

MHKO080000292026



Presented on : 08/01/2026

Registered on : 08/01/2026

Decided on : 28/04/2026

Duration : Y M D
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IN THE COURT OF DISTRICT JUDGE - 1 GADHINGLAJ,
DIST. KOLHAPUR
(Presided over by M. A. Shinde)

Misc. Civil Appeal No. 01/2026
Exh. No. 50/A

- 1) **Mahadev Jotiba Patil (D. H.)**
 - a) **Malu Mahadev Patil**
Age 64 Years, Occu. - Housewife,
 - b) **Abhay Mahadev Patil through POA**
holder **Shirish Sadashiv Patil,**
Age 30 Years, Occu. - Agriculturist.
- 2) **Sadashiv Jotiba Patil (D. H.)**
 - a) **Sindhu Sadashiv Patil,**
Age 59 Years, Occu. - Housewife
 - b) **Shirish Sadashiv Patil,**
Age 30 Years, Occu. - Agriculturist.
All R/o. Dugunwadi, Tal. Gadhinglaj,
Dist. Kolhapur.

..Appellant
(Orig. Plaintiffs)

Versus

- 1) **President, Devasthan Sthanik Sallagar**
Samitee,
Dugunwadi, Tal. Gadhinglaj, Dist.
Kolhapur.

..Respondent
(Orig. Defendant)

Appearance :-

Ld. Advocate, Shri. A. R. Mehta for the Appellants.

Ld. Advocate, Shri. P. M. Patil for the Respondent.

J U D G M E N T
(Delivered on 27th April, 2026)

1. The present miscellaneous civil appeal is moved by the original plaintiffs in R.C.S. No. 08/2025 being aggrieved and dissatisfied with the findings recorded by the Ld. Civil Judge, Senior Division, Gadhinglaj (“Ld. Civil Court” for short) below Exh.5 dated 18/02/2025. For the sake of convenience parties are referred to as per their nomenclature in the suit.

2. It is the case of the plaintiffs that, an agricultural land admeasuring 10R out of area admeasuring 1.03 HR situated in Block No. 135 Mouje Dugunwadi, Tal. Gadhinglaj, Dist. Kolhapur is the subject matter of present litigation (herein after refer to as “the suit property” for short).

(2.1) Since inception the suit property was originally in possession of forefathers of the plaintiffs. The plaintiffs are taking seasonal crops in it. The defendant is local committee of Shri Lakshmi Devasthan. The defendant has moved an application dated 26/08/2024 to the Ld. Administrator, Devasthan Samitee, Paschim Maharashtra, Kolhapur (herein after refer to as “the Ld. Administrator” for short) The defendant is trying to make a construction in the suit property which is violation of Section 83 of Maharashtra Land Revenue Code, 1966 (herein after refer to as “MLRC” for short).

(2.2) Since 1944/45 the forefathers of plaintiffs are cultivating the suit property. They have paid yearly rent to the Devasthan Samitee. The Ld. Administrator passed order dated 06/12/2024 which is in violation of principles of natural justice (herein after refer to as “the impugned order” for short). Therefore, the impugned order needs

to be stayed.

(2.3) Therefore, the plaintiffs have prayed to stay the impugned order passed by the Ld. Administrator and perpetual injunction against the defendant for not creating any construction in the suit property.

(2.4) Plaintiffs have also filed an interim injunction application (Exh. 5) seeking urgent reliefs against the defendant. The plaintiffs have claimed prima facie case, balance of convenience and irreparable loss in their favour and therefore, prayed to allow the application.

3. The defendant has appeared in the case and filed its say/written statement at Exh.35 and opposed the suit and the interim application. It has contended that, the suit property is owned by Shri Lakshmi Devasthan. The suit property was allotted by the Ld. Ld. Administrator by the impugned order dated 06/12/2024. The Ld. Administrator has given opportunity of hearing to both the parties and then passed the impugned order.

