

MHLA010022442017



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IN THE COURT OF DISTRICT JUDGE-2, LATUR

(Presided over by R.B.Bhagwat, DJ-2, Latur)

Misc.Civil Appeal No.66/2017

Exh.No.61

Rama s/o. Limba Shinde (Died)

Through Legal heirs

1/1) Prayag d/o. Ram Shinde

Age :- 66 years, Occu. :- Labour,

1/2) Mangal d/o. Ram Shinde

Age :- 55 years, Occu. :- Labour,

Both R/o. Takalgaon, Tq. Renapur, Dist. Latur

1/3) Shobha w/o. Gola Narsinge

Age :- 52 years, Occu. :- Household,

R/o. Sangvi, Tq. Renapur, Dist. Latur

1/4) Vatsala w/o. Santaram Kamble

Age :- 53 years, Occu. :- Household,

1/5) Keshar Manohar Kamble

Age :- 40 years, Occu. :- Household,

1/4 & 1/5 R/o. Sindhgaon, Tq. Renapur, Dist. Latur

2) Raosaheb s/o. Rama Shinde

Age :- 40 years, Occu. :- Agriculture,

3) Subhash s/o. Rama Shinde

Age :- 38 years, Occu. :- Agriculture,

- 4) Gajanan s/o. Rama Shinde
Age :- 35 years, Occu. :- Agriculture,
- 5) Govind s/o. Rama Shinde
Age :- 30 years, Occu. :- Agriculture,
nos.2 to 5 r/o. Takalgaon, Tq. Renapur, Dist. Latur

.... Appellants
(Original respondents)

Versus

- 1) The State of Maharashtra Through
Collector, Latur, Tq. Dist. Latur
- 2) Deputy Collector (tenancy department)
Deputy Collector Office, Latur
- 3) Tahasildar, Tahasil Office,
Renapur, Tq. Renapur, Dist. Latur
- 4) Circle Inspector
Circle Inspector Office, Bitargaon
Tq. Renapur, Dist. Latur
- 5) Talathi, Talathi Sajja Bitargaon
Tq. Renapur, Dist .Latur
(Original respondents)
- 6) Govind s/o. Sangitrao Hake
Age :- 40 years, Occu. :- Agriculture
R/o. Takalgaon, Tq. Renapur, Dist. Latur

.... Respondent
(Original Plaintiff)

Appeal under Order XLIII Rule 1 of Civil Procedure Code.

Shri P.D.Dede, Advocate for appellant.
Respondent nos.1 to 5 are formal parties in this appeal
Shri. A.D.Mane, Advocate for respondent No.6

J U D G M E N T

(Delivered on this 13th day of March, 2026)

Present appeal has been filed for challenging the order below Exh.5 in R.C.S. No.414/2016 passed by Ld. 8th Jt. Civil Judge, Senior Division, Latur on 14.08.2017.

2. The brief facts giving rise to present appeal are as under:-

The respondent No.6 filed RCS No.414/2016 before the Court of Ld. 8th Jt. Civil Judge, Senior Division, Latur for Specific performance of contract against present appellant and respondent Nos.2 to 5. In the said suit respondent No.6 filed application for grant of temporary injunction vide Exh.5. (The parties are hereinafter referred as per their nomenclature in the suit).

3. It is the contention of plaintiff that deceased defendant no.6 Rama Limba Shinde was the protected tenant of Land bearing old survey no.4, corresponding to new block no. 02 admeasuring 07 acres 15 R. situated at village Takalgaon, Tq. Renapur, Dist. Latur more particularly described in para no.4 of

the plaint. Deceased defendant no.6 was in possession of the said land from the year 1965 till the year 2006. The said land is hereinafter referred as "Land-A" for the sake of brevity and convenience.

4. According to plaintiff one Kausalyabai Eknath Jogdand had fraudulently taken ownership certificate of the Land-A from the Tahasil Office, Renapur. Defendant no.6 did not have money to litigate against the said Kausalyabai. Hence, defendant no.6 alongwith defendant nos.7 to 10 put forth a proposal to plaintiff to incur the litigation expenses and agreed to give suit Land-A in his possession for the purpose of cultivation on crop sharing basis (batai). Accordingly, a crop sharing agreement (bataipatra) came to be written between them on 20.04.2006 and since then till date plaintiff is cultivating the Land-A.

5. Further according to plaintiff the defendant no.6 alongwith defendant nos.7 to 10 agreed to sell in Northern portion of Land-A more particularly described in para no.10 of the plaint for a consideration that the plaintiff shall incur all the litigation expenses for all the Court and other proceedings going against defendant nos.6 to 10 pertaining to the Land-A. The said agreement to sell came to be written on 18.11.2013. The Northern portion which is subject matter of the agreement to sell is hereinafter referred as "Land-B" for the sake of brevity and convenience.

