

MHND010032262023



Received on : 06.11.2023

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Decided on : 29.06.2026

Duration : YY MM DD
02 07 23

IN THE COURT OF DISTRICT JUDGE-2, NANDED, AT NANDED
(Present :- Shri. T. S. Solankar)

M.C.A.No.107/2023**Exhibit No.20**

Ravi Balaji Kalyankar Age 41 yrs., Occ. Agri., r/o. Kamtha, Tq. Ardhapur, Dist. Nanded.	<u>.....APPELLANT</u> (Ori. defendant)
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V E R S U S

1)	Bebitai w/o. Balaji Gojegave @ Bebi d/o. Shankar Kalyankar Age 41 yrs., Occ. Household, R/o. Bomnali, Tq. Mukhed, Dist. Nanded.	
2)	Meera w/o. Umakant Deshmukh @ Meerabai d/o. Shankar Kalyankar Age 36 yrs., Occ. Household, R/o. Ulhasnagar, Nanded.	<u>.....RESPONDENTS</u> (Ori. plaintiffs)

**CLAIM : APPEAL U/O. 43 RULE 1 & 2 OF THE CODE OF CIVIL
PROCEDURE, 1908**

Appearances :

Appellant	: Adv. Shri. G.U. Sarode
Respondent	: Adv. Shri. S.S. Wakode

J U D G M E N T

(Delivered on this 29th June, 2026)

Being aggrieved and dissatisfied by an Order dated 06.10.2023 below Exhibit-5 in R.C.S. No.55 of 2022 passed by the Learned Civil Judge J.D. Ardhapur (hereinafter being referred as

‘Trial Court’), the appellant/original defendant has preferred present appeal. By said order, the application under Order XXXIX Rule 1 and 2 the Code of Civil Procedure, 1908 (for short ‘CPC’) filed by the respondents/original plaintiffs came to be allowed.

2. The present appellant is the defendant and the respondents are the plaintiffs before the Ld. Trial Court. The parties are referred in this appeal as per their nomenclature stood before this Court.

3. In pursuance of appeal notice, the respondents appeared in the matter through their Ld. advocate.

4. **Brief facts necessary for disposal of present appeal produced as under:-**

4.1 The respondents brought suit before the learned Trial Court for perpetual injunction restraining the appellant from interfering into the peaceful possession of the respondents in respect of suit properties mentioned in the clause of the plaint.

4.2 It is the averment in the plaint that, the respondents have become owners of the suit properties by virtue of sale-deeds executed on 07.12.1984. Said sale-deeds were executed by one Mainabai w/o. Narayanrao Kalyankar. Accordingly, names of respondents were mutated in the 7/12 extract. It is further averment that, the respondents are in possession of the suit properties since said sale-deeds. The appellant is their cousin brother. He tried to dispossess respondents from the suit

properties and further tried to take forceful possession of the same. Hence, suit was instituted.

4.3 The appellant appeared before the Ld. Trial Court and filed his statement of defence by way of written statement below Exh-15 thereby denying all the material averments. Appellant pleaded that, the respondents purchased suit properties from his grand mother by giving threats to her. He denied the cause of action to file the suit. He further pleaded that, as per judgment given in RCS 452/1995 the respondents were take possession. The respondents are not in possession and prayed to reject the application.

5. After hearing respective parties, on application of temporary injunction filed under Order XXXIX R.1 and R.2 of CPC, Ld. Trial Court framed following points for considerations.

- i) Whether the plaintiffs have made out *prima facie* case in their favour?
- ii) Whether balance of convenience lies in favour of plaintiffs?
- iii) Whether plaintiffs will suffer irreparable loss if temporary injunction is not granted?
- iv) What order?

6. The Ld. Trial Court, in response to issues no. 1 to 3 answered in the affirmative and allowed the application in answer to point no.4.

