

<u>IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, DHADGAON, DIST. NANDURBAR</u>	
C.N.R.No.MHNB070004232023 	<u>Reg. Civil Suit No. 19/2023</u> <u>Batesing Vs. Khatya.</u>

Order Below Ex. 05 & 16

(Passed on 14th day of August 2026)

Application is under Order XXXIX Rule 1 & 2, CPC.

02. The plaintiffs alleged, suit property Sy. No. 38/1 adm. 03.00 HR, situated at Manvani Kh., Temaripada, Tal – Akrani/Dhadgaon, with boundaries mentioned in para 3 of the plaint, is in their lawful possession. However, on 09.05.2023 defendants tried to dispossess them from suit property. Defendants do not have any concern to the suit property. Hence, the plaintiffs constrained to file this suit for perpetual injunction.

03. Per contra, the defendants vehemently apposed the submission of plaintiffs. They filed counter claim and contended that they never interfered with possession of plaintiffs over the suit property. Entire Sy No. 38 is in possession of defendants. Suit property Sy No. 38/1 as a part of intact Sy No. 38 is also in their exclusive possession. Sub-division of Sy No. 38 is not yet effected as alleged by plaintiffs. Defendants have their own houses in Sy No. 38. Therefore the suit filed by plaintiffs is baseless and false. As against, on the basis of longstanding possession over the suit land without interference and peaceful nature, the defendants claim adverse possession. Plaintiffs even failed to show any prima-facie incident as to interference. Hence, suit is without cause of action and needs to be dismissed. Accordingly, application of plaintiffs for temporary injunction is also liable to be rejected and as against, application of defendants for said relief deserves to be allowed.

04. Heard both sides. Perused applications and reply. Perused record and material adduced by both sides. Following points spring up for my determination, against each of them, I have recorded my findings for the reasons discussed below-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Do the plaintiffs/defendants prove their prima-facie case ?	Plaintiffs proved
2.	Do the plaintiffs/defendants prove the balance of convenience in their favor ?	Plaintiffs proved

- | | | |
|----|--|--------------------|
| 3. | Do the plaintiffs/defendants prove that irreparable loss would cause, if the application is rejected ? | Plaintiffs proved |
| 4. | What order ? | As per final order |

REASONS**Point No. 1:**

05. Plaintiffs alleged, they owned and possessed the suit property Sy No. 38/1 adm. 3.00 HR. For that they relied on mutation entries, copy of 7/12 extract and four boundaries. As against, defendants submitted counter claim to the claim of the plaintiffs and alleged Sy No. 38 adm. 3.18 HR is not yet sub-divided. There is not existed any permanent mark like *bandh*, which can show sub-division of Sy No. 38/1 & 38/2. Entire Sy No. 38 is remained intact. Thus, partition as alleged by plaintiffs, is not ever effected and acted upon. Since last 30-40 yrs. defendants are in exclusive possession of entire Sy No. 38. They have their houses there. Defendants in support of their counter claim relied on copies of 7/12 extracts of Sy No. 38/1 & 38/2, house tax receipts (form no. 8) for the house no. 73 & 143 boundary map of Sy No. 38.

06. Heard both sides at length. Perused record of the case and documents relied. Lrd. Adv. for the plaintiffs vehemently argued that as defendants are claiming adverse possession over the suit land, they are not denying title of the plaintiffs. Be that as it may, revenue mutation entry no. 3, 54 & 73 and copies of 7/12 extract of Sy No. 38/1 clearly demonstrate that suit property Sy No. 38/1 adm. 3.00 HR. was originally owned by their common ancestor namely, deceased Lasama Dudhla Bhil and on his demise it was inherited by his legal heir namely, Demasha Lasama Bhil. Further, Demasha Bhil by partition had given it to Bhamata Nurya Bhil. He again made partition and suit property fallen to his share. On demise of Bhamata Nurya suit property came in possession of plaintiffs. It is also argued on behalf of plaintiffs that copy of 7/12 extract of Sy No. 38/1 reflects exclusive occupancy of plaintiffs.

07. As against, lrd. advocate for the defendant vehemently argued that as alleged by plaintiffs they did not adduce any document showing obstruction by defendants. Thus, there is no cause of action at all for filing this suit. FIR relied by plaintiffs does not contain names of all defendants; hence, claim of plaintiffs about obstruction against all defendants is not tenable. Defendants relied on form no. 8 (house tax receipts) established their possession over the suit property. Therefore, mere revenue

record in the names of plaintiffs can not establish ownership and possession of plaintiffs over the suit property.

