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**IN THE COURT OF AD-HOC DISTRICT
JUDGE-1, KOLHAPUR.**

(Before Smt. S. Y. Deshmukh)

Misc. Civil Appeal No. 187/2025

Exh. No. /A

- 1] Uday Sadashiv Vadam
A/a 53 Yrs., Occu.- Agriculturist,
R/o Mazgaon (Malwadi), Tal. Panhala,
Dist. Kolhapur.
- 2] Amar Sadashiv Vadam
A/a 55 Yrs., Occu.- Agri. and business
R/o. As above. .. Appellants
District Kolhapur. (Ori.Deft.No.1 & 2)
- Vs.
- 1] Avinash Ramchandra Khadke
A/a 53 Yrs., Occu.- Agriculturist
R/o Mazgaon, Tal. Panhala,
Dist. Kolhapur.
- 2] Vijaya Ramchandra Khadke
A/a 80 Yrs., Occu.- Household,
R/o As above.
- 3] Sandesh Ramchandra Khadke
A/a 49 Yrs., Occu.- Agriculturist .. Respondents
R/o As above. (Ori.Plttf.No.1 to 3)

- 4] Mangesh Sadashiv Vadam
A/a 58 Yrs., Occu.- Agriculturist ... Respondent
R/o As above. (Ori.Deft. No.3)

**Appeal under Order 43 Rule (1)
of Code of Civil Procedure.**

Mr. M.P.Jadhav, learned advocate for the appellants.
Mr. A.D.Bhalkar learned advocate for the respondents.

J U D G M E N T

(Delivered on 30-04-2026)

1] This is an appeal against the order passed below Exh.5 by the Learned Civil Judge Junior Division, Kale-Kheriwade in Regular Civil Suit No.80/2025 dated 01-11-2025. Being aggrieved by order below Exh.5 this appeal has been filed by appellants who are the defendants in Regular Civil Suit No.80/2025.

The parties in appeal are referred by their original nomenclature for the sake of convenience.

2] **The case of the plaintiff in short is as under :-**

The plaintiffs are owners of land admeasuring 10.80R in Gat No.16 of village Mazgaon, Taluka Panhala, District Kolhapur and four bounded by, on eastern side property of Ganpati Avba Chougale, on the western side property of Ganu Bala Vichare, on southern side property of Jagubai Sambhaji Kamble and on northern side property of Jaysing Yashwant Patil and Khandu Bala Powar. The plaintiffs

are owners and possessors of this property. This being so, the defendants illegally by encroaching upon the suit property are doing RCC construction in area admeasuring 20 ft. x 43 ft. and which is four bounded by, on eastern side property of Kautik Mahipati Bhomkar, on western side property of Ganesh Vichare, on southern side road and on northern side the remaining land of plaintiffs. The said property is the subject matter of the dispute and so referred as 'suit property'.

3] That, Shivaji Ishwara Kamble on 05-07-2005 by registered exchange deed bearing No.1754/2005 and by correction deed bearing No.1848/2005 has transferred the property in Gat No.16 admeasuring 10.80R in favour of plaintiffs. By mutation entry No.3247 the name of plaintiffs are mutated upon revenue record as owner and till today the property is in possession of the plaintiffs.

4] The defendants don't have any right or interest in the suit property. The defendants illegally without permission of plaintiffs encroached upon the suit property and have dug pits in the suit property for RCC construction. When the plaintiffs inquired the defendants, that time they informed that the suit property was purchased earlier by them and as such they are doing construction in Gat No.16 (old survey No.106). The plaintiffs asked the defendants to get measure the property and after fixation of boundaries to construct

upon it. But the defendants have not paid any heed and even have brought construction material on the suit property. The defendants are having political support. The 7/12 extract of Gat No.16 doesn't bearing any entry of the name of the defendants. The defendants don't have ownership or possession in Gat No.16. Thus the plaintiffs filed the Regular Civil Suit No.80/2025 before Ld. Trial Court for relief of perpetual injunction to restrain the defendants from doing encroachment and erecting construction in Gat No.16 and not to disturb the possession of plaintiffs upon the suit property. Also filed interim injunction application and claimed interim relief to restrain the defendants from doing encroachment and construction on the suit property, to not to change the nature of the suit property and also not to disturb the possession of plaintiffs.