7. Arguments on behalf of the appellant/defendant:

7.1 The Ld. advocate for the appellant, *inter alia*, with a great vehemence argued that, the suit properties was initially

owned and possessed by Mainabai i.e. the grand mother of appellant and respondents. The mother of respondent fraudulently got executed registered sale-deed in the name of respondents inspite of the fact that, there were three sons to said Mainabai and one of the son was father of present appellant. It is further argued that, at the time of execution of alleged sale-deed in favour of respondents on 07.12.1984, the father of appellant and his another brother i.e. uncles were in police custody for having allegations of committing murder of father of respondents. Therefore, it is highly impossible for a Indian woman on the death of son to execute sale-deed.

7.2 She could not have executed such sale-deed without any influence. It is further argued that, surprisingly, on the date of execution of sale-deed father of respondents was murdered and the respondents' mother paid consideration to the grand mother i.e. grand mother of the appellant and respondents.

7.3 It is further argued that, though at the time of execution of sale-deed, it is mentioned that, possession of the suit properties is delivered to the respondents, however, the respondents were minor and said minor respondents went with their mother to her maternal/parents house. Therefore, he submitted that, the suit properties are not actual possession of the respondents.

7.4 It is also contended that, after released of appellant's father from jail, he is started cultivate the suit properties, however, said aspect has not considered by the learned Trial Court.

7.5 He further argued that, in the year 1995, Reg. Civil Suit no. 452/1995, the respondents had filed through their mother a suit for recovery of possession of the suit properties and said civil suit was decreed. However, no possession was given by the appellant to them as the respondents never filed any execution proceeding in pursuance of said judgment and decree. It is also submitted that, the possession of appellant is undisputed since last 26 years, but said aspect has not been considered. The learned Trial Court failed to consider the document placed on record and consequently came to wrong conclusion and passed wrong order under challenged.

7.6 Learned advocate further submitted that, the *prima facie* case, balance of convenience is in favour of appellant. Due to such erroneous order there is irreparable loss to the appellant. The learned Trial Court passed order in the haste. Accordingly, prayed to allow the appeal and quash and set-aside order passed by the learned Trial Court.

8. Arguments on behalf of the respondents/plaintiffs:-

8.1 *Per contra*, learned advocate Mr. A.V. Powade holding for h/f. Mr. S.S. Wakode submitted that, on 07.12.1984 the suit properties was purchased by the mother of respondents by way of sale-deeds. The suit filed by the father of appellant for declaration of ownership, possession and injunction got dismissed. So also, appeal against said judgment is also dismissed by the learned District Court.

8.2 Next it is contended that, the suit filed by respondents came to be decreed and possession was directed to be given and accordingly, the respondents have taken possession. The respondent no.1 has sold 40 Aar land out of 60 Aar came to her share and respondent no.2 is holding 60 Aar land.

8.3 The sale-deed executed in the year 1984 in favour of the mother of respondents and subsequent mutation entry is also cancelled till date. Learned advocate Mr. S.S. Wakode in furtherance of argument advanced by his colleague submitted that, merely because the premium of crop insurance is deposited by appellant that will not be considered as a proof of possession of the appellant. The crop insurance premium can be paid by any one, on behalf the land owner. Accordingly, prayed to dismiss the appeal.

9. Heard Ld. advocate Mr. G.U. Sarode for the appellant/defendant and advocate Mr. A.R. Powade along with Mr. S.S. Wakode for the respondents/plaintiffs. Perused the appeal memo, impugned order, paper book and subsequent documents filed during the progress of the appeal.

10. On rival contentions of the parties, following determinations arise on which I have recorded my findings along with reasons here under:-

Sr. No.	POINTS	FINDINGS
1)	Whether the plaintiffs have <i>prima-facie</i> case?	No
2)	Whether the balance of convenience lies in favour of plaintiffs?	No

3)	Who would suffer irreparable loss in the event? If the TI application is allowed?	No
4)	Whether interference is warranted ?	Yes
5)	What Order?	As per final order.

11. Legal Principles and Precedents/authoritative pronouncements:

11.1 Before, delving into analysis and reasoning part, I find it fruitful to discuss the principles governing grant or refusal of discretionary relief of temporary injunction under O. XXXIX R.1 & R. 2 of CPC.

11.2 In order to succeed in securing relief of injunction, the party seeking injunction, must satisfy the court that, he is having *prima facie* case, balance of convenience and irreparable loss i.e. *three golden rules*.

