

MHKO070021462025

**ORDER BELOW EXH.38 IN SPECIAL CIVIL  
SUIT No.91/2025.**

Shubhangi R. Shinde

Vs.

Sulochana S. Gadkari and others.

Defendants Nos. 1 to 3 have filed the present application seeking permission to send the sugarcane crop cultivated on the suit property for crushing in their name at the sugar factory, namely, Deshbhakt Ratnappanna Kumbhar Panchganga Sahakari Sakhar Karkhana, Ichalkaranji. The plaintiff has filed her say (Exh.41) and has raised objection to the said application.

2. Heard both sides and perused the record. On perusal thereof, it appears that the plaintiff has filed the present suit for specific performance of the agreement to sell dated 30.08.2023, allegedly executed by defendant Nos. 1 to 3 in her favour. In the present application, defendant Nos. 1 to 3 have stated that they cultivated a sugarcane crop on the suit property. On 20.12.2025, they harvested the said crop and intended to transport it for crushing to Deshbhakt Ratnappanna Kumbhar Panchganga Sahakari Sakhar Karkhana, Ichalkaranji, using two trolleys. However, taking advantage of the status quo order passed on the application (Exh.17), the plaintiff, with the assistance of Jaysingpur Police Station, allegedly threatened defendant Nos. 1 to 3 and the tractor owners. Consequently, the tractor owners did not transport the sugarcane for crushing and instead dumped it in front of their house. In view of these circumstances, defendant Nos. 1 to 3 have filed the present application.

3. On the contrary, the plaintiff has alleged that the contentions raised by defendant Nos. 1 to 3 in the present application are contrary

to their pleadings. It is contended that defendant Nos. 1 to 3 do not possess any document to show that they have cultivated the alleged sugarcane crop. Hence, the plaintiff has prayed for the rejection of the present application and, alternatively, has requested that the sugarcane be sent for crushing in the name of the Court Commissioner at Deshbhakt Ratnappanna Kumbhar Panchganga Sahakari Sakhar Karkhana, Ichalkaranji, and that the proceeds thereof be deposited in Court.

4. The plaintiff has alleged in the suit that defendant Nos. 1 to 3 are the owners of the suit property. It appears that defendant Nos. 1 to 3 have filed their written statement (Exh.25) and contested the suit. In their written statement, defendant Nos. 1 to 3 have specifically pleaded that they are not the owners of the suit property and that they are not in possession thereof. In particular, in Paragraphs 10 and 11, they have stated as follows:

१०. तसेच सदर दावा मिळकतीमध्ये यातील प्रतिवादी क्र.१ ते ४ यांची कधीही कब्जे वहिवाट नव्हती. तसेच सदर गट नं.१०३७ ही मिळकत प्रतिवादी यांचे मालकीची नव्हती व तिचे कब्जे वहिवाटीशी त्यांचा कोणताही संबंध नव्हता व नाही.

११. मौजे दानोळी येथील गट नं.१०३७ या मिळकतीचे सात बारा पत्रकी यातील प्रतिवादी क्र.१ ते ४ यांनी मूळ जमीन मालक गणपतराव आप्पासो जगताप वगैरे यांचेशी संगनमत करून अल्का विलास गडकरी व तिची मुले सुजाता, सुजित व वैशाली यांच्या अपरोक्ष कूळ कायदा कलम ३२-ग दानोळी ४४/२३ चे कामी संगनमताने दि.०३.०५.२००३ चे सुमारास बनावट तडजोडनामा करून घेऊन सदर मिळकतीमध्ये कब्जा वहिवाट नसताना सात बारा पत्रकी आपली नावे बेकायदेशीरपणे दाखल केली होती.

