

ORDER BELOW EXH. 5
(Padmashri vs Vaishali and Ors)

The present suit is instituted by Plaintiff for recovery of possession and Perpetual Injunction, in which Plaintiff has filed this application under Order XXXIX Rule 1 and 2 of The Code of Civil Procedure, 1908, and prayed for restraining Defendants from damaging the suit property as well as for restraining Defendants from alienating the suit property by any mode, till disposal of suit.

THE CASE OF PLAINTIFF :-

2. That, the property bearing Survey no. 20/4 having total area of 0 H 30 R, situated at village Bamnoli. Out of which the property of 0H 10 R, situated at the western side is the subject matter of said suit. From the said 0 H 10 R, the property of 278.6 sq mtrs (having north-south length of 27.90 mtrs and east west width of Rs. 13.33 mtrs, i.e. in total 2998 sq. mtrs at eastern side. (Hereinafter referred as 'suit property', for the sake of brevity and convenience.)

3. According to the Plaintiff, the suit property was originally owned and possessed by smt. Latabai Narayan Salunkhe, Chandrakant Salunkhe, Sau. Sujata Shashikant Jadhav and Sanjay Narayan Salunkhe. On 23/01/2018 they appointed one Vidyadhar Bapu Patil as their Power of Attorney vide a Registered Instrument bearing no. 583/2018. While exercising the rights he got from the said Power of Attorney, said Vidyadhar Bapu Patil executed a registered sale deed in favour of Plaintiff on 30/08/2019 bearing no. 5047/2019 and thereby handed over symbolic possession of it to the

Plaintiff. The Defendants have unlawfully possessed the total 2998 sq. mtrs at eastern side out of said property. The Plaintiff has acquired the right to recover the possession from defendants by way of the registered sale deed in her favour. The name of the Plaintiff has been entered upon the revenue records of suit property by way of Mutation No. 7640.

4. The Defendants have unlawfully possessed the total 2998 sq. mtrs at eastern side out of said property, since more than two years. On 03/04/2022, the Plaintiff demanded the possession of suit property to Defendants. However, Defendants refused to hand over the vacant possession to Plaintiff. Hence on 21/04/2022, Plaintiff issued legal notice through her advocate for handing over the possession of suit property to her within 7 days from receiving said notice. However, Defendants replied the said notice with false and wrong answers, and denied to hand over the possession thereof. The Plaintiff is a lady and Defendants are not law-abiding citizens having money, muscle and political power. This has constrained to Plaintiff to institute the said suit. The disposal thereof on merit will take the time. There is possibility that, Defendants may damage the suit property by any whatsoever means and the Defendants are also talking the language of alienating the suit property or creating interest of any third party or financial institute therein. In such case, the Plaintiff will suffer the loss which cannot be compensated in terms of money. On the other hand, Defendants will not suffer any kind of loss, if temporary Injunction is granted in the favour of Plaintiff.

The Case of Defendants is as follows -

5. Defendant strongly objected the said application. They filed their Written Statement cum reply to Exh. 5 at Exh 14. They denied all the claims

of Plaintiff. It was contended by Defendants, the Suit has been insufficiently stamped by the Plaintiff. The Power of Attorney of original owners of suit property and the Plaintiff are the husband and wife and hence the sale deed executed in the favour of Plaintiff is hallow and without consideration. The name of Plaintiff entered on the revenue records, being based on the said deed is also liable to be quashed. The suit property was originally owned by one Narayan Ramji Salunkhe. He along with Latabai, Chandrakant, Sanjay as well as Narmadabai alias Sujata Jadhav, empowered one Lingappa Ramappa Dhawaleswar Patil as their power of attorney. Said Lingappa sold the suit property of 0.3 R out of total 0.30 R in favour of one Raosaheb Keshav Kacharawat by a registered sale deed bearing no. 9042 on 24/04/1989. The said Raosaheb Kacharawat sold the said property in favour of Mr. Bhausahab Shripal Sutar by way of registered sale deed bearing no. 4271 on 01/12/2011. These Defendants, i.e. Sachin Govind Patil and Vaishali Deepak Mohite purchased the said property from said Mr. Sutar by way of an registered sale deed bearing no. 788 on 28/02/2020. The Defendants have made the said sale deed by entering the house no, as per the Grampanchayat Records of property no. 1577. They have also regularly paid the Gram Panchayat Tax regarding the said house property.

6. The property purchased by Defendants being the Gunthewari property, the names of Kacharawat, Sutar and Defendants were not entered on the revenue records and the said Vidyadhar Bapu Patil joined the hands with original owners of suit property and made the false and unlawful power of attorney in his favour and thereby made the false sale deed in favour of his wife without an valid consideration. Total area of 0.30 R of S. No. 20/4 in village Bamnoli has already been sold to various persons, still the sale deed in favour of Plaintiff has been made by taking benefit of

wrong revenue records. Accordingly, he prayed for rejection of application.

