



Ajit Dagdu Kale

Vs.

Dashrath Damu Kale

ORDER BELOW EXH. 5

The plaintiffs have filed the present application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 to restrain defendants, their agent, servants or any other assignees claiming on behalf of them from causing obstruction by any means to the peaceful possession of the plaintiffs over the suit property mentioned in the para 1 of plaint till final decision of the suit.

Case of plaintiffs in short is as follows:

2. The present suit is instituted for present declaration and permanent injunction. The subject-matter of the suit is block No. 353/2 (old block No. 355) admeasuring an area 00 H 81 R, situated at Aamondi, Tal. Ambegaon and Dist. Pune boundaries specifically described in the Para No. 1 of the present application. (“suit property”)

3. The plaintiffs purchased the suit property from Shri Mangesh Shantarama Borhade and Shri Ramesh Shantarama Borhade through a registered sale deed dated 22/10/2018 for a consideration of Rs. 10,00,000/-. Possession of the property was handed over to the plaintiffs on the same day. Since the purchase, the plaintiffs have been in continuous and lawful possession of the property. From 2018 to 2023, they cultivated tomato crops, and during 2024–2025, they cultivated paddy and soybean. The plaintiffs developed the land at their own cost by installing a pipeline from the eastern stream to irrigate the entire property. On the northern side of the suit property,

with mutual consent, the plaintiffs permitted their uncle, Umaji Sitaram Kale, who had no other residence, to temporarily construct a house. The said house Property No. 844 is recorded in his name. The plaintiff's residential house lies to the south of the suit property.

4. To the east of the suit property lies the ancestral property of the plaintiff's father namely Dagdu Sitaram Kale, jointly recorded with his brother and two sisters in block No. 353/1 admeasuring 00H 81R. Their father has been independently cultivating the said property for the past 20 years. The defendants have no right, title, or interest in the suit property. However, they have frequently attempted to interfere with the plaintiff's peaceful possession using threats and obstruction. The cause of action arose on 29/12/2019 when the plaintiffs requested official measurement of the land, and the defendants objected and prevented the land surveyor from carrying it out. After payment of remeasurement fees, the plaintiffs again sought measurement, which was ultimately completed on 17/06/2022 under police protection. Despite this, the defendants continue to interfere with the plaintiff's lawful possession and agricultural activities. Such repeated obstruction by the defendants has caused the plaintiffs serious hardship, and unless restrained, the plaintiffs will suffer irreparable loss. Therefore, the plaintiffs are constrained to file the present suit and prayed to allow the application.

5. On the other hand, the defendants filed the reply and submitted that the application is false and frivolous. There is no cause of action to file the present suit. The regular civil suit No. 137/2018 related to the block No. 353/1 is pending before court. This fact is suppressed by the plaintiffs. Hence the suit is barred for suppression of material facts. According to plaintiffs the defendants obstructed the plaintiffs on 21/12/2021, at that time the cause of action arose. According to Article 58 of The Limitation act the limitation is of 3 years. Hence the suit is barred by limitation.

6. The original ancestor of both the plaintiffs and defendants was Shivaram Mahadu Kale, who had four sons namely Babu, Sitaram, Ramchandra and Damu. The eldest, Babu Shivaram Kale, purchased old block No. 355 on 11/01/1979 from Balwant Ravji Kulkarni for the entire joint Hindu family. His name was recorded in the 7/12 extract, by Mutation Entry No. 102 and the family jointly enjoyed peaceful possession of this land. Out of old block No. 355, 00 H 81 R were reserved for acquisition, and this portion was allotted for rehabilitation to Punaji Krishnaji Shengale as he had been dispossessed from block No. 355/2. Later, by Mutation Entry No. 424 dated 10/11/1989, the said portion came to be recorded in the name of the District Rehabilitation Officer, Dimbhe Project.

7. Subsequently, by order dated 21/03/1995 of the Deputy Director, Rehabilitation and District Collector, Pune, the same 00 H 81 R were allotted for rehabilitation to Shantaram Laxman Parit, with the condition that the rights were new, indivisible and restricted. Possession was handed over on 13/06/1995 with a proper panchnama and map, defining the boundaries of the allotted portion. As per map the boundaries of said block were on east side - old block No. 352, on west side - old block No. 354, on south side - old block No. 354 and on north side - remaining land of old block No. 355. Mutation Entry No. 653 recorded Shantaram Laxman Parit as owner of block No. 353/2. After his death on 13/12/2003, his sons Mangesh Shantaram Borhade and Ramesh Shantaram Borhade were recorded as his legal heirs through Mutation Entry No. 982.