5] The defendants have resisted the suit by filing their say on Exh.21. The defendants have denied that they have done any encroachment or illegal construction as alleged. The defendants have come with specific contention that their ancestor i.e. their grandfather Dhondi Ravji Vadam on 16-01-1968 had purchased land admeasuring 3R in Gat No.16 (old Survey No.106) by registered sale deed No.42/1968 having four boundaries - on eastern side the land of defendant, on western side Ganpati Bala Vichare, on southern side government road and on northern side the land of defendant. As such the defendants are utilizing the said

property being owner and possessor of the same. In the said property the ancestor of defendants had constructed house in the year 1970-71. In the said house the grandfather of defendants and thereafter their father and defendants have resided as owner and possessor of the same. After construction of said house every year its property tax, water tax, electricity bill is paid by them. As the ancestor of the defendants had constructed house in the year 1970-71 so the house was in dilapidated condition and so the defendants want to do new construction on that land.

6] Further the defendants have come with the contention that the suit property or property in respect of which relief is sought is not identifiable, as such suit is not tenable one. The property is mutated in the name of Dhondi Ravji Vadam by mutation entry No.5460. The defendants are in possession of the suit property from their ancestors i.e. from near about 60 to 70 years. The plaintiff had never raised any objection to the defendants earlier. It is just vaguely pleaded by plaintiffs that the defendants have done encroachment. But have not mentioned the direction or portion of encroachment. Neither any evidence of encroachment is filed on record. As such the defendants have prayed to reject the application.

7] After appreciating the material on record, the Ld. Trial Court has allowed the interim application below Exh.5

and restrained the defendants from carrying out construction in the suit property and also restrained the defendants from changing the nature of suit property and causing obstruction to the possession of the plaintiffs. Being aggrieved by the said order original defendants have challenged the order.

8] Heard learned counsel Mr. M.P. Jadhav for the appellants and learned counsel Mr. A.D. Bhalkar for the respondents.

9] Upon rival pleadings of the parties, the following points arise for my determination. I have recorded my findings with reasons thereon.

Sr. No.	Points	Findings
1.	Whether the plaintiffs have prima facie case to grant temporary injunction as prayed ?	No
2.	Whether the balance of convenience lies in favour of plaintiffs ?	No
3.	Whether the plaintiffs will suffer irreparable loss in the event of not granting temporary injunction ?	No
4.	Whether the impugned order passed below Exh.5 in Regular Civil Suit No.80/2025 on 01-11-2025 needs interference ?	Yes

5.	What order ?	Order below Exh.5 in R.C.S. No.80/2025 is hereby set aside.
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REASONS

As to point No.1 to 4 :-

10] The grant of an interim injunction is a discretionary and equitable remedy governed by well settled principles. The core objective is to preserve the property until the final disposal of the suit, preventing irreparable harm while ensuring the defendant is not unfairly prejudiced. The applicant must satisfy the court the three parameters i.e. prima facie case, balance of convenience and irreparable injury. A prima facie case must simply demonstrate a triable issue or a serious question to be tried. There must be a bonafide dispute raising substantial questions that needs investigation and a determination on merits. For balance of convenience, the court weighs the comparative mischief or inconvenience, whereas an irreparable injury means that injury which cannot be adequately compensated by monetary damages.

11] Herein the plaintiffs have come with the case that they are owner of the suit property on the basis of registered exchange deed No.1754/2005 dated 05-07-2005 and

registered correction deed No.1848/2005. The plaintiffs in support of their contention have filed on record the photo-stat copy of exchange deed executed by Shivaji Ishwara Kamble in favour of the plaintiffs, photo-stat copy of correction deed dated 16-07-2005, 7/12 extract etc. By the said correction deed four boundaries mentioned in the sale deed are corrected. On the basis of exchange deed bearing No.1754/2005 dated 05-07-2005 mutation is also recorded, but the defendants have made encroachment and started raising construction on suit property, against which they have filed present suit of injunction simpliciter.

12] In short according to the plaintiffs they are owner and possessor of land admeasuring 10.80R in Gat No.16 of village Mazgaon, Taluka Panhala, District Kolhapur and which is having four boundaries as mentioned in the application. Now according to plaintiffs, the defendants by encroachment are doing construction in the said Gat No.16 to the extent of 20 x 43 ft. having four boundaries, as described in para 1 of application. According to plaintiffs the portion of alleged encroachment bears different four boundaries and the alleged encroachment portion is termed as suit property.

