

MHKO080002662025



Received on : 08/05/2025

Registered on : 08/05/2025

Decided on : 29/07/2026

Duration : 01Y 02M 21D

**IN THE COURT OF DISTRICT JUDGE-1, GADHINGLAJ,**

**AT : GADHINGLAJ**

(Presided over by Amit A. Laulkar)

**Misc. Civil Appeal No. 19/2025.**

(CNR No.MHKO080002662025 )

**Exh.No. 29/A**

- 1) **Shri. Bhimrao Sambhaji Nevage,**  
Age 70 Years, Occu. - Agriculture,  
R/o. Koraj, Tal. Chandgad,  
Dist. Kolhapur.

**..Appellant  
(Ori. Plaintiff)**

**//Versus//**

- 1) **Shri. Bhagoji Ningappa Kagankar,**  
Age – 78 Years, Occu. - Agriculture,  
R/o. Tawarewadi, Post Karve,  
Tal. Chandgad, Dist. Kolhapur.
- 3) **Abhay Gramin Bigar Sheti Sah. Patsanstha**  
**Maryadit Kowad,**  
Nesari Road, Kowad,  
Tal. Chandgad, Dist. Kolhapur.

- 4) **Special Recovery Officer,**  
**Abhay Gramin Patsanstha Maryadit Kowad,**  
Tal. Chandgad, Dist. Kolhapur.

**..Respondents  
(Ori. Defendants)**

**Appearance :-**

Shri. S.F. D'cruz, Ld. Advocate for the Appellant.

Shri. K.S. Surutkar, Ld. Advocate for Respondent No.1.

Shri. D.B. Patil, Ld. Advocate for Respondent Nos.3 and 4.

**JUDGMENT**

( Delivered on this 29<sup>th</sup> Day of July 2026)

1) Posing loud *weirdo* over disapproval of temporary injunction order dated 02/05/2025 below Exh. 05 in Regular Civil Suit No. 116/2024 on the file of learned Civil Judge (Jr. Dn.), Chandgad, the plaintiff herein *vent over his spleen* with instant appeal vide Order XLIII Rule 1(r) of the Code of Civil Procedure 1908.

2) Original suit is for Partition cum perpetual injunction wherein intermediately an application vide order XXXIX Rule 1 and 2 of the Code of Civil Procedure was moved by the plaintiff below Exh.05 thereby restraining defendants from causing obstruction to the peaceful possession over the suit properties and not to create third party interest therein.

**Parties to the Appeal**

3) The appellant is original Plaintiff whereas the respondents are original defendants. The parties are referred hereinafter as per their original nomenclature. Defendant No. 1 is co-owner, defendant No.3 Co-operative Society whereas defendant No.4 is the Special Recovery Officer of the said Society.

**Subject Matter of Lis -**

4) Plot No. 1 and 2 having area 331.07 Sq.Mtr. from the Non agricultural land bearing Gat No. 178/2 having area 0.60 H.R. situated at Tawrewadi, Tq. Chandgad, District Kolhapur, which is more specifically detailed in paragraph No.1 of the interim application are subject matter of the *lis*. They are hereinafter referred as “suit property or suit plot”.

**Bonsai Facts Summarizing Appeal are as under -**

5) The parties to the *lis* hails from village Tawrewadi, Tq. Chandgad. Gat No. 178/2 at Tawrewadi was jointly procured by the plaintiff and defendant No.1 & 2. They are co-owners of the same. Eventually, said land was converted to Non Agricultural use and subdivided into 15 Plots of different measurements. The plaintiff and defendant No.1 & 2 got equal 1/3 share in those plots having measurement of 1366.19 Sq. Mtr. each. Amongst them, certain plots are sold by defendant No.1 & 2 with excessive measurement and received consideration of the same. The plaintiff has also sold few plots. As of now the plaintiff is in possession of plot No. 3 and 4. It is urged that defendant No.1 & 2 have grabbed excess Plot area wherein the plaintiff is entitled for 265.35 Sq. Mtr. plot area, out of remaining plot No. 1 & 2, from the defendants, as they have sold plots with excessive measurement. The defendant No.2 is claiming rights over plot No.2. Thus, the plaintiff requested defendant no.1 & 2 for partition and shading said area of plot in his favour which evoke no positive response. Hence, he cited notice for partition. Later-on the plaintiff learnt that at the instance of defendant No.1 director many misappropriation cases were reported in defendant no.3 Society, whereupon special recovery officer was appointed, who in turn for recovery of embezzled amount initiated recovery and taken constructive possession of the suit plots. Therefore the plaintiff issued public notice in the news paper claiming rights over the suit property. Now, with oblique intention defendants are persistently disturbing the lawful possession of the plaintiff over suit Plot No.2. Defendant No.1 & 2 may create third party interest in the suit property. In the event, the plaintiff left with no other option, moved the Court of first instance with referred suit. In the same cause, he moved application for temporary injunction against the defendants and crave leave for desired reliefs.