8. Meanwhile, the father of Plaintiffs, Dagdu Sitaram Kale, received his share in the ancestral lands through a registered partition deed dated 03/03/2006 (Deed No. 616/2006). Several family members, including the predecessors of Defendants and the plaintiffs's own father, were allotted specific areas in block No. 353. Though the individual shares were determined,

the orientation and exact boundaries of each share were not physically demarcated, and therefore all co-sharers continued peaceful possession according to mutual understanding. Importantly, the plaintiffs never had possession on the northern side of block No. 353/1.

9. On 24/04/2015, the plaintiffs executed a registered agreement to sale bearing No. 1498/2015 and a Power of Attorney bearing No. 1499/2015 with Mangesh and Ramesh Borhade regarding the area 00 H 81R in block No. 353/2. Relying on these documents, the plaintiffs executed a registered sale deed bearing No. 2649/2018 dated 22/10/2018 for block No. 353/2. However, the boundaries mentioned in this sale deed were completely incorrect and inconsistent with the original 13/06/1995 possession record and maps of Shantaram Laxman Parit.

10. In November 2018 the defendants objected to the plaintiffs, pointing out the boundary discrepancies, they refused to accept it and instead allegedly used threats and attempted to dispossess the defendants. This led the defendants (including their father) to file Regular Civil Suit No. 137/2018 seeking a permanent injunction against the plaintiffs, which is still pending. When the plaintiffs later sought mutation of the sale deed, Defendant No. 5 filed objections before the Talathi, showing that the boundaries in sale deed No. 2649/2018 were incorrect. The plaintiffs then executed a Correction Deed bearing No. 1024/2019 dated 22/10/2019 and changed the boundaries. However, even with the corrected boundaries, the plaintiffs had never obtained actual possession of the land. The defendants assert that the plaintiffs are attempting to misuse the court's injunction orders to forcibly evict them, despite the defendants having long-standing lawful possession. The defendant's possession includes a well, irrigation pipeline and current cultivation of paddy and soybean. The plaintiff's claim that they permitted their uncle Umaji Sitaram Kale to build House No. 844 on the northern side is false, because revenue

records show that the house was constructed in 2008, whereas the plaintiffs purchased the land only in 2018, proving that the plaintiff's version is fabricated.

11. Earlier, when one of the defendants, Shantaram Babu Kale, constructed a house on his possession area, the plaintiffs had filed an injunction application (Exh.19) in RCS 1237/2018, which was rejected on 22/11/2019, with the court holding that the plaintiffs had no possession over that portion. The plaintiffs concealed this adverse order in the present suit. A government measurement (M. R. No. 406/2022) does not show block No. 353/1 and 353/2 as separate or the plaintiff's alleged possession. The measurement confirms the existing possession of the defendants. Despite this, the plaintiffs have filed a false suit, suppressing true facts, while RCS 137/2018 regarding the same property is already pending.

12. The defendants assert that the plaintiffs have no prima facie case, have not approached the court with clean hands, and have never had possession of the suit property. Granting injunction to the plaintiffs would irreparably harm the defendant's lawful rights, whereas refusal would cause no prejudice to the plaintiffs. Therefore, they prayed to reject the application.

13. Heard the learned advocate for the plaintiffs Shri. M. M. Thombare. He submitted that the plaintiffs have purchased the suit property from Mangesh and Ramesh Borhade through a registered sale deed bearing No. 2649/2018 dated 22/10/2018. The defendants have not challenged the said sale deed and the mutation entry No. 982 through which the names of Mangesh and Ramesh Borhade mutated. The mutation entry No. 387 gives the specific boundaries of suit property. The pending regular civil suit is for the whole block No.353. They have filed the affidavits of third persons and photographs of suit property which shows that the plaintiffs are in possession

of suit property. Remaining he submitted as per his application. Also he contended that the plaintiffs are having a prima-facie case. The balance of convenience is in their favour. They will suffer irreparable loss, if the injunction is not granted. Therefore he prayed for grant of a temporary injunction against the defendants.

14. Heard the learned advocate for the defendant Shri. V. B. Pokharkar. The suit is barred by limitation. In the said sale deed they have mentioned the boundaries of the whole block. They executed the correction deed but they have not pleaded anything about it in plaint. The house property of Umaji Kale was built in 2008 and plaintiffs stated that they gave consent to construct it after the execution sale deed in 2018 which is not possible. Plaintiffs claimed that they have a house property in the south side of suit property but to show this they have not filed any document. He submitted that the plaintiffs have suppressed the material facts. The plaintiffs have not come up with clean hands before court. Therefore a temporary injunction cannot be granted in favour of plaintiffs. To support this contention he filed the following citation.

