

MHPU180013382023



R.C.S. No.306/2023

Mangal Dhamale

Vs.

Dattatraya Pasalkar

ORDER BELOW EXH.5.

(Passed On 24/06/2026)

The present application has been filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, seeking an injunction restraining the defendant from alienating the suit property or creating any third-party interest therein and should not disturb the possession of the plaintiff over the suit property. On the other hand, the defendant has filed say below Exh.23 opposed the present application.

2. It is the case of the plaintiff that agricultural land Gat No. 221/1C admeasuring 41 R and Gat No. 222/1B admeasuring 40 R, situated within the limits of Village Malthan, Tal. Daund, District Pune (Hereinafter referred to as "*the suit property*") was allotted to her in lieu of the acquisition of her ancestral land. According to the plaintiff, she is the owner and in possession of the suit property. It is further the case of the plaintiff that the defendant is her brother and was looking after the suit property on her behalf. In the year 2010, the defendant informed her that certain persons were raising disputes regarding the suit property and requested her to execute a power of attorney in his favour to protect her interests. On the request of the defendant, the plaintiff executed a power of attorney in his favour in the year 2010. The plaintiff contends that she did not read the contents of the power of attorney and signed it believing the defendant, which is registered before Sub-Registrar, Daund.

Subsequently, when the plaintiff raised questions regarding the suit property, the defendant denied her title and claimed that he is the owner of the suit property on the basis of a registered sale deed. Thereafter, the plaintiff obtained the relevant documents from the office of the Sub-Registrar and came to know that the defendant, acting on the basis of the said power of attorney, had executed a sale deed bearing Registration No. 5394 of 2013 in his own favour. The defendant executed power of attorney by playing fraud on the plaintiff. The plaintiff further contends that the suit property has always remained in her possession and that possession thereof was never handed over to the defendant. Therefore, the plaintiff has prayed for a temporary injunction restrained the defendant from creating third party interest in the suit property and disturbing possession of the plaintiff.

3. The defendant has strongly opposed the present application by filing his say and contended that the application is false, frivolous and not maintainable in law. The defendant submits that he and his brother Arun received certain properties in lieu of the acquisition of their ancestral lands. The plaintiff also received the suit property as compensation for the acquisition of ancestral property. However, according to the defendant, he received a lesser share of the acquired property. Therefore, discussions took place between the plaintiff, her sister and the defendant regarding the transfer of the suit property in favour of the defendant. The defendant further contends that, pursuant to such understanding, the plaintiff executed a power of attorney in his favour in the year 1994 before the Notary Public and handed over possession of the suit property to him. Since then, the defendant has been in possession of the suit property and has been

developing and managing the same. It is further submitted that in the year 2006, the defendant paid a part of the sale consideration by obtaining a loan. Thereafter, in the year 2010, the plaintiff executed registered power of attorney bearing registration No.1830/2010 in favour of the defendant, authorizing him to alienate the suit property. The son of the plaintiff was present at that time. On the basis of the said power of attorney, the defendant obtained the necessary permissions from the concerned authorities and thereafter executed and registered Sale Deed No. 5394/2013 in accordance with law. The defendant further submits that notices regarding the mutation entry was issued to the plaintiff in the year 2014 and the plaintiff gave her consent to the said mutation proceedings. According to the defendant, he has been in possession of the suit property for a long period and continues to remain in possession thereof. Hence, he has prayed for rejection of the present application.

4. Heard both the Ld. Advocates for the parties. Perused the application, say and record and proceeding. In view of rival pleadings of both the parties following points arise for my determination, to which I record my finding for the reasons stated there under:

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
01.	Does plaintiff proves that she made out <i>prima facie</i> case?	In the Negative
02.	Does plaintiff proves that the balance of convenience lies in her favour?	In the Negative

03.	Does plaintiff proves that it would sustain irreparable loss, if the temporary injunction is refused?	In the Negative
04.	What order?	The application is rejected.

5. I have carefully perused all the documents placed on record by the plaintiff as well as the defendant.

REASONS

AS TO POINT NOS.1 TO 3 :-

6. Since all the points are interrelated and interconnected, they are being considered and discussed collectively.

7. It is the case of the plaintiff that the defendant, by practicing fraud, obtained the power of attorney and thereafter executed the sale deed in his own favour. The plaintiff further contends that she has remained in possession of the suit property throughout. Thus, the plaintiff has to prima facie prove that the fraud was committed and the suit property is in her possession.

8. The plaintiff has filed the registered power of attorney bearing Registration No. 1830/2010 dated 20/04/2010. Perusal of the said document shows that the Suraj Shivaji Paygude was present at the time of execution of the power of attorney. The defendant contended that, Suraj is relative of the plaintiff and educated person. This fact is not expressly denied by the plaintiff. The power of attorney executed in presence of the relative of the plaintiff and not by the plaintiff alone. It appears from the power of attorney that, the plaintiff executed the power of attorney in favour of the defendant in respect

of the suit property and expressly given power to execute the sale deed in respect of the suit property. The sale deed bearing Registration No.5394/2013 was executed by the defendant on the basis of the aforesaid power of attorney. It is pertinent to note that neither the power of attorney nor the said sale deed has been canceled by any competent court. Further, the plaintiff had not challenged either of these documents prior to filing the present suit. The plaintiff has come before the Court approximately 10 years later the execution of the sale deed.