6) *Refuting claim*, defendants raised stiff objections and implored for rejecting the claim at the threshold. According to them, the suit cum interim application is trumped-up, misconceived and based upon spurious statements. The suit is devoid of any cause and the purported cause is neither legal nor tenable in the eyes of law. The claim suffers from *suppresio veri*. The plaintiff has posed self serving version.

7) It is urged by the defendants that the Gat No. 178/2 is jointly procured by the plaintiff and defendant No.1 & 2. They are co-owners of the same. Eventually, said land was converted to Non Agricultural use and subdivided into 15 Plots of different measurements. Thereafter since 1996, by virtue of oral arrangement *inter-se* them, the plaintiff and defendant No. 1 and 2 are in possession of the plots allotted to each of them. It is denied that they have equal share in the said plots. Since 1996, defendants No. 1 and 2 have sold many plots but plaintiff raised no objection for the same. Now with ill intention the plaintiff is trying to interfere with defendants possession over Plot No. 1 and 2. He has no concern with the suit property. As per defendant No.3 and 4 by way of legal orders they have taken constructive possession of the suit Plots and the plaintiff has no concerned at all. The plaintiff has no *prima facie* case and balance of convenience lies in their favour. As such, plaintiff has no concerned with the suit property at all. Hence, they implored for rejection of the interim application at the threshold.

8) Post hearing both sides and examining all *prima facie* circumstances, the Court of first instance came to the conclusion that plaintiff has not succeeded to prove *prima facie* case, balance of convenience in his favour and held that defendants would face irreparable loss, if injunction is granted. Ultimately, the Court obliged to deject temporary injunction against the defendants below Exh.05.

9) Being irked, *ipso jure* present appeal is before this Court for due deliberation. Posing exclusion to said order, plaintiff states that the impugned order is fallacious, illegal and erroneous. The facts and evidence on record have not been properly appreciated by the Court. The order is imaginary and has lost sight of legal basis. It was objected that the issue of possession is not touched properly. The learned court did not exercise its jurisdiction to ascertain in whose possession suit property lies. The court has also ignored to consider the effect of the nature of property. At the end, plaintiff craves for allowing the appeal by interference in the impugned order considering all grounds posed before the court.

10) *Per Contra* defendants respondents caused appearance and raised potent objections to the appeal and urged that the dictum delivered by the learned lower court is legal and proper and in accordance with the law. Impugned order is not misconceived. It does not deserve any interference. By pressing upon legality of the impugned order, respondents prayed for rejection of the appeal in *entirety*.

11) Heard learned advocate Shri. S.F. D'cruz for appellant, learned advocate Shri. K.S. Surutkar, for respondent No.1 and learned advocate Shri. D.B. Patil for respondent Nos.2 and 3 at length.

12) In the light of submissions, following points arose for my determination. My findings thereon are as follows :-

| <u>Sr.No</u> | <u>Points</u>                                                          | <u>Findings</u>     |
|--------------|------------------------------------------------------------------------|---------------------|
| 1)           | In whose favour <i>Prima facie</i> case, balance of convenience lies ? | Defendants.         |
| 2)           | Is interference required with the impugned order ?                     | No.                 |
| 3)           | What order ?                                                           | As per final order. |

### **REASONS**

#### **As to All Points :-**

13) All above points are interlinked and interconnected with each other. Hence, they are taken up together for due deliberation.

14) The main object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the actions if the uncertainty is resolved in his favour at the trial. It is well settled that for grant of temporary injunction three vital factors have to be satisfied which are *prima facie* case, balance of convenience and irreparable loss. A useful reference on the point can be taken from the verdict delivered by the Hon'ble Supreme Court in the case of **Dalpat Kumar V/s. Pralhad Singh, AIR 1993 (SC) 276**, wherein three significant factors lightened as follows -

- i) There is a serious disputed question to be tried in the Court and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff / defendant.
- ii) The Court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or danger would ensue before the legal right would be established at the trial and
- iii) That the comparative hardship on mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from granting it.