- **Shri Vassudev Nene & Others vs Shri Dattatraya
Raghunath Jog (2000) 3 ALLMR 193 (BOM)**

15. He further submitted that the plaintiffs have failed to prove prima facie case. Balance of convenience does not lie in their favour. Plaintiffs have not mentioned how they will suffer irreparable loss. If the application is allowed then the defendants will suffer irreparable loss. Hence he prayed to reject the application.

16. I consider the following points for determination and record findings thereon with reasons mentioned as under : -

Sr. No.	Points	Findings
1.	Whether the plaintiffs have made out a prima-facie case to grant a temporary injunction ?	No
2.	Whether the plaintiffs prove that the balance of convenience lies in their favor ?	No
3.	Whether the plaintiffs prove that they will suffer irreparable loss if a temporary injunction is not granted ?	No
4.	What order ?	Application is rejected.

REASONS

17. In support of averments, plaintiffs have produced following documents:

- Original copy of registered sale deed dated 22/10/2018.
- Correction deed of boundaries of suit property dated 22/10/2018.
- Digital copy of 7/12 extract of Block No. 353/2 from the year 2016-17 to 2024 - 25.
- Digital copy of 7/12 extract of Block No.353/1.
- Digital copy of 7/12 extract of Block No.353.
- Verified copy of measurement proceeding of block No. 353/2.
- Measurement map of suit property as per M.R. No. 406/2022 and M. R. No.3.
- Verified copy of decision of deputy collector in Dimbha S.R./1/2020.

- Verified copies of mutation entry Nos. 2362, 2339, 387, 434 and 653.
- Verified copy of Map of entire village.
- Verified copy of Yojanapatrak of block No. 355.
- Verified copy of decision of circle officer on the complaint filed by defendant No.1.
- Verified copy of tax assessment list extract of Village property No.844.
- Photographs of suit property showing different crops, house property and pipeline.
- Bill of photographer.
- Affidavit of third person namely Dagadu Sitaram Kale and his Adhar card and verified copy of his block No. 353/1.
- Affidavit of third person namely Umaji Sitaram Kale and his Adhar card and verified copy of his block No. 353/1.
- Affidavit of third person namely Dagadu Sitaram Kale and his Adhar card and verified copy of his block No. 353/1.
- Affidavit of third person namely Giridhar Govind Jadhav and his Adhar card and verified copy of his block No. 363.
- Affidavit of third person namely Ramchandra Govind Kale and his Adhar card and verified copy of his block No. 352.
- Verified copy of order of court on Exh.19 in R.C.S. No. 137/2018.

18. In support of averments, defendants have produced following documents:

- Verified copy of tax assessment list extract of Village property No.985.
- Photocopy of agreement to sell deed No.1498/2015.
- Photocopy of power of attorney deed No.1499/2015.

- Photocopy of sell deed No.3649/2018.
- Photocopy of correction deed No.1024/2019.
- Photocopy of partition deed No.616/2006.
- Photocopies of mutation entry Nos. 102, 434 and 653.
- Possession receipt dated 13/06/1995.
- Photographs of suit property.
- Photocopy of light bill of Umaji Sitaram Kale.
- Certified copy of decision of deputy collector rehabilitation Pune dated 11/03/2020.
- Amended plaint in R.C.S No.137/2018.
- Affidavit of third person namely Ramdas Shankar Kale and his Adhar card and verified copy of his block No.671.
- Affidavit of third person namely Vilas Lakshman Kale and his Adhar card and verified copy of his block No.670.
- Affidavit of third person namely Suresh Maruti Falake and his Adhar card and verified copy of his block No.665.
- Affidavit of third person namely Dayanand Dhondiba Dongare and his Adhar card and verified copy of his block No.662.
- Google map of suit property bearing block No.353.
- Map of block No.353.

AS TO POINT NOS. 1 TO 3 :-

19. Point Nos. 1 to 3 are interlinked to each other. Therefore, they are discussed together to avoid repetitions.

20. The plaintiffs have filed present application under Order XXXIX Rule 1 of the Code which provides as follows:

Cases in which temporary injunction may be granted -

Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

21. It is well settled that the Court is required to consider three ingredients while deciding an application of temporary injunction namely the existence of prima-facie case, irreparable loss and balance of convenience. There are well settled rules which govern the exercise of power of granting temporary injunction. It is, therefore, obvious that the power under rules 1 and 2 of order XXXIX of the Code cannot be mechanically exercised unless the existence of three ingredients are established.

