

MHPU180018842023



R.C.S. No.308/2023

Suman Dhamale

Vs.

Dattatraya Pasalkar and

Anr.

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 defendants 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 defendants have filed say below Exh.25 opposed the present application.

2. It is the case of the plaintiff that agricultural land Gat No. 223/3 admeasuring 81R, 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 No.1 is her brother and was looking after the suit property on her behalf. In the year 2010, the defendant No.1 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 No.1, 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 No.1, which is registered before Sub-Registrar, Daund. Subsequently, when the

plaintiff raised questions regarding the suit property, the defendants denied her title and claimed that defendant No.2 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 No.1, acting on the basis of the said power of attorney, had executed a sale deed bearing Registration No. 934/12 in favour of defendant No.2. The defendant No.1 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 defendants. Therefore, the plaintiff has prayed for a temporary injunction restrained the defendants from creating third party interest in the suit property and disturbing possession of the plaintiff.

3. The defendants have strongly opposed the present application by filing their say and contended that the application is false, frivolous and not maintainable in law. The defendants submit that defendant No.1 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 defendants, defendant No.1 received a lesser share of the acquired property. Therefore, discussions took place between the plaintiff, her sister and the defendant No.1 regarding the transfer of the suit property in favour of the defendant No.1. The defendants 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 defendant No.1. Since then, the defendant No.1 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 No.1 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.1829/2010 in favour of the defendant No.1, authorizing him to alienate the suit property. The relative of the plaintiff was present at that time. On the basis of the said power of attorney, the defendant No.1 obtained the necessary permissions from the concerned authorities and thereafter executed and registered Sale Deed No. 934/2012 in accordance with law in favour of defendant No.2. According to the defendants, they have been in possession of the suit property for a long period and continues to remain in possession thereof. Hence, they have 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.
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5. I have carefully perused all the documents placed on record by the plaintiff as well as the defendants.

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 No.1, by practicing fraud, obtained the power of attorney and thereafter executed the sale deed in favour of defendant No.2. 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. 1829/2010 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 defendants contended that, Suraj is relative of 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 No.1 in respect of the suit property and expressly given power to execute the deed in respect of the suit property. The sale deed bearing Registration No. 934/2012 was executed by the defendant No.1 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 defendants have 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 No.1 to deal with the suit property in the year 1994 and handed over possession of the suit property to the defendant No.1.

10. On the strength of the said power of attorney registration No.1829/2010, the defendant No.1 executed the sale deed bearing Registration No.934/2012 in favour of defendant No.2. The consideration amount is mentioned in the said sale deed and the possession of the suit property also confirmed in favour of the defendant No.2. The said sale deed continues to remain in force and has not been set aside. Further, 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 defendants by playing fraud. Therefore, the plaintiff has failed to prove prima facie case in her favour.

11. The defendants have relied upon the registered power of attorney bearing Registration No.1829/2010 and the registered Sale Deed bearing Registration No.934/2012. Both the registered

instruments stand in favour of the defendants and continue to remain valid as on date. The plaintiff has alleged that the said documents were executed 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 No.2. Considering above reasons, the balance of convenience appears in favour the defendants than the plaintiff.

12. 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 2015–2016 reveals that the name of the defendant No.2 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 No.2. Moreover, the power of attorney in the year 1994 prima facie shows the possession of the defendant No.1 over the suit property. The registered sale deed confirms the possession of the defendant No.2 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 are 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.

13. 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 :-

14. 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 P.D.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
4th 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.