Naturally plaintiff's claim deserves to be scanned from the legal cannons elucidated above.

15) Exposition of law as regards temporary injunction is concerned the Hon'ble Supreme Court unfolded in the case of ***Seema Arshad Zaheer and others V/s Municipal Corporation of Gr. Mumbai and others, 2006 (5) Mh.L.J. 218, SC*** stating that The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (I) existence of a *prima facie* case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff approaches the Court with clean hands.

16) In likewise context on the count of lawful possession the Hon'ble Bombay High Court expressed in the case of ***Smt. Sarladevi Wd/o Kundanlal Bandawar V/s Shailesh S/o Gourish Namdeo, (AIR 1996 Bom 98)*** stating that Once the finding of lawful possession goes in favour of the plaintiff, that should be the end of the matter, and, therefore, it is only to be seen as to whether the plaintiff would be entitled to an injunction as prayed, for restraining the defendants from dispossessing plaintiff otherwise than by due course of law. In ***American Home Products Corporation and others V/s Lupin Laboratories Ltd., (1996(1) Bom CJ 640)*** the Hon'ble Bombay High Court held that At the interim stage the Court will consider whether serious issues have been raised by the plaintiff. If the defendant does not establish on evidence that there was no serious issue to be tried and if the Courts find that

there is ample evidence required to be examined at the trial and that a serious issue of deception is involved which requires to be tried, then the Court will grant injunction in favour of the plaintiff. In verdict delivered in case of ***Prakash V/s. Mansoorkhan, (1996(2) Mh. LJ 30.)*** the court expounded that In a matter arising under Order XXXIX, Rules 1 and 2, Code, of Civil Procedure, three conditions are to be satisfied; that the applicant has a *prima facie* case; that in the event of not granting injunction he would be put to an irreparable loss and inquiry; and that the balance of convenience is in his favour.

17) It is further highlighted by the Hon'ble Court in the verdict of ***Mulji Umershi Shah etc. V/s Paradisia Builders Pvt. Ltd., Mumbai and others, (AIR 1998 Bom 878)*** that in the suit for perpetual injunction that court may called upon to hold inquiry in title, right, interest or status, as the case may be, of the plaintiff to find out whether plaintiff is entitled to protection of his possession by decree of injunction, the same consideration, *prima facie*, is required to be seen while considering an application for temporary injunction. The question of possession presupposes lawful possession and for adjudication of that question whether finally or at interlocutory stage, the inquiry into title, right, interest or status of plaintiff is not foreign to the subject matter.

18) In ***Bharat Petroleum Corporation Ltd. & Anr. Vs. M/s Jethanand Thakordas Karachiwala & Ors, (1999(1) ALL MR 319.)*** the Hon'ble Bombay high court expounded that While coming to the Court to seek relief of temporary injunction plaintiff must make out a *prima facie* case. A *prima facie* case means that the plaintiff can show to the Court that in all probabilities ultimately, he would succeed in securing a permanent injunction and, therefore, refusal of relief pending the trial would make the final relief even if granted, infructuous and in order to



make the same effective, it is necessary to grant the relief even pending suit.

19) In a celebrated verdict in the case of *Rame Gowda (Dead) by L.Rs. Vs. M Varadappa Naidu (Dead) by L.Rs. and another, (AIR 2004 SC 4609.)* the Hon'ble Supreme Court mandated that a person in settled possession or effective possession without title entitled to protect his possession even as against the true owner.

20) Legal scenario on the count of injunction was pinpointed by the Hon'ble Supreme Court in glaring manner in the case of *Maria Margarida Siqueira Fernandes and others Vs. Erasmo Jack De Siqueira (Dead) through L.Rs. (2012 ALL SCR 1096.)* In para 70 of the said verdict Hon'ble Court observed as follows -

“70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

- (a) Who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents;
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;
- (f) how came into possession – whether he purchased the property or inherited or court the same in gift or by any other method;
- (g) -----
- (h) -----"

The Hon'ble Court mandated that the parties must plead and satisfy above aspects so as to claim equitable relief in the form of injunction from the court of laws.

21) In the guided cannons of law elucidated and manifested above instant claim needs due deliberation.