22. Perused the application, reply thereon and documents filed on record.

23. The present suit is instituted for declaration and permanent injunction. The plaintiffs' claim of possession primarily rests on their sale deed dated 22/10/2018 and alleged agricultural activities. A sale deed, however, is not conclusive proof of possession unless corroborated by independent material. The defendants have placed on record the history of Block No.353/2, including the rehabilitation allotment of 1995, the boundaries of possession delivered to Shantaram Parit, and the mutation entries reflecting his heirs. They contend that the boundaries in the plaintiffs' sale deed are inconsistent with the 1995 record. The defendants had filed the application towards the Talathi regarding the incorrect boundaries in sale deed, after this objection from defendants, plaintiffs executed a Correction Deed. The earlier suit RCS 137/2018 was filed by the present defendants against the present plaintiffs, relating to entire Block No. 353, including the area now described as Block No.353/2. This fact was not pleaded by the plaintiffs in plaint. After defendants revealed this fact in written statement, plaintiffs admitted the pendency of that suit but they stated that, earlier suit was regarding entire block number. The omission of these facts in the plaint gives rise to a prima-facie inference of suppression of material facts. Also on perusal of possession receipt dated 13/06/1995 and the sale deed No. 3649/2018 it appears that the dispute is regarding the possession of the suit property not regarding the title.

24. The defendants have also produced material indicating that House No.844 existed since 2008, contradicting plaintiffs' claim that they granted permission in 2018. This further weakens plaintiffs' version. The Measurement Report No.406/2022 does not conclusively show plaintiffs' possession. Defendants assert that it supports their possession and that Block No.353/1 and 353/2 were not physically demarcated therein. Further, the plaintiffs and defendants have filed affidavits of third persons. On perusal of the affidavits, it appears that the third persons supported the respective parties. However, it is

needless to state that said witnesses are yet to go through the test of cross-examination. So their affidavits are not wholly reliable.

25. Further it is not permissible to grant a blanket injunction when there is dispute regarding the identity of the property and the boundaries. Further, I have minutely gone through all documents on record. The plaintiffs have produced nothing on record to prima-facie substantiate their claim. Considering all documents on record and in view of settled legal position, it appears that, in the present suit, there is a dispute relating to an area and boundary marks between the plaintiffs and defendants who are adjacent land holders. Unless and until those boundaries of the said property of the plaintiffs and defendants get fixed, it would be uncertain to observe at this stage that defendants are obstructing peaceful possession of the plaintiffs over the suit property.

26. The burden lies upon the plaintiffs to show prima-facie that defendants have made obstruction over the said property. The plaintiffs have contended that defendants are obstructing peaceful possession over the suit property. However, there is dispute between the plaintiff and defendants on account of boundary marks. The plaintiffs have prima-facie failed to show that defendants have made obstruction over the said property. After going through the entire record, apart from bare words of the plaintiffs, there is no documentary evidence on record to show prima-facie that defendants have obstructed the peaceful possession of the plaintiffs over the suit property. Therefore, the plaintiffs have failed to show that they have a prima-facie case. The plaintiffs have failed to show that the balance of convenience lies in their favour. Further, the plaintiffs failed to prove that, if the application is rejected, it will cause hardship upon the plaintiffs which cannot be compensated in terms of money and no irreparable loss will be caused to them even if the relief of temporary injunction is not granted. Therefore, without fixation of

boundaries between the suit property and lands of defendants, blanket injunction cannot be granted in favour of the plaintiffs. Therefore, I answer point Nos.1 to 3 in the negative.

AS TO POINT NO. 4:-

27. Considering the findings of point Nos.1 to 3. The application is liable to be rejected. Hence the following order is passed.

ORDER

The application is rejected.

Place: Ghodegoan
Date: 25/11/2025

Sd/-
(Sneha Sunil Pulujkar)
2nd Jt. Civil Judge Junior Division,
Ghodegoan, Dist. Pune.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file are the same word for word as per the original order .

Name of the Court : Smt. Sneha Sunil Pulujkar,
2nd Jt. C.J.J.D. and J.M.F.C.,
Ghodegaon, Dist. Pune.

Name of the Steno : J. S. Kaite, Steno Grade - III.

Order date : 26/11/2025.

Order signed by P.O. : 26/11/2025.

Order uploaded on : 26/11/2025.