11.3 The *prima facie case* means a claim having *bonafide* and involves substantial question which required to be tried and is not vexatious one. The plaintiff must not require to prove their entire case at this stage but point out the material which suggest possibility of success, preventing summery disposal of the case. In case of *Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719*, the Hon'ble the Supreme Court of India held that for a temporary injunction, the plaintiff must establish a *prima facie* case, balance of convenience, and likelihood of irreparable harm. A *prima facie* case means the plaintiff must show a serious, arguable legal right that has been violated or is under threat. The court need not go

into the merits deeply but must be satisfied that the matter involves substantial legal questions worth trial.

11.4 So far as balance of convenience is concerned, it refers to comparative hardship or prejudice that would be caused to each party, if the injunction were either granted or refused. The Court must determine which party will suffer greater inconvenience. If refusing the injunction will cause more harm and hardship to the plaintiff than granting, then the balance of convenience lies in favour of the plaintiff. However, the equitable relief of injunction will not be granted, if it would unfairly harm/injure the defendant. On this point, it is fruitful to refer the decision in the case of *Gujarat Bottling Co. Ltd. Vs. Coca Cola Co., (1995) 5 SCC 545*, wherein, Hon'ble the Supreme Court of India held that where non-grant of injunction would cause irreparable harm to the plaintiff, and no substantial harm to the defendant, the balance of convenience lies in favour of the plaintiff.

11.5 Lastly, irreparable loss which means the plaintiff must demonstrate that, without the relief of grant of injunction, they would face harm that cannot be adequately compensated in terms of money or corrected at a subsequent stage. However, the injury must be imminent, substantial, and not compensable in monetary terms. In recent decision of the Hon'ble the Supreme Court of India titled *M. Gurudas v. Rasaranjan, (2006) 8 SCC 367*, the Court noted that irreparable injury does not mean that there must be no physical possibility of repairing the injury, but that the injury must be of such a nature that no fair and reasonable redress can be had in a Court of law.

REASONS**12. AS TO POINT NO.1:**

12.1 The respondents in order to prove *prima face* case before the learned Trial Court have relied upon sale-deed no. 4731/1984 dated 07.12.1984 for area admeasuring about 60 Aar and sale-deed no. 4732/1984 dated 07.12.1984 for area admeasuring about 60 Aar respectively. If the application Exh.5 is perused, it goes to show that, the respondents have averred that, by virtue of said sale-deeds, they have become owner and possessor of the suit properties. The appellant has noy concerned with the suit properties. It is also contended that, on 26.06.2022 the appellant brought Gunda person and tried to dispossess the respondents from the suit properties and further tried to take forcefully possession. It is further apprehended that, the appellant may take possession of the suit properties at any time and dispossess the respondents from the suit properties. Hence, on the basis of cause-of-action dt. 26.06.2022, the said suit was filed.

12.2 It is also superficially mentioned in para no.8 of the application that, the respondents having *prima-facie* case. Balance of convenience is in their favour. If the injunction is not granted, then the appellant may dispossess the respondents from the suit properties and in that event irreparable loss would be caused to them and same cannot be compensated in terms of money. In support of said contention affidavit is also filed on record.

12.3 If the order passed by the learned Trial Court is perused, then it goes to show that, the learned Trial Court has just observed hardly in few lines in para no.8, the *prima facie* case, balance of convenience and irreparable loss and consequently gave affirmative findings to the points framed for deciding TI application.

12.4 In my opinion, if the written statement filed with the paper book is considered, then it goes to show that, it is the specific plea of the appellant that, on 05.12.1984 the father of appellant, one Bhoju Namdeo Lokhande and Uttam Narayan Kalyankar were allegedly arrested for having committed murder of respondent's father Shankar Narayan Kalyankar, and, thereafter, they were arrested on 06.12.1984. In support said contention, learned advocate has filed on record the xerox copy of the judgment in Sessions Case No. 52/1985 delivered by learned Addl. Sessions Judge, Nanded on 16.09.1985, wherein 1) Bhoju Namdeo Lokhande, 2) Balaji Narayan Kalyankar (appellant's father) and 3) Uttam Narayan Kalyankar were prosecuted for having committed murder of Shankar Narayan Kalyankar i.e. father of respondents on 05.12.1984 at Kamtha (Bk.).