(3.1) The plaintiffs are owned 6 acre and 38 *gunthe* land. The family of plaintiffs is not depending upon the suit property. The plaintiff No. 1B is a captain in Merchant Navy and plaintiff No.2B is serving at CPT, Mumbai. Plaintiff No.1 is pensioner. They are settled in Mumbai and their annual income is 60 to 70 lakhs. More so, they are not cultivating the suit property personally. The suit property is allotted for construction of temple by the Ld. Administrator to the defendant. The Lakshmi Mandir Devasthan is a registered trust. The suit property is owned by the Trust which is under the control of Paschim Maharashtra Devasthan Samitee. Therefore, submitted that, the suit is devoid of merit. Interim injunction application (Exh.5) is not tenable. Hence prayed to reject the same.

4. The record shows that, on perusal of entire record and

hearing both the parties the Ld. Civil Court is pleased to reject the application (Exh.5) on 18/02/2025. Therefore, being aggrieved and dissatisfied with the said findings the original plaintiffs have moved the present miscellaneous civil appeal challenging the findings recorded by the Ld. Civil Court on the ground more precisely mentioned in the appeal memo.

5. Perused the record. Heard both the parties. Following points arise for my determination and my findings thereon are recorded as under :-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiffs prove prima facie case?	In the negative.
2)	Whether the balance of convenience lie in favour of the plaintiffs?	In the negative.
3)	Whether the plaintiffs will suffer irreparable loss, if interim injunction order is not passed in his favour?	In the negative.
4)	Whether the impugned order (Exh.5) passed by the Ld. Civil Court on 18/02/2025 in R.C.S. No. 08/2025 requires interference by this Court in this appeal?	In the negative.
5)	What order?	Appeal is dismissed with costs.

REASONS

As to Point Nos.1 to 4 :-

6. The Ld. Civil Court in the impugned order below Exh.5 has taken a view that, the plaintiffs have failed to prove prima facie case, as the impugned order passed by the Ld. Administrator after hearing the objections raised by the plaintiffs and thereafter, the possession of the suit property was given to the defendant. The

impugned order is not challenged and therefore, is in force and thus, the Ld. Civil Court has rejected the application (Exh.5).

7. Assailing the said order the Ld. Counsel, Shri. A. R. Mehta for the appellants has submitted that, the Ld. Civil Court has not properly considered facts and law in their proper perspective. The Ld. Civil Court ought to have considered the longstanding possession of the plaintiffs on the suit property. The possession of the plaintiff in respect of the suit property was taken highhandedly and therefore, any construction activity on the part of the defendant is totally illegal. Therefore, he submitted that, if the construction of temple is completed the plaintiffs will lose the possession of the suit property permanently and the very object of filing of present suit will be frustrated. He further submitted that, he has moved an amendment application seeking amendment of the plaint by incorporating relief of declaration challenging the impugned order passed by the Ld. Administrator. Therefore, he finally prayed to allow the present appeal. During his course of arguments he has filed various documents on record relating to the suit property and relied on following case laws :

- i) *Sulochana Sahoo Vs. Raghunath Sahoo and Another 2025 Legal Eagle (ORI) 378.*
- ii) *Mohammed Imran Vs. Imtiyaz Ahmed 2026 Legal Eagle (KAR) 377.*
- iii) *Harishankar Vs. Satyaprakash AIR 1982 Raj. 183*
- iv) *State of Maharashtra Vs. Pravin Kamdar AIR 2000 SC 1099.*
- v) *Ajudh Raj Vs. Moti Mussadi AIR 1991 SC 1600.*
- vi) *Grampanchayat of village Naulakh Vs. Ujagar Singh AIR 2000 SC 3272.*
- vii) *Yashpal Vs. Grampanchayat Rajheri 2018 Legal Eagle (PHHC) 971.*