5. The defendant Nos.1 to 3 have further pleaded in the plaint that-

गट नं.१०३७ मध्ये विलास शंकर गडकरी यांची कूळ नात्याची कब्जे वहिवाट होती व त्याप्रमाणे त्यांचे नावाची नोंद सात बारा पत्रकी झाली होती व त्यांचे पश्चात सात बारा पत्रकी झालेल्या नोंदी बेकायदेशीर असल्याने सदर बाबत अल्का विलास गडकर व त्यांची मुले यांनी महसूल न्यायाधीकरण, कोल्हापूर यांच्याकडे कोर्टात टेनन्सी रिव्हिजन अर्ज क्र.२३/२५ दाखल केला असून तो प्रलंबित आहे व त्यांची गट नं.१०३७ मध्ये कब्जे वहिवाट

होती व आहे. ते सदर मिळकतीमध्ये सालोसाल कष्टमशागत करत, सोयाबीन, भुईमुंग, ऊस इत्यादी पिके घेत आले असून त्यामधील ऊस आपल्या नावे गळीतास पाठविले होते व आहे. केवळ सदर मिळकतीचे सात बारा पत्रकी प्रतिवादी यांचया नावाची ही पोकळ स्वरुपाची असल्याने त्यांना कोणताही कायदेशीर हक्क व अधिकार प्राप्त होत नव्हता व नाही. त्यामुळे सदरचा दावा नामंजूर होणेस पात्र आहे.

6. On a plain reading of the above contentions, it is clear that defendant Nos. 1 to 3 specifically pleaded in their written statement that they are neither owners nor possessors of the suit property. Alka Vilas Gadkari and her children are in possession of the same and they used to cultivate the sugarcane and other crops thereon. By way of the present application, the defendants have now alleged that they are in possession of the suit property and have produced certain documents such as sugarcane weighting receipts and order passed on interim injunction application in RCS No. 233 of 2018 to show such possession. However, it is well settled that the defendants cannot adduce oral or documetary evidence regarding facts not pleaded in the written statement as well as contrary to their pleading. Likewise, a defendant cannot alter the defence taken in the written statement and can file an interim application based on contrary facts. Therefore, the contentions raised by defendant Nos. 1 to 3 as well as documents produced by the defendants cannot be relied upon.

7. As discussed above, defendant Nos. 1 to 3 have specifically pleaded in Paragraph Nos. 9 to 12 of their written statement that they are neither the owners nor the possessors of the suit property. However, in Paragraph No. 13, the defendants have stated that - “सदर दावा मिळकत ही प्रतिवादी यांचे सामाईक कब्जे वहिवाटीस होती व आहे. त्याप्रमाणे त्यांचे नावाची कागदोपत्री नोंद होती व आहे.” The said averment is clearly contrary to the specific defence taken in Paragraph Nos. 9 to 12 of the written statement. It therefore, appears that the aforesaid pleadings of the

defendants are mutually contradictory and self-destructive in nature. The said pleas cannot stand together. In that regard the Hon'ble Supreme Court in the case of **R.N. Gosain A v. Yashpal Dhir, AIR 1993 SC 352**, it is held that -

Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage".

Thus, both the statements of the defendants can not be relied on. Consequently, by way of filing interim application, defendant Nos.1 to 3 cannot claim possession over the suit property which is not consistent with their written statement. Furthermore, prior to filing the present application, the defendants have not offered any explanation for the contradictory and self-destructive pleadings taken by them in the written statement. Therefore, the defendants cannot be permitted to take alleged plea of possession in the present application.

8. Defendant Nos. 1 to 3 have themselves pleaded that Alka and her children are co-sharers in the suit property and are in possession thereof. Admittedly, they are not parties to the present proceedings. In such circumstances, if defendant Nos. 1 to 3 are permitted to send the sugarcane crop cultivated on the suit property for crushing exclusively in their own name, the same may cause prejudice to the alleged rights and interests of Alka and her children. Therefore, it would neither be legal nor proper to permit defendant Nos. 1 to 3 to send the sugarcane crop for crushing in their name.

9. In her say (Exh.41), the plaintiff has, in the alternative, prayed that the alleged sugarcane crop be sent for crushing in the name of a

Court Commissioner. However, no such specific prayer has been made by the defendants in the present application. Moreover, as discussed above, there are other co-sharers in the suit property who are not party to the present suit. No opportunity of hearing has been afforded to them. So also, the defendants have pleaded that they are not the owners of the suit property and also not in possession of the same. In such situation, it is not legal and proper to pass any order directing that the sugarcane crop be sent for crushing solely in the name of defendant Nos. 1 to 3. Thus, the application is liable to be rejected. In the result, I pass following order.

**ORDER**

The application (Exh.38) is rejected.

Jaysingpur.  
Date: 13.02.2026.

**( P. A. Patil )**  
Jt. Civil Judge Senior Division,  
Jaysingpur.