6. According to plaintiff he litigated all the proceedings on behalf of defendant nos.6 to 10 against Kausalyabai Jogdand. The defendant no.6 succeeded in the litigation. The Deputy Collector Tenancy, Latur has ordered the Tahasildar concerned to record the name of defendant no.6 in the 7/12 extract of Land-A as per Section 38-E of the Hyderabad Tenancy Act. The plaintiff incurred huge amount of about 20 Lakhs for the said litigation and traveling. But after the decision of the Deputy Collector (tenancy) Latur in favour of defendant no.6, the defendant no.6 turned hostile against plaintiff and was deliberately avoiding for mutation of his name on the Revenue Record and is also avoiding to execute sale deed in favour of plaintiff as per agreement dtd.18.11.2013 despite many oral requests and receipt of legal notice dated 15.06.2016. Since July-2016 defendant nos.6 to 10 were interfering and obstructing possession of plaintiff over Land-A without any concern. The defendant nos.6 to 10 are in a haste to sell the Land-A to other persons. Hence, the application for temporary injunction came to be filed.

7. The defendant nos.6 to 10 appeared in the suit and filed Written Statement-cum-reply to Exh.5. They admitted that Land-A was possessed by defendant no.6 as a protected tenant and that he was cultivating the same since 1965. The proceedings before the Tahasildar and the Additional Collector have been admitted. All other averments in the plaint and the T.I. application have been denied.

8. According to defendant nos.6 to 10 they are in continuous possession and cultivation of the Land-A. The defendant no.6 never signed on the alleged bataipatra dated 20.04.2006. Also the defendant no.6 never executed any agreement to sell dated 18.11.2013 in favour of plaintiff pertaining to Land-B. The defendant no.6 was an old man. He was unable to walk. He never went to any notary for execution of the said agreement to sell. The plaintiff never engaged any advocate on behalf of defendant nos.6 to 10 to litigate the proceedings before the Revenue Authorities. For litigating those matters the defendant nos.6 to 10 had incurred their own expenses.

9. Further according to defendant nos.6 to 10 the Land-A is a tenancy land and it cannot be alienated without obtaining prior permission of Revenue Authority. The alleged agreement dated 18.11.2013 is illegal. The suit is false and baseless and has been filed with an intention to extract money from these defendants. Hence, they prayed that the suit and the application Exh.5 be rejected.

10. The defendant nos.1 to 5 are the Revenue Authorities. No order is sought against them in the application Exh.5.

11. On the basis of rival pleadings of both the sides, the Ld. trial court framed point for determination while deciding the

application below Exh.5. On the basis of arguments advanced by advocates of both the sides, the trial court was pleased to allow the application Exh.5. Being aggrieved by the said order present appeal came to be filed.

12. In present appeal the advocates of both the sides were heard. On the basis of appeal memo and the arguments advanced by advocates of both the sides, following points arise for my determination, and I have recorded my findings thereon, for the reasons given below:

	<u>Points</u>		<u>Findings</u>
1)	Whether plaintiff is having a prima-facie case ?	...	In the Negative
2)	Whether balance of convenience lies in favour of plaintiff ?	...	In the Negative
3)	Whether plaintiff would suffer irreparable loss, in case of rejection of application for temporary injunction ?	...	In the Negative
4)	Whether the order dated 14.08.2017 delivered by 8th Jt.Civil Judge, Sr.Dn. Latur in R.C.S. No.414/2016, is illegal and requires interference ?	...	In the Affirmative
5)	What order ?	...	Appeal is allowed

REASONS

As To Point No.1 :-

13. It is an admitted position that defendant no.6 was the protected tenant of suit Land-A. During pendency of the suit he expired on 31.09.2019. His legal representatives 6/1/A to 6/1/E have been brought on record.

14. On the strength of the copy of the document titled as 'bataipatra', the plaintiff is claiming his possession over Land-A. Also plaintiff filed affidavit of one Hanumant Tulshiram Chormale and Pandit Hanmant Shendge to prove his possession over Land-A. On perusal of the copy of the bataipatra it reveals that it is silent about the period for which the said land was allegedly given to the plaintiff for cultivation. This is one of the circumstance to create doubt on the said document. It is difficult to believe that a person would execute bataipatra without mentioning the tenure and create legal problems for himself.