12.5 It is nowhere disputed by the respondents that, the appellant was the real brother of their father and their uncle. It also appears that, on 07.12.1984 said accused were arrested by the police and after completion of investigation, they were put on Trial. After conclusion of Trial, they got acquitted on 16.09.1985. If said dates are taken into account, it appears that, on 07.12.1984 the alleged sale-deeds have been executed in favour of

respondent's mother by grand mother of appellant and respondents.

12.6 It is very surprising fact that, when the respondent's father Shankar Kalyankar was murdered by his real brothers including present appellant's father on 05.12.1984 at about 5.00 p.m., the FIR was lodged on very next day i.e. 06.12.1984 and subsequently accused were arrested on 07.12.1984, then how come Mainabai Narayan Kalyankar i.e. mother of appellant's father and respondent's father executed such sale-deeds during period of deep grief. Record further shows that, once son was murdered on 05.12.1984 and another two sons were arrested by police on 07.12.1984 and on the same day said sale-deeds came into existence. The execution of sale-deeds by mother Mainabai in favour of respondents through their mother that too when her son is expired and another son is arrested and during such painful days, she executed sale-deeds certainly points out suspicion about genuineness of the sale-deeds in favour of respondent's mother. Generally no woman would go to registration office on a very third day of death of her husband for the execution of sale-deeds, more particularly, when there is no denial of her share from the side of in-laws. So also, mother will not go for executing such sale-deeds, when she was under deep sorrow due to murder of one son and pain due to arrest of other sons. Therefore, I find that, the sale-deeds might have been executed forcefully, otherwise, Mainabai would have waited for some time at least 10-15 days after the death of her son.

12.7 Second circumstance, which is in my opinion is that, there were 3 brothers. The suit properties was held by Mainabai. There is no record to indicate that the suit properties was self-acquired properties. Then it follows said properties must be either ancestral properties or joint family properties. Then, definitely 3 brothers will have equal share in the same.

12.8 Thirdly, in Reg. Civil Suit No. 452/2005 filed by present respondents through their mother, it appears that, said suit was filed for recovery of possession of the suit properties on 20.06.1995 and thereafter, after holding trial, the learned Trial Court pleased to allow partly said suit on 02.03.1996. It appears that, the defendant therein i.e. appellant's father was directed to hand over possession of suit properties to the plaintiffs i.e. respondents herein. However, it appears that, since then no petition for execution was filed by the respondents/deed holders to recover the possession of the suit properties.

12.9 Admittedly, the suit before learned Trial Court is filed on 14.07.2022, then certainly, in my opinion, the suit filed by the plaintiffs claiming that, they are having possession is definitely misleading one. Over all, I find that, there cloud over the title of respondents. The finding of learned Trial Court on point no.1 is not correct as same is not based upon correct appreciation of facts, put-forth by the parties to the *lis*. Therefore, I find that, no *prima facie* case is made out before the learned Trial Court by the respondents. **I answer point no.1 in the negative.**

13. AS TO POINT NO.2:-

13.1 The balance of convenience is also not in favour of the respondents for the reason that, their title deeds are surrounded with suspicion. The sale-deeds though came into existence appears to be tainted with some doubts. The respondent's father was murdered on 05.12.1984 and sale-deeds were executed on 07.12.1984. Moreover, Mainabai was not absolute owner of the suit properties. There were three sons to Mainabai, one of whom was the appellant's father and another was respondent's father. No details are provided as to how Mainabai alienated entire suit properties to the respondent's mother that too on very third day of her husband's murder. The finding of learned Trial Court on point no.2 is also not correct and same is liable to be interfered with. Therefore, I find that, the balance is also not in their favour. Hence, **I answer point no.2 in the negative.**

