendants and pass the following order.

**ORDER**

The application at Exh. 5 is rejected with costs.

Sd/-xxx

(Aparn D. Gade )

Civil Judge, Jr. Division,  
Jafrabad

Date- 03/04/2024

**CERTIFICATE**

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

Sd/-xxx

(Ahemad I.Shaikh)  
Stenographer.

Date 08/04/2024