15. It is mentioned in the crop sharing agreement (bataipatra) that plaintiff and defendant will incur equal expenses for cultivating the said land and would equally share the crop produced. There is no reference in the said agreement that the defendant no.6 had put the plaintiff in exclusive possession of the said land. If the contents of the bataipatra are to be interpreted, the possession of plaintiff, if any, on the Land-A would be only to the extent of cultivating the said field and not actual physical possession to fully exclude the defendant nos.6 to 10. Bataipatra is merely a license to the plaintiff to use

the said land for the purpose of cultivation for a consideration of sharing half of the crops produced. Based on a bataipatra a person does not come in absolute possession or ownership of a land. The said document is fundamentally an agreement for sharing agricultural produce. The possession of plaintiff on the basis of said document would be a permissive possession, holding the said land on behalf of defendant no.6. By way of the said bataipatra the defendant no.6 would not part away with his possession over the said land. The status of plaintiff based on the bataipatra would be that of a cultivator (licensee) and nothing more.

16. There is nothing credible on record to show that defendant nos.6 to 10 are disturbing the plaintiff from cultivating the Land-A. Also it is not the contention of plaintiff that defendant no.6 was trying to disposes him from the Land-A. If that would be so the plaintiff would lodge a police report against respondent nos.6 to 10.

17. It is a settled law that the real owner of a property cannot be restrained by way of injunction by a licensee / cultivator who claims to be in exclusive possession of the document titled as bataipatra.

18. Plaintiff is claiming specific performance of contract based on agreement dtd.18.11.2023. But the said document is

vague. As per said document in the event the defendant no.6 succeeds in all the litigation pending before Revenue authorities, he would sell Land-B to plaintiff for a consideration i.e. the litigation expenses incurred by him towards the said litigation. This is a contingent contract which depends upon happening of uncertain future events. There is no timeline mentioned in the said agreement for executing the agreement to sell.

19. As per admitted position the Land-B which is part and parcel of Land-A is a tenancy land. For alienation of such land permission of competent authority is required. Hence, specific performance would depend on the permission which is a future uncertain event. The defendant no.6 has expired. The defendant nos.6/1/A to 6/1/E, who are the legal representatives of deceased defendant no.6 are not willing to apply for such permission. Hence, uncertainty remains on the possibility of execution of Sale deed.

20. As per submission of advocate for plaintiff himself the Land-A came to defendant no.6 from his father who was the original tenant of the said land. By way of succession the defendant nos.6/1/A to 6/1/E have also acquired their right in the said land. Hence, their consent would be necessary for alienation. There is no prima facie evidence to show that for family need the said land was agreed to be sold by defendant no.6 to plaintiff. If for the sake of argument the agreement

dtd.18.11.2013 is held to be valid it would be only to the extent of undivided share of deceased defendant no.6 in the said land. Hence, injunction over the entire Land-B would not be legal and justified.

21. In view of the reasons discussed in para nos.13 to para no.20, I hold that the plaintiff has failed to put up a good prima facie case. I, therefore, answer my findings to point no.1 in negative.

As To Point Nos.2 and 3 :-

22. The point nos.2 and 3 are interconnected to each other hence, they are taken for discussion together.

23. There is nothing on record to show that the plaintiff suffered any loss in crop production because of any alleged obstruction or interference of defendant nos.6 to 10. Admittedly no police report has been given by plaintiff against said defendants alleging obstruction. The deceased defendant no.6 has the rightful title over the Land-A. Plaintiff was given only permissive possession to cultivate the land on behalf of defendant no.6 and to share the crops. His possession over the said land is not exclusive. Hence, if injunction is granted against defendant nos.6 to 10, greater inconvenience will be caused to them than the plaintiff. Also, If injunction is granted as prayed there is every likelihood that the order will be misused against

defendant nos.6 to 10 to exclude them totally from the possession of Land-A.

24. As regards the relief for specific performance of contract the plaintiff has also sought alternate relief for compensation. If plaintiff can be monetarily compensated as per his own alternate prayer in the suit, there is no question of any irreparable loss to him. On the other hand, if injunction is granted it will be the defendant nos.6 to 10 who will suffer irreparable loss as the defendant nos.6/1/A and 6/1/E had never consented for selling the Land-B.

25. In view of the reasons discussed in para nos.23 and 24 supra, I answer my findings to point nos.2 and 3 in negative.

As to Point No.4 :

26. On perusal of the impugned order passed below Exh.5, it is apparent that the points for determination were properly framed. However, as per my considered opinion, those points have not properly discussed and answered by the trial court. The reasons as discussed above and the position of law has been wrongly considered by the Ld. trial Court. Hence, the impugned order needs interference by this Court. I, therefore, answer my findings to point no.4 in affirmative.

As To Point No.5 :

27. In view of my findings to point nos.1 to 4, I hold that present appeal deserves to be allowed with costs. I, therefore, pass the following order :-

ORDER

- i) Appeal is allowed with costs.
- ii) The impugned order passed by trial Court below Exh.5 in R.C.S. No.414/2016 on 14.08.2017 is hereby set aside.
- ii) Trial Court be informed about this order.

Date : 13.03.2026

Sd/-
(R.B.Bhagwat)
District Judge-2
Latur.