

MHNG180009002021

R.C.S. NO. 36/2021



ORDER BELOW EXH. 5
(Order passed on 02nd February, 2026)

Plaintiff has filed the present application for grant of temporary injunction against defendants vide Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908.

2. In short, it is the case of the plaintiff that, the plaintiff has filed the instant suit for declaration and permanent injunction against the defendants. It is submitted that the non-applicant/defendant No. 2 has sold the Plot No.5, admeasuring about 2129 Sq. Ft., Mouza - Kalmeshwar, P.H.N. 27, Mouza No. 19, Survey No. Old 299, 300/2, New Survey No. 634, within the limits of Nagar Parishad, Kalmeshwar-Brahmani, Tahsil - Kalmeshwar District - Nagpur and bounded by East and North - Layout Road, West - Plot No. 4 and South - Plot No. 6, dated 10/12/2013, by way of notary agreement to the plaintiff. The plaintiff has deposited the required registration fee for the said notary agreement for possession. The said survey number has converted into non-agricultural land but the

sale deed cannot be executed due to non approval from the Town Planning Department. The above property will now be called as suit property.

3. The plaintiff has further submitted that the said plot is carved out in the layout by Proprietor Jaisingh Gavhane on behalf of Jayadutt Trading Company. He is deceased and now his son Amit is looking after the business of the company. This plot was earlier taken from him by Mrs. Asha Vijay Mahajan on 29/11/2010 by notarial possession letter and from her by defendant No.2 on 05/11/2012 by notarial possession letter and sold to the plaintiff. Since then, the plaintiff is in possession over the suit property till date.

4. The plaintiff has further submitted that the said property has been in the possession of the plaintiff since the date of purchase and from last three to four months, the defendant No. 1 has started trying to occupy the said suit property plot and despite repeated warnings from the plaintiff, he has been repeatedly obstructing the possession of the plaintiff.

5. The plaintiff has further submitted that the defendant No.2 may have sold the said plot to the defendant No. 1 without having any ownership rights. The defendant has no right to do so because the plaintiff is the legal owner and possessor of the suit property since 10/12/2013. Therefore, the defendants are trying to take the possession of the suit property owned by the plaintiff by committing a wrongful act through illegal means, due to which the plaintiff has had to file this suit. That, since the defendants has repeatedly obstructed the possession, this application has to be filed. Prima facie the balance of convenience is lies in favour of the plaintiff and if the defendants have take the suit property from plaintiff forcibly, the plaintiff will suffer a huge and irreparable loss. If the application for temporary injunction is granted in favor of the plaintiff, no prejudice would be caused to the defendants. Hence, the plaintiff prayed for grant of temporary injunction.

6. Summons were issued to defendant Nos. 1 and 2, it was served upon them, defendant Nos.1 & 2 appeared and file their composite written statement/reply.

7. Learned Advocate for defendant No.1 submitted that this answering defendant is in uninterrupted physical possession as an owner of Plot No. 5, out of land having Khasara No. 634, admeasuring 139.354 Sq. Mtrs., Mouja Kalmeshwar, since 05/12/2015 by way of executed and notorised document executed in favour of defendant No.1 by Sau. Savita Anil Pande, R/o. Plot No. 164, Ladikar Layout, Ayodhya Nagar, Nagpur. That, this executed document was later on impounded on dated 17/05/2018 by the authority The Collector of Stamps, Nagpur (Rural) by collecting and acknowledging the same with Deficit Stamp Duty and Penalty which charged in total Rs.50,750/- on dated 13/06/2018. That no sale transaction took place in favour of plaintiff in respect of any property as stated in this para No.1 by plaintiff. The user of said land having Khasara No. 634 is not changed to Non-Agricultural use as stated in this para No.1 by plaintiff. No sale transaction took place in favour of plaintiff in respect of any property as stated this para No. 1 by plaintiff. It is specifically submitted that at no point of time the plaintiff became the owner by any means of any property as stated in the suit. The suit is

not within limitation. The attached documents alongwith suit are forged and fabricated. Hence application deserves to be rejected.

8. The defendant No.2 in his reply submitted that as per the need and wish of plaintiff the said document dated 10/12/2013 has been cancelled by and in between the parties thereto and the defendant No. 2 had refund the mentioned amount of document in presence of witnesses namely Vijay Mahajan and Yunus Sheikh both resident of Kalmeshwar. Defendant No.1 is in uninterrupted physical possession as an owner of Plot No. 5, out of land having Khasara No. 634, admeasuring 139.354 Sq. Mtrs., Mouja Kalmeshwar, since 05/12/2015 by way of executed and notorised document executed in favour of defendant No. 1 by this answering defendant. No sale transaction took place in favour of plaintiff in respect of any property as stated in this para by plaintiff. The user of said land having Khasara No. 634 is not changed to Non-Agricultural use as stated in this para No.1 by plaintiff. At no point of time the plaintiff became the owner by any means of any property as stated

in this suit. The attached documents alongwith suit are forged and fabricated.

9. Perused the application, documents filed on record by plaintiff and defendants. Heard learned advocate Shri. H. I. Tajne for the plaintiff and Shri. A. B. Lokare for the defendants. Considering application and facts and circumstances of present matter, following points arise for my determination. I recorded my findings and reasons thereof as follows :-

Sr. No.	POINTS	FINDINGS
1)	Whether the plaintiff has made out prima-facie case ?	..In the negative.
2)	Whether balance of convenience lies in favour of the plaintiff?	..In the negative.
3)	Whether the plaintiff will suffer irreparable loss if the injunction as prayed is not granted ?	..In the negative.
4)	What order ?	..As per final order.