14. AS TO POINT NO. 3:

14.1 So far as point of irreparable loss is concerned, I find that, while assessing irreparable loss, Court has to see in the event of grant of injunction which party would suffer loss. In the present case the sale-deeds produced on record are surrounded by certain amount of doubts. The possession was never been handed over by virtue of alleged sale-deeds in the year 1984 by Mainabai to respondents, though there are recitals about handing over possession of the suit properties. However, when the suit seeking recovery of possession is filed by the respondents through their mother vide RCS No. 452/1995, then it follows that, possession

was not handed over on the date of alleged sale-deeds. Further, by impugned judgment and decree in RCS No. 452/1995, the appellant's father was directed to hand over the possession to the respondents, but nothing is brought on record to show that, any execution petition was filed and possession was delivered to the respondents. The learned advocate for the appellant submitted that, the appellant's father never handed over possession of the suit properties to respondent's mother or respondents. Even after death of appellant's father, the suit properties remained in possession of appellant. He is cultivating the same. He has even paid premium of crop insurance. I find that, in such situation if, the injunction is granted, then definitely it will put appellant at loss as he is in possession of the suit properties. If the injunction is granted in favour of respondents, then on the strength of said injunction and on the basis of sale-deeds and subsequent mutation entries, the respondents might create third party interest and obstruction to the appellant also. Therefore, the finding of learned Trial Court on point no.3 also not based upon correct appreciation of pleadings of the parties and documents. Therefore, same is not sustainable in the eyes of law. Accordingly, **I answer point no.3 in the negative.**

15. AS TO POINT NO. 4 :

15.1 I find that, the findings of learned Trial Court on point no. 1 to 3 are not legally sustainable. Said findings are not correct, legal and in accordance with correct appreciation of facts as well as law. The learned advocate for the appellant has successfully pointed out the illegality, perversity and arbitrariness while

passing said order. I also find that, the order passed by the learned Trial Court was patently illegal and arbitrary since none of the facts touching the points for determination were correctly appreciated.

15.2 In respect of this, ready reference can be made to landmark judgment in the case of *Wander Ltd. And Another vs. Antox India P. Ltd 1990 (Supp) SCC 727*, wherein the Hon'ble Supreme Court has laid down the law in respect of substitution of discretion by the Appellate Court in place of discretion already exercised by the Trial Court. In paragraph no. 14 of the said judgment, the Hon'ble Supreme Court has held that the appellate court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. This position has been followed thereafter consistently by all Courts, which is reiterated recently by the Hon'ble Supreme Court in **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi, 2024 INSC 913, 1990 (Supp) SCC 737**. In view of above discussion, I find that, there appellant has made out case for interference, accordingly, the impugned order is required to be set-aside. **I answer point no.4 in the affirmative.**

15.3 It is hereby made clear that, this Court has not in any way declared any right in favour of the over the suit properties by

passing this order. The question of *prima facie case*, irreparable loss and balance of convenience are considered in the light of said sale-deeds and other documents of the appellant and the respondents in respect of the properties and to meet the ends of justice.

16. AS TO POINT NO. 5:

16.1 In upshot of above discussion, I find that, the order passed by the learned Trial Court on the point of *prima facie case*, balance of convenience and irreparable loss is incorrect. Consequently, appeal succeeds and therefore, **in answer to point no.5 following order is passed-**

ORDER

1)	Appeal stands allowed.
2)	The order below Exh. 5 dated 06.10.2023 passed by the Ld. Civil Judge, J.D., Ardhapur, Dist. Nanded, in Reg. Civil Suit No.55/2022, is hereby set-aside and quashed.
3)	No order as to costs.
4)	Inform learned Trial Court accordingly.
5)	Pending applications, if any stands disposed of.
	Dictated and pronounced in the open court.

Date: 29.06.2026

Sd/-
(**T. S. Solankar**)
District Judge-2, Nanded.

Certificate

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original judgment.

Name of Stenographer	:	Khindre B.R. Steno Grade-I
Court Name	:	Dist. Judge-2 and Addl. Sessions Judge, Nanded.
Date of Order/Judgment	:	29.06.2026
Judgment signed by: Presiding officer	:	29.06.2026
Judgment uploaded on	:	29.06.2026

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