- viii) *Ambika Construction Company Vs. Union of India 2024 Legal Eagle (BOM) 1891.*
- ix) *Pani Devi Vs. Board of Revenue 2026 Legal Eagle (Raj.) 126.*
- x) *Dhulabhai Vs. State of Madhya Pradesh AIR 1969 SC 78.*
- xi) *Eknath Yadav Vs. Ganapatrao Dhavan 2006(2) Bom. C.R. 738.*
- xii) *Laxmi Narayan Temple Vs. Laxman Chandore AIR 1970 Bom. 23.*
- xiii) *Janardan Khomane Vs. Eknath Yadav AIR online 2019 SC 2080.*
- xiv) *Chhatrapati Charitable Devasthan Trust Vs. Parisa Bhoska AIR 1979 Bom. 218.*
- xv) *Kerabai Jadhav Vs. Pandurang Patil 2004 (4) Mh.LJ 169.*
- xvi) *Maharval Khevaji Trust Vs. Baldevdas AIR 2005 SC 104.*

8. On the other hand, the Ld. Counsel, Shri. P. M. Patil has supported the impugned order by pointing out the various mutation entries in respect of the suit property. He has also filed on record the progress made in respect of the construction of the temple in the suit property and submitted to dismiss the appeal with costs. During his course of arguments he has filed various documents relating to the suit property and relied on *Govind Vs. Pundlik (1996(2) Mh.LJ 162)*.

9. On perusal of the entire record it appears that, the defendant is the *Upsamitee* of Shri Lakshmi Devasthan, Dugunwadi and the land in Block No. 135 admeasuring 1.03 HR is owned by the Devasthan. The defendant was intending to construct a temple in the suit property therefore, has approached to the Ld. Administrator and sought 20R land from Block No. 135. The Ld. Administrator has given opportunity of hearing to both the parties and granted 10R land out of 1.03 HR land in Block No. 135 to the defendant to construct temple and hall by his impugned order dated 06/12/2024. The plaintiffs have grievance that, the suit property including the remaining land in Block

No. 135 was in possession of their forefathers since 1944. They are continuously paying yearly rent to the defendant. They are tenant of the suit property. Therefore, defendant has no authority to make any construction activity in it.

10. On the other hand, the defendants have submitted that, in 1961 a *Kabuliyatnama* was executed wherein forefathers of the plaintiffs have been given permission to cultivate the suit property and they have given undertaking to handover the possession of it without any objection after the lapse of period mentioned in the *Kabuliyatnama* (Paper book page No. 133). The contents in the *Kabuliyatnama* are admitted to both the parties. It is also matter of record that, even thereafter the forefathers of the plaintiffs and at present the plaintiffs are continuously in possession of land in Block No. 135. It is also matter of record that, after passing impugned order by the Ld. Administrator, the possession of the suit property is handed over to the defendant and construction of the temple is nearer to completion.

11. The sum and substance of the case laws referred to by the Ld. Counsel Shri. A. R. Mehta for appellants is as under,

i) For entertaining the prayer of temporary injunction pending the lis in terms of the provisions of order 39 Rule 1 and 2, CPC, the three essential things i.e. prima facie case, balance of convenience and irreparable loss are to be looked into essentially.

ii) Trial Court cannot conduct a 'mini-trial' or record final findings on merits at the interlocutory stage as if amounts to jurisdictional error.

iii) There is no need to seek declaration about invalidity of the documents.

iv) If the order has been passed without jurisdiction, the same can be ignored as nullity, that, is non – existent in the eye of law and it is not necessary to set it aside.

v) *In order to contend in a latter suit or proceeding that an earlier judgment was obtained by collusion, it is not necessary to file an independent suit for a declaration as to its collusive nature or for setting it aside, as a condition precedent.*

vi) *A decree passed without jurisdiction is a nullity and can be contested at any stage, including execution.*

vii) *Where the statute gives a finality to the orders of the special tribunals the civil courts jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*

viii) *Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.*

ix) *In order for trust to claim exemption under section 88-B trust must be registered before 1-4-1957. If trust not registered on 1-4-1957, tenant would become deemed purchaser and ownership vested in him on 1-4-1957 could not be divested by subsequent registration of trust.*

x) *Unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to multiplicity of proceedings.*

12. On the basis of the above ratio the Ld. Counsel Shri. A. R. Mehta has submitted that, in order to seek execution of civil rights relating to property of an individual, the jurisdiction of civil court is not barred. He also pointed out that, the plaintiffs being tenant of the suit property since 1943/44 the provisions of sections 79(A), 84, 841A of Bombay Land Revenue Code, 1869 were applicable to the suit property and at present section 4-A, 4-B, 32, 88-B of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (herein after refer to as “the MTAL Act” for short) are applicable to the suit property and therefore, when the plaintiffs are tenants and the present defendant Trust admittedly registered after 01/04/1957 and therefore,

ownership of the land wasted with the plaintiffs in view of provisions of section 88-B if MTAL Act.