08. In view of the submissions of both sides and material discussed above, I am agreed with submission advanced by lrd. adv for the plaintiffs, that title of suit property is not disputed as defendants are claiming adverse possession. Defendants further contended that they are exclusive possession of entire Sy No. 38 which is yet to be sub-divided though it is alleged by the plaintiffs otherwise. Upon perusal of copies of 7/12 extracts of Sy No. 38/1 & 38/2, it is seen that plaintiffs are in possession of Sy No. 38/1 adm. 3.00 HR. Defendants to establish their possession over the suit property Sy No. 38/1, have relied on house tax receipts issued by concerned Gram Panchayat. However, by those receipts, it can not establish that alleged houses are situated at Sy No. 38/1. These receipts can only reflect houses in the name of defendants and house tax they paid. Thus, at this stage it can not be certainly said that suit property is in defendants' possession. Defendants did not adduce any other material for showing their prima-facie possession over the suit land.

09. So far as regard, revenue entries in the name of plaintiffs, the plaintiffs relied on authority of Hon'ble Apex Court in Civil Appeal No. 1511 of 2020 (arising out of SLP (Civil) No. 725 of 2017) Shri Partap Singh (Dead) through Lrs. & Ors. V/s Shiv Ram (Dead) through Lrs., in para 24 of the judgment held that-

Therefore, we find that the presumption of truth attached to the record of rights can be rebutted only if there is fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed. It will not be proper to rely on oral evidence to statutory presumption as the credibility of oral evidence vis-a-vis documentary evidence is at a much weaker level.

10. In the light of the authority discussed supra, defendants also failed to adduce any iota of prima-facie material by which statutory presumption raised by public record can be rebuttable. Whether those entries are fraudulently taken or not, is a matter of trial, but defendants failed to adduce any such prima-facie material. Hence, at this stage, the plaintiffs proved their settled possession over the suit land by adducing enough prima-facie material. Whatever allegation made by defendants is now become matter of trial. Thus, from entire material discussed, I found the plaintiffs proved their prima-facie case. Accordingly, I am answering point no. 01 in affirmative.

Point No. 2 to 4:

11. Plaintiffs alleged that on 09.05.2023 when plaintiffs are carrying measurement of land Sy No. 50, 49 & 38/2 through TILR Dhadgaon, defendants have come over and obstructed their possession over suit property Sy No. 38/1. They did not even allow them to complete the measurement of above said Survey numbers. As against, in counter claim defendants are claiming adverse possession over the suit property without showing even their prima-facie possession over the suit land. At the strength of claim of defendants as to adverse possession over the suit property made in counter claim, interference alleged by plaintiffs is prima-facie establish. In above circumstances, when the plaintiffs prima-facie proved their possession over the suit property, their interest needs to be protected till final adjudication of the suit. If the present application is rejected, it would cause irreparable loss to the plaintiffs.

12. On the other hand, defendants are failed to prove their possession over any part of Sy No. 38, hence no question of interference to their possession arise. Further, attempt made by the plaintiffs to carry measurement of Sy No. 38/2, 49 & 50 through TILR can not be called as interference over any property in possession of defendants. Hence, no hardship would cause to the defendants as they did not show any prima-facie concern to the suit land Sy No. 38/1 and as they admitted the title of plaintiffs. Thus, I have found prima-facie case in favor of plaintiffs and their move appears bonafide. Hence, the application of plaintiffs deserves to be allowed. As against, application of defendants seeking temporary injunction in respect of Sy No. 38, is liable to be rejected. Accordingly, I am answered point No. 2 & 3 in affirmative. Eventually, in answer to Point No. 4, I pass following order:

ORDER

Application Exh. 5 is allowed and application of defendants Exh. 16 is rejected.

- i. Defendants are hereby temporarily restrained from interfering with possession of the plaintiffs over the suit property by themselves or through other on their behalf till disposal of this suit.
- ii. The costs would be in main cause.

Dhadgaon,
August 14, 2026

(B. S. Wadhai)
Civil Judge Junior Division
Dhadgaon, District Nandurbar

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”	
UPLOAD DATE AND TIME	Pallavi A. sonar Name of the Stenographer (Gr.-III)
Name of the Judge	Shri. B. S. Wadhai
Date of pronouncement of order	14.08.2026
Order signed by P.O. on	14.08.2026
Order uploaded on	14.08.2026