REASONS

10. The plaintiff in support of his contention filed documents on record such as -

- 1) Ferfar Application
- 2) Kabja Patra dated 10/12/2013
- 3) Kabja Patra dated 05/11/2012
- 4) Kabja Patra dated 29/11/2010
- 5) Notice to defendants dated 07/07/2021
- 6) Postal receipts
- 7) Acknowledgment
- 8) N. A. Application

11. The defendants in support of their contention filed documents on record such as -

- 1) Impounded executed by Kabja Patra dated 05/12/2015
- 2) Kabja Patra dated 05/12/2015.

AS TO POINT NO. 1 :

12. This point pertains to prima facie case. Learned advocate for plaintiff has reiterated the facts in application. The plaintiff is seeking temporary injunction restraining the defendants from alienating or creating third party interest

in suit property on the ground that the plaintiff came to have purchase the suit plot from defendant No.2 in the year 2013 through a notarized document. He has filed copy of said notarized document on record. Perused the document it reveals that alleged transaction relied upon by plaintiff is based on a notarized document. A notarized document does not confer any right, title or interest in immovable property.

13. In the present case, plaintiff submitted that defendant No.2 has sold the said suit property to defendant No.1. The plaintiff has filed the suit in the year 2021 alongwith the present application. On the perusal of document filed by defendants it is seen that there is transaction between defendant Nos.1 and 2 in the year 2015. But still plaintiff has filed the suit after six years. The present temporary injunction application is also pending since last 5 years i.e. from year 2021. At present plaintiff has not shown any apprehension or urgency to grant interim relief. Hence, interim relief has become infructuous due to passage of time. It is settled law that delay defeats equity. A person who sleep over his right cannot claim urgent interim relief. Hence, considering the same plaintiff

has failed to show the prima facie case at current juncture. In these circumstances, it cannot be said that, the plaintiff has not come with clean hands.

14. Relief of injunction is discretionary and equitable relief. As per the provisions of Order 39 Rule 1 and 2 of the Code of Civil Procedure for granting interim relief of injunction, there must be existence of a prima facie case as pleaded, necessitating protection of the plaintiff right by issue of a temporary injunction. When the need of protection of the plaintiffs rights is compare with or weighed against the need for protection of the defendant's right, the balance of convenience tilting in favour of the plaintiff and there must be clear possibility of irreparable injury being caused to the plaintiff, if the temporary injunction is not granted. It is also pertinent to note that in addition to the above requirements the discretion for granting equitable relief of injunction requires to be exercised only when the plaintiff's conduct is free from blame and he approached the Court with clean hands. Therefore, I am of the considered view that, the plaintiff has failed to made out prima face case for grant of

temporary injunction. Hence, I answer point No.1 in negative.

AS TO POINT NO. 2

15. This issue pertains to balance of convenience. The balance of convenience determines whether injunction should be issued to prevent a defendant from continuing allegedly wrongful act. In the present matter, the suit is filed in the year 2021. The present application is pending since last 5 years. The plaintiff has failed to explain long delay. The plaintiff is only relying on notarized agreement which is executed in 2013. The contention of plaintiff that defendant No.2 sold the same suit property to defendant No.1. But that document is of year 2015 and she has filed the suit in the year 2021. Therefore, plaintiff has failed to establish urgent hardship for which interim relief is required after 5 years. Hence, considering the same and on perusal of all documents on record, the plaintiff has failed to demonstrate balance of convenience lies in her favour. As such, I answer point No.2 in the negative.

AS TO POINT NO. 3

16. This issue pertains to irreparable loss. In view of the aforesaid discussions to point Nos.1 and 2, the plaintiff has failed to establish prima facie case and balance of convenience in her favour. The plaintiff has not shown any imminent threat that arose recently. If any alleged loss is caused to the plaintiff the said fact can be decided on merits after trial and if it is proved, it can be compensated in terms of money. In such circumstances, the plaintiff has failed to show any irreparable injury will be caused to her. Hence, I answer point No.3 in the negative.

AS TO POINT NO. 4

17. In the present matter, the plaintiff has failed to show her case is having merit. She has failed to show that balance of convenience lies in her favour and if injunction is not granted in her favour, then she will suffer irreparable loss. Thus, the plaintiff has failed to satisfy all the three ingredients which are required for grant of temporary injunction. As such, it is clear that plaintiff has not approached the Court with clean hands as the said

application is pending from last 5 years and at this juncture there is no immediate threat or apprehension shown by plaintiff. Considering the aforesaid discussions and in answer to the present point, I pass the following order-

ORDER

1. Application (Exh.5) is rejected.
2. Both parties to take note.

Place :- Kalmeshwar
Date :- 02/02/2026

(Saurabh B. Mandwe)
Jt. Civil Judge Junior Division,
Kalmeshwar

ENDORSEMENT

Case Argued on	:	02/02/2026
Judgment dictated on	:	02/02/2026
Transcription Ready on	:	02/02/2026
Judgment checked and signed off	:	02/02/2026

CERTIFICATE

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

Name of Stenographer : *Shri. Ashish K. Wasnik (Grade-III)*
Date of PDF : 02/02/2026.
Judgment Signed by
Presiding Officer on : 02/02/2026.
Judgment uploaded on : 02/02/2026.