

MHPA110001642026

**IN THE COURT OF CIVIL JUDGE, SENIOR****DIVISION,****AT GANGAKHED, DIST. PARBHANI.**

(Presided over by : Gajanan B. Yadav)

Spl.C.S.No.04/2026**Rahila Begum W/o Atta-ur-Raheman & Ors.****Vs.****Madhusudan S/o Manikrao Kendre & Ors.****ORDER BELOW EXH.05.**

Perused the application and say filed on behalf of defendants. This is an application filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

02- It is contended by Adv. Shri. K.S.Daithankar on the behalf of plaintiffs that plaintiffs have purchased suit property by registered sale-deed 669/1997 and their land is on the northern-side of Gangakhed-Parli road. Defendants are having their land Gut No.428/3 which was purchased by them in the year 2006 and their land is on the southern-side of Gangakhed-Parli road. Defendants are having no way concern with the land situate on the northern side of Gangakhed-Parli road. In the year 2007 father of defendant has got measured their land through T.I.L.R. and at that time statement was also came to be recorded and panchnama was also drawn. In which it has been clearly

mentioned that land of defendant is on the southern-side on Gangakhed-Parli road, but defendants by executing a correction deed on 20.06.2025 at Parbhani prepared a false and bogus document and therefore got executed sale-deed from defendant No. 4 on 28.07.2025 and on that basis trying to encroach upon area of plaintiffs on the northern side of Gangakhed-Parli road. Therefore, plaintiffs has to now the doors of Court. Plaintiffs have established prima-facie case, balance of convenience also lies in favour plaintiffs and if interim injunction is refused then it will cause irreparable loss to them. Therefore, he requested to allow the application and grant interim injunction as prayed.

03- Ld. Advocate Shri. S.A. Deshpande on behalf of defendants strongly opposed the application and submitted that plaintiffs have failed to establish identification of suit property as no toch map or any revenue record has been placed on record. In in the sale-deed of plaintiffs there is no reference of Sub-Division number and plaintiffs also not placed on record any map showing area of Sub-Division of Survey No. 428. Plaintiff is only relying on the so-called measurement carried out in the year 2007 and statement and panchnama. But they have not placed on record application upon which that measurement was carried out. Therefore, it is not clear whether defendants have measured their entire land or portion of the same. In the sale-deed of plaintiffs there is no reference of canal. Though it has been argued that land was acquired for the purpose of canal and Gangakhed-Parli road then also there is no clear pleading as to form whose possession how much area was acquired. Plaintiffs are trying to

use the order passed in Spl. C.S. No. 57/2024 as a tool and therefore it is clear that plaintiffs have not come before this court with clean hands. As far as, correction-deed is concerned for the sake of convenience and as per the letter issued by revenue department execution of registered document at district headquarter is permissible. Moreover plaintiffs have no right to challenge legality and validity of such documents. As they are not party to the document. Plaintiff cannot take the weakness of the defendants they have to establish their case on their own proof. Therefore, Ld. Advocate requested to reject the application.

04- Considering the rival submissions and the pleadings from the record, following points arises for my determination and I have recorded my findings thereon for the reasons stated there below:

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiffs have <i>prima-facie</i> case ?	...In the affirmative.
2)	Whether the balance of convenience lies in favour of the plaintiffs ?	...In the affirmative.
3)	Whether the plaintiffs would suffer irreparable loss in case the temporary injunction is not granted ?	...In the affirmative.
4)	What order ?	...As per final order.

REASONS

POINT NOS.01 TO 03:-

05- Admittedly, the suit property which has been purchased by the plaintiffs is subject matter. Which was

purchased by them by registered sale-deed bearing No. 669/1997. By that sale-deed plaintiffs have purchased 2 H 42 R land out of 2 H 91 R land of their vendor and thereafter mutation entry No. 5119 was sanctioned in their name. It is pertinent to note that in the said sale-deed there is no reference of Sub-Division of Survey No. 428, in the said sale-deed there are only 3 boundaries were mentioned instead of four boundaries which was as follows; to the East Survey No. 430, West-Survey No.504, South-Portion of Survey No. 428 and Gangakhed-Parli road. This sale-deed is silent about the north boundary. It is pertinent to note here that the area of their vendor was 2 H 91 R land and out of each only 2 H 42 R land was purchased by the plaintiff and still 0H 49 R land is with the vendor of plaintiffs. It is again pertinent to note here that the sale-deed does not speak that on the southern-side there is direct Gangakhed-Parli road.