22) It is epochal to note here that the original suit is filed seeking partition cum perpetual injunction against the defendants. There is no as such any counter claim moved on behalf of defendants. Having explored pleading of both the parties, it is crystalline that as regards possession over the suit property is concerned, both parties are in *juxtaposition*.

23) *Incisively*, the cause of the *lis* rotates around with the issue of nature of and actual possession over the suit plots needing evaluation cum analysis within purview of legal mandate enlightened above.

24) Having explored entire record cum evidence tendered by the parties it primarily reveals that Gat No. 178/2 at Tawrewadi was jointly procured by the plaintiff and defendant No.1 & 2. They are co-owners of the same. Eventually, said land was converted to Non Agricultural use and subdivided into 15 Plots of different measurements. As per plaintiff they have got equal 1/3 share in those plots having measurement of 1366.19 Sq. Mtr. each. This aspect is specifically denied by the defendants. To assert the *factum* of equal share in the plots noting is placed on record by the plaintiff. Except oral averments of the plaintiff there is noting adduced on record revealing that the parties were having equal share in the subject plots. Thus on what count the plaintiff is stating that he has 1/3 share in the plots, is little dubious. On other count it can be seen and admitted by the plaintiff that the defendants have sold few plots allotted to them. If that being scenario, question arises, why at, the then time the plaintiff did not raise any objection for sale of plots. Why plaintiff did not challenge those transaction objecting

same are made with excessive measurements. Such conduct of the plaintiff speaks into volume. On this count no suitable justification is offered by the plaintiff. In the event, *prima facie*, there is no material on record revealing that the defendants have sold their plots with excessive measurement. When the *factum* of allocation and distribution of plots with equal share is itself not primarily proved then the question of *prima facie* case doesn't arise. The plaintiff has primarily not shown how he deserves share in the suit plots. At the moment, there is lack of evidence on the part of the plaintiff to support his version.

25) Pertinent to note that, despite specific assertion, there is nothing placed on record unveiling that the plaintiff is in possession of plot No 2. In fact, it can be seen that the defendant co-operative society has taken constructive possession of the suit plots from defendant No. 1. If that being factual scenario, it can not be said that the plaintiff is having possession over the suit plots. In absence of material documentary evidence it is hard to conclude that any part of plot No. 2 is actually in possession of the plaintiff.

26) Significantly, amid hearing of instant application, defendant No. 3 and 4 placed pursis before this court below Exh.26 and stated that by virtue of orders passed by the Collector Kolhapur, in recovery proceeding, the actual possession of suit plots is handed over to the defendant society. If that being factual scenario, it can not be said that as on today, the plaintiff is enjoying possession over the suit plots. This existent aspect, goes to the root of the matter thereby ruling out *prima facie* substance in the case of the plaintiff.

27) Virtually, the plaintiff has not shown any valid and good ground to infer that the impugned order is misconceived and has lost

factual or legal site. He did not offer any valid ground so as to sustain his case in four corners of law. Apart from remarks of non urgency in pursuing main application, rest of the reasoning is detailed and proper. It doesn't reflect any flaw.

28) *Apogee* of facts manifested above speaks into large that the plaintiff has no *prima facie* case; that in the event of granting injunction defendants would be put to an irreparable loss and thus the balance of convenience lies in their favor.

29) *Summing up*, I hold view taken by the Court of first instance is just proper and judicial, which deserves no interference. The *stock of situation cum* documentary evidence is rightly appreciated by the court and thus the impugned order is proper, legal and sustainable. *Ergo*, I decide all points in favour of defendants accordingly.

30) Conspectus of the circumstances leads me to pass the following order.

### **ORDER**

1. Mis. Civil Appeal No. 19 of 2025 is Rejected with costs.
2. Impugned order dated 02/05/2025 below Exh. 05 in Regular Civil Suit No. 116/2024 on the file of Civil Judge (Jr. Dn.), Chandgad, is hereby confirmed.
3. Inform the Court of first instance i.e. learned Civil Judge (Jr. Dn.), Chandgad.
4. **The hearing of Regular Civil Suit No. 116/2024 is expedited with outer limit of 08 months from the date of this order.**

5. All concerned to take note of this order and co-operate the Court of first instance for disposal of suit within time frame.

Place: Gadhinglaj.  
Date:-29/07/2026.

(Amit Anant Laulkar)  
District Judge-1,  
Gadhinglaj.