9. The defendant has further relied upon an earlier power of attorney executed by the plaintiff in his favour in the year 1994 before a Notary Public. The said document also pertains to the suit property and has neither been challenged nor cancelled. The document indicates that the plaintiff had initially authorized the defendant to deal with the suit property in the year 1994 and handed over possession of the suit property to the defendant.

10. The defendant has relied upon the mutation entry notice dated 17/01/2014, whereby intimation of the mutation of the suit property in the name of the plaintiff was issued. The said notice bears the signature of the plaintiff dated 17/01/2014. The plaintiff has not disputed or challenged the said signature till date. From the mutation entry notice dated 17/01/2014, it prima facie appears that the plaintiff had knowledge of the said sale transaction in the year 2014, i.e., immediately after the execution of the sale deed.

11. On the strength of the said power of attorney registration No.1830/2010, the defendant executed the sale deed bearing Registration No. 5394/2013. The consideration amount is mentioned

in the said sale deed and the possession of the suit property also confirmed in favour of the defendant. The said sale deed continues to remain in force and has not been set aside. In these circumstances, at this stage, the plaintiff has prima facie failed to prove any circumstances of fraud and the power of attorney and sale deed got executed by the defendant by playing fraud. Therefore, the plaintiff has failed to prove prima facie case in her favour.

12. It is settled principle of law, while considering a prayer for discretionary relief, the conduct of the parties is also a relevant factor. The material placed on record shows that the plaintiff had signed the mutation notice in the year 2014 therefore, prima facie had knowledge of the mutation proceedings and the transfer of the property. Despite such knowledge, the plaintiff instituted the present suit in the year 2023. The considerable delay in approaching the Court, coupled with the absence of any satisfactory explanation for such delay, adversely affects the plaintiff's claim for equitable and discretionary relief. Prima facie, it appears that plaintiff not come before the Court with clean hands.

13. The defendant has relied upon the registered power of attorney bearing Registration No.1830/2010 and the registered Sale Deed bearing Registration No.5394/2013. Both the registered instruments stand in favour of the defendant and continue to remain valid as on date. The plaintiff has alleged that the said documents were obtained by fraud. However, at this stage, the plaintiff has relied only upon bare allegations to substantiate the plea of fraud but, prima facie failed to prove such allegations. The registered instrument confirms the possession of the defendant. Considering above reasons,

the balance of convenience appears in favour the defendant than the plaintiff.

14. The plaintiff has relied upon the 7/12 extracts of the suit property for the years 2002–2003 to establish her possession. However, a perusal of the 7/12 extract of the suit property for the year 2014–2015 reveals that the name of the defendant is recorded therein. Further, in the cultivation column, the entry "self-cultivation" is reflected. Prima facie, these revenue records indicate that, as on the date of filing of the present suit, the suit property is in the possession and cultivation of the defendant. Moreover, the power of attorney in the year 1994 prima facie shows the possession of the defendant over the suit property. Apart from the earlier revenue records, the plaintiff has not placed any material on record to demonstrate her possession of the suit property. In these circumstances, the plaintiff has prima facie failed to prove that she is in possession of the suit property or that the defendant is interfering with or disturbing her possession. Therefore, the plaintiff has also failed to prove her possession over the suit property. Therefore, if an injunction is granted in favour of the plaintiff, it would cause greater irreparable loss and inconvenience to the defendant than to the plaintiff.

15. Considering the above discussion, in my opinion, the plaintiff has failed to establish a prima facie case as well as the balance of convenience in her favour. The plaintiff has failed to prove her possession over the suit property and has not made out a case for grant of injunction. In these circumstances, Point Nos. 1 to 3 are answered in the negative.

AS TO POINT NO. 04 :-

16. On applying the settled principles governing grant of temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure, this Court finds that the plaintiff has failed to establish a prima facie case, balance of convenience and irreparable injury in her favour. Accordingly, the plaintiff is not entitled to the relief of temporary injunction. Resultantly, I pass the following order:

ORDER

1.	The application Exh. 05 is rejected with costs.
2.	Both parties shall take note of the order
	(Dictated and pronounced in open Court)

Daund.
Dt. 24/06/2026.

(A. S. Shaikh)
4th Jt. Civil Judge (Jr.Dn.),
Daund.

CERTIFICATE

I affirm that the contents of this PD.F file, Order are same, word to word, as per the original order.

Name of the Steno	:- Deepak A. Merukar, Grade-3
Court / Panel	:- A. S. Shaikh 4 th Jt. C.J.J.D. & Judicial Magistrate First Class (Court No. 4) Daund.
Order / Judgment date	:- 24/06/2026.
Order / Judgment signed by	:- 24/06/2026.
the Presiding Officer on	
Order/ Judgment uploaded on :-	24/06/2026.