

MHKO010001152026



**Misc.Civil Appeal No.9/2026**  
**Order below Exh.1 and stay application Exh.5**

This appeal is directed against the order dated 01-01-2026 passed below temporary injunction application at Exh.5 in Reg.Civil Suit No.192/2023. The application is rejected.

02. Learned advocate for the appellants has submitted that by way of order dated 27-11-2023, passed below Exh.50, the defendants were directed not to oust to the plaintiffs from the suit property. This relief was in force till decision of Exh.5. The learned trial Court has rejected to extend the order below Exh.50 for further 30 days. He further submitted that by way of two registered mortgage deeds dated 17-01-1974 and 5-2-1978 the suit properties to the extent of 25 aana and 25 aana were mortgaged in favour of Vilasrao and Shankarrao i.e. father of deceased plaintiff no.1 and plaintiff no.2. He further submitted that Reg.Civil Suit No.235/1983 was interse between the defendants. The plaintiffs were not parties to that suit. The suit was for partition. It was decreed and in pursuance of the same the defendants are trying to disturb possession of the plaintiffs. He further submitted that since 1974 names of the plaintiffs' father are appearing in the 7/12 extract. He submitted further that by taking advantage of order below Exh.5 if possession of the plaintiffs is disturbed, they will suffer irreparable loss. He prayed

for granting ex-parte injunction against respondents 1 to 18.

03. There is a caveat of respondents 14 to 26.

04. Learned advocate for the appellants submitted that respondents 15 to 26 neither filed say to the temporary injunction nor written statement.

05. During the course of arguments learned advocate for the appellants referred various documents, including the mortgage deeds.

06. Both the mortgage deeds appeared to be executed by Ganpati Rama Nirmale and Krushna Rama Nirmale. In mortgage deed dated 17-04-1974 the mortgagors have stated in favour of the mortgagees that they were handing over possession of 4 aana share out of survey no.111. In mortgage deed dated 9-2-1978 the mortgagors have stated in favour of the mortgagees that they were handing over possession of 4 aana share out of survey no.111.

07. After careful perusal of both the mortgage deeds there is reference of handing over possession but four boundaries of 4 + 4 aana share in both the mortgage deeds are not mentioned. In mortgage deed dated 9-2-1978 there is reference of earlier mortgage deed but there also four boundaries are not mentioned. Out of survey no.111 (presently Gat No.320) which portion was handed over to the Vilas Chougule and Shankarrao Chougule on the day of execution of mortgage deeds is not certain. In such situation, granting of ex-parte injunction will lead to ambiguity and chaos. No case is made out to grant ex-parte

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injunction without hearing both the parties on merit. Thus, following order is passed -

**Order**

1. Issue notices to the respondents, R/o.10-02-2026.
2. E.P and S.B. allowed, if prayed.

Date : 17/01/2026

(D. V. Kashyap)  
District Judge- 2, Kolhapur.