13] On the other hand the defendants have claimed in their pleading that their grandfather Dhondi Ravji Vadam has purchased 0.3R portion in Gat No.16 of village Mazgaon, Taluka Panhala, District Kolhapur (having four boundaries as

described in para No.10 of their written statement/say) by way of registered sale deed in the year 1968 and since then they are residing and in actual possession of the property. The defendants in support of their contention are also relying upon registered sale deed No.42/1968, mutation entry, assessment extracts etc.

14] Now if the pleading and rival claims of parties are considered it appears that, there is no prima facie material of encroachment except rough map of plaintiffs and their contention to that effect. Thus, at present there is nothing on record to show that the defendants have done alleged encroachment upon the suit property. Here the plaintiffs have come with the case that, they are exclusive owner on the basis of exchange deed registration No.1754/2005 but the defendants' contention appears to be that they are in possession of property in Gat No.16 to the extent of 0.3R since their ancestor on the basis of registered sale deed No.42/1968 which appears to be executed in the year 1968. So, this is not a case of simpliciter encroachment and both parties are claiming possession on basis titles. The suit of plaintiffs i.e. R.C.S.No.80/2025 is for simpliciter injunction. So in this situation the claims of both sides cannot be decided without adjudicating the claims of title which of-course cannot be decided in suit for simpliciter injunction.

15] So in this facts, reference can be made to the case of Hon'ble Apex Court in **T. V. Ramkrushna Reddy Vs. M. Mallappa and another Civil Appeal No.5577 of 2021** where the question before the Hon'ble Apex Court was that, whether a suit simpliciter for permanent injunction without claiming declaration of title, as filed by the plaintiff was maintainable in which the Hon'ble Apex Court in para No.9 has observed that, "The position has been crystalised by this Court in the case of **Anathula Sudhakar v. P. Buchi Reddy (dead) by L.Rs. And others** in paragraph 21, which read thus:

"21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant

sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu The-var [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will inquire into title and cases where it will refer to the plaintiff to a

more comprehensive declaratory suit, depending upon the facts of the case.”

In the above case the Hon'ble Apex Court has held that, a suit for perpetual injunction without a prayer for declaration of title is not maintainable when the plaintiff's title is genuinely disputed by the defendant or is under the cloud. The core reasoning is that a court cannot grant the relief of an injunction if it would have to decide a complicated question of title without a proper suit for declaration.

16] Thus, a simpliciter injunction suit may be maintainable in trivial trespass cases but simpliciter injunction suit is not maintainable when the serious or complex cloud is cast over the plaintiff's title. In such cases the plaintiff must file a comprehensive suit seeking a declaration of title. In present suit the plaintiff is claiming title to his 10.80R land in Gat No.16 including the suit property and contending defendants to have caused encroachment and doing construction upon suit property, whereas the defendants are denying this fact and claiming ownership upon 0.3R portion in Gat No.16 on basis of title. So here in this case complex questions of fact and law relating to title are raised which cannot be decided in a mere injunction suit.

17] Further the plaintiffs have not brought any material on record in respect of alleged encroachment. So in

above circumstances it cannot be said that plaintiffs have established prima facie case in their favour. When plaintiffs failed to establish prima facie case in their favour then no question of balance of convenience and irreparable loss arises. Further I hold that the finding recorded by Ld. Trial Court is erroneous one and needs interference. Accordingly, I answer point No.1 to 3 collectively in negative and point No.4 in affirmative and in answer to point No.5 pass following order :-

ORDER

1. Appeal is allowed as follows.
2. Order dated 01-11-2025 passed below Exh.5 in Regular Civil Suit No.80/2025 by Ld. Civil Judge Junior Division, Kale-Kheriwade is hereby set aside and application Exh.5 stands rejected.
3. Under given circumstances parties to bear their own costs.
4. Ld. Trial court be informed accordingly.
(Dictated and pronounced in open Court)

Dt: 30-04-2026
Kolhapur.

(Smt. S. Y. Deshmukh)
Ad-hoc District Judge-1,
Kolhapur.