13. However, the arguments advanced by Ld. Counsel Shri. A. R. Mehta though attractive but without any merits as the present suit property does not cover prima facie under the provisions of MTAL Act. The plaintiffs are not tenant as per the definition of tenant as mentioned in section 4 and 4-A of MTAL Act because on perusal of entire documents placed on record by both the parties it appears that the suit property owned by the defendant. It was given by *Kabuliyatnama* for cultivation to the forefathers of the plaintiffs on yearly license fee.

14. Though, there is record prior to 1961 that, the forefathers of the plaintiffs were cultivating the suit property but mutation register part – 2 (paper book page No. 31) shows that, even at that time, it was auctioned for yearly basis cultivation. Therefore, the submissions made by the Ld. Counsel Shri. A. R. Mehta are contrary to the documents placed on record. *Kabuliyatnama* (paper book page No. 133) was executed on 20/04/1961 and the permissive possession for cultivation was given only for one year to the forefathers of the plaintiffs and they had given in writing to handover vacant possession on 31/03/1962 without an objection.

15. Thus, this document itself shows that, the possession of forefathers of the plaintiff was only for one year that too, with condition to handover the possession on a specified date. Unfortunately, the record shows that, the Devasthan Authority continuously kept possession of the suit property with the forefathers of the plaintiffs and accepted yearly license fee but the nature of the

transaction in between both the parties remains as a permissive possession based on yearly license fee and therefore, by virtue of provisions of MTAL Act the plaintiffs cannot claim permanent tenancy and therefore, the ratio refer to above and relied on by the Ld. Counsel Shri. A. R. Mehta are not helpful to the plaintiffs in the present case.

16. So far as the legal authority of the Ld. Administrator in passing the impugned order dated 06/12/2024 is concerned though the Ld. Counsel Shri. A. R. Mehta disputed the invocation of provisions of section 56-D of Maharashtra Public Trust Act, 1950 but the plaintiffs have participated in the proceedings conducted by the Ld. Administrator and submitted themselves to the jurisdiction of the Ld. Administrator. Therefore, prima facie for the purpose of deciding the interim injunction application it can be taken its face value that, the Ld. Administrator has acted within the parameters of his jurisdiction.

17. Though, the Ld. Counsel Shri. P. M. Patil has relied on Govind Vs. Pundlik (supra) on the point of maintainability of the suit simpliciter for injunction without seeking declaration of the impugned order passed by the Ld. Administrator. However, the said aspect is to be dealt with the Ld. Civil Court during the course of hearing of the suit at the appropriate stage because the Ld. Counsel Shri. A. R. Mehta has submitted that, he has already moved the amendment application seeking incorporation of relief of declaration challenging the impugned order passed by the Ld. Administrator.

18. Therefore, the Ld. Civil Court has taken appropriate view and considered all above aspects while dealing with interim injunction application. Therefore, no illegality has occurred in passing the

impugned order dated 18/02/2025 by the Ld. Civil Court while rejecting the interim injunction application (Exh.5).

19. In view of above discussion the present Miscellaneous Appeal is devoid of merits, as the plaintiffs have failed to prove prima facie case, balance of convenience and irreparable loss in their favour. Therefore, I answer point Nos. 1 to 4 in the negative.

20. In the result, following order is passed –

ORDER

- 1) The Misc. Civil Appeal No. 01/2026 is dismissed with costs.

(Dictated and pronounced in open Court.)

Date: 28/04/2026.

(M. A. Shinde)
District Judge-1, Gadhinglaj.