06- Defendant's father has purchased properties out of Gut No. 428/3 by two separate sale-deeds bearing Nos.441/2006 and 442/2006. Their sale-deed is having reference of Sub-Division. By two sale-deeds father of defendant has purchased 1 H 94 land each and thereby become owner and possessor of 3H 88 R land. On going through sale-deed 441/2006 it seems that the land which was purchased by that sale-deed was divided in two parts and therefore two separate four boundaries were mentioned in that sale-deed. One portion was bounded in the following boundary; East-Portion of Avinash Ramrao Choudhari, West-Pandan Juna Rasta, South-Land of Deshmane Ambekar, North-Parli-Gangakhed road. The another portion bounded in the

following boundary; East-Ginning Owned by Samad, West-Pandan, South-Parli-Gangakhed road and North-Ginning owned by Samad. The above two four boundaries makes it clear that the land purchased by sale-deed No.441/2006 was divided in the two portion due to Gangakhed-Parli road and for that reason only one portion is on the northern-side and other portion is on the southern-side of Gangakhed-Parli road. On the basis such document it is cannot be said that defendants are not having any land on the northern-side of Gangakhed-Parli road.

07- It is the matter of record that defendants has sold 1 H 40 R land to defendant no.4 on 19.09.2014 and correction deed was executed on 20.06.2025 by that correction deed four boundaries of the land sold to defendant no.4 was corrected. By sale-deed dated 28.07.2025 defendant Nos. 1 to 3 purchased 41.77 R land was purchased and accordingly mutation entry No.23948 also been sanctioned.

08- The right, title and interest created by a registered document cannot be taken away by the measurement carried out in the year 2007. By registered sale-deed bearing No. 441/2006 right, title and interest of defendant was created in the land mentioned in the four boundaries of that registered sale-deed. The purpose for which measurement is carried out in the year 2007 was for layout. The very purpose of measurement is not to create any right or title but to find out where the land situates. As

the lands of plaintiff and defendants were purchased without their being any revenue record of Sub-Division and therefore they were having their possession according to their boundaries in their title document.

09- By this application plaintiffs apprehends that defendants will encroach over their land and therefore they are seeking injunction order. As it appears from the record, the entire area of Survey No. 428 was 28 acre 32 R and out of which 2 acre 36 R land was acquired for the purpose of Parli-Gangakhed road by acquisition award dated 17.02.1966. The 7/12 extract available on record speaks that area of Survey No. 428/1 is 2 H 92 R land, area of Survey No. 428/2 is 2 H 91 R land, area of Survey No.428/3 is 3H 88 R and area of Survey No.428/4 is 1 H 95 R land and therefore entire area of Survey No. 428 seems to be 11 H 66 R which is more than the actual area i.e. 28 acre 32 R land. Therefore, probability of crossing over the boundaries by the owners of the Sub-Division of survey no. 428 cannot be ruled out. Though plaintiffs are claiming that defendants are not having any land to the northern-side of Gangakhed-Parli road but documents submitted by plaintiffs itself speaks that actually defendants had some land to the northern-side of Gangakhed-Parli road. But the defendants having any land towards northern-side of Gangakhed-Parli road does not give any right to encroach over the land of plaintiffs. Every land owner has statutory right to enjoy their property as per their will within the four corners of Law. If defendants are restrained not to encroach in the four boundaries of plaintiffs then no question of any prejudice is going

to cause to the defendants. Because defendants do not have any right, title or interest in the land situated in the four boundaries of plaintiffs. Considering all these aspects I come to the conclusion that, plaintiffs have established prima-facie case, balance of convenience also lies in favour and if injunction order is not granted is going to cause irreparable loss to the plaintiffs. Consequently, by recording affirmative findings on point nos. 1 to 3, I pass the following order.

ORDER

1. The application Exh.5 is allowed.
2. The defendants are hereby restrained from causing obstruction to the peaceful possession of plaintiffs over survey No.428/2 adm. 2H 42 R land bounded in the following boundaries; East-Survey No.430, West-Survey No.504, South-Portion of Survey No.428 and Gangakhed-Parli road only (Boundaries mentioned as per sale-deed No.669/1997) till the disposal of the suit.
3. It is made clear that this order in no way restrained defendants from enjoying their property situated in the Survey No. 428/3

Date :- 10.07.2026

(G.B. Yadav),
Civil Judge, Senior Division,
Gangakhed.