7. From the submissions of rival parties, following points arose for my consideration, against which I have given my findings and appended my reasons to follow -

Sr. No.	Points for Determination	Findings
1.	Does Plaintiff prove that, she has <i>prima-facie</i> case in their favour ?	Proved
2.	Does Plaintiff prove that, the balance of convenience lies in her favour ?	Partly Proved
3.	Does Plaintiff prove that, she will suffer from irreparable loss if the Temporary Injunction is refused ?	Not Proved
4.	Whether Plaintiff is entitled for Temporary Injunction?	Partly
5.	What order and relief ?	Application is Partly allowed

8. In support of his case, the Plaintiff has relied upon some documents. They have been tabulated as under –

Sr.No.	Exhibit No.	Nature of Documents
1.	Exh. 3/1	7/12 Extract of S. No. 20/4
2.	Exh. 3/2	Photocopy of sale deed in favour of Plaintiff
3.	Exh. 3/3	Office copy of Notice issued by Plaintiff to Defendants
4.	Exh. 3/4	Office copy of Reply issued by Defendants to the Notice of Plaintiff

9. The Defendant has also filed some documents on record, they are tabulated as under -.

Sr. No.	Exh.No.	Nature of Documents
1.	Exh. 27/1	Sale Deed bearing no. 788/2020, in favour of Defendants
2.	Exh.27/2	Sale Deed bearing no. 4201/2011, in favour of Mr. Sutar
3.	Exh.27/3	Sale Deed bearing no. 9042/2001, in favour of Mr. Kacharawat
4.	Exh.27/4	Tax Assessment assessed by Grampanchayat Bamnoli, in favour of present Defendants

10. ADMITTED/UNDISPUTED FACTS -

Description and boundaries of suit property of the property bearing Survey no. 20/4 looking to be undisputed by the parties. However, the nature of the property therein is in dispute. Latabai Salunkhe and others are the original owners of suit property is looking to be the fact admitted by the parties.

11. Perused the record. Heard Shri A.S. Done, the Id. Counsel for Plaintiff and Shri S.B. Dhole, Id. Counsel for Defendant at sufficient length.

REASONS**AS TO POINT NO. 1, 2 AND 3 -**

12. This point is about the three basic parameters of every application for Temporary Injunction i.e. *prima facie* case, Balance of Convenience, Irreparable loss alleged by the Plaintiff in his favour and denied by the

Defendant. To avoid repetition of discussion, they have been discussed together. It is the settled position of law that, the term *prima-facie* case actually means the *bona-fide* contest between the parties. The *bona-fide* contest must result into an arguable case. There should not be a flimsy or fanciful case. Before going into the intrinsic factual details of the cases, I consider it necessary to have reference to the settled position of law laid down by the Honourable Supreme Court in the case of ***Dalpat Kumar And Another vs Prahlad Singh And Others*** reported in **AIR 1993 SC 276**, Their Lordships observed in Paragraph No 05 as under:-

“5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a *prima facie* case" in his favour which needs adjudication at the trial. The existence of the *prima facie* right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with *prima facie* title which has to be established, on evidence at the trial. Only *prima facie* case is a substantial question raised, bona fide, which needs investigation and a decision on merits.”

13. According to Plaintiff, the suit property was originally owned and possessed by smt. Latabai Narayan Salunkhe, Chandrakant Salunkhe, Sau. Sujata Shashikant Jadhav and Sanjay Narayan Salunkhe. On 23/01/2018 they appointed one Vidyadhar Bapu Patil as their Power of Attorney vide a Registered Instrument bearing no. 583/2018. While exercising the rights he got from the said Power of Attorney, said Vidyadhar Bapu Patil executed a registered sale deed in favour of Plaintiff on 30/08/2019 bearing no. 5047/2019 and thereby handed over symbolic possession of it to the Plaintiff. The Defendants have unlawfully possessed the total 2998 sq. mtrs at eastern side out of said property. On 03/04/2022, the Plaintiff demanded

the possession of suit property to Defendants. However, Defendants refused to hand over the vacant possession to Plaintiff.

14. In support of her contention, the Plaintiff has filed on record, rough hand sketch of the S. No. 20/4. It shows that there are some vertical rectangular shaped portions, in S. No.20/4. They are described as unlawfully possessed by various persons. Out of them, one vertical rectangular portion has been shown in the possession of present defendants. Since the location, shape and size thereof has not looking to be disputed, the same has not been discussed elaborately hereinafter.

15. The plaintiff has also filed the 7/12 extract of S.No. 20/4 on record. It shows the area mentioned therein as 0.30 R. For the area of 0.10 R, the names of original owners i.e. Latabai Salunkhe and others is looking to be present. The name of Plaintiff is looking to be present for 0.10 R. The area has been described therein is in Hector Are, as well as in Square meters. At Exh.3/2, the Plaintiff has filed the photocopy of the sale deed in favour of Plaintiff. Upon apparent perusal of said sale deed is shown in paragraph 4, as some people have possessed some portion of said property unlawfully. At Exh.3/3, the Plaintiff has filed the copy of the legal notice issued by Plaintiff to Defendants to hand over the peaceful possession within 7 days. At Exh. 3/4 there occurs the office copy of the reply issued by Defendants to the legal notice issued by Plaintiff to them. In such way, the documents filed by Plaintiff appear to be in consonance with the pleadings of Plaintiff.

16. The Defendants have contested the application with saying that, The Power of Attorney of original owners of suit property and the Plaintiff are the husband and wife and hence the sale deed executed in the favour of

Plaintiff is hallow and without consideration. The name of Plaintiff entered on the revenue records, being based on the said deed is also liable to be quashed. The suit property was originally owned by one Narayan Ramji Salunkhe. He along with Latabai, Chandrakant, Sanjay as well as Narmadabai alias Sujata Jadhav, empowered one Lingappa Ramappa Dhawaleswar Patil as their power of attorney. Said Lingappa sold the suit property of 0.3 R out of total 0.30 R in favour of one Raosaheb Keshav Kacharawat by a registered sale deed bearing no. 9042 on 24/04/1989. The said Raosaheb Kacharawat sold the said property in favour of Mr. Bhausahab Shripal Sutar by way of registered sale deed bearing no. 4271 on 01/12/2011. These Defendants, i.e. Sachin Govind Patil and Vaishali Deepak Mohite purchased the said property from said Mr. Sutar by way of an registered sale deed bearing no. 788 on 28/02/2020. The Defendants have made the said sale deed by entering the house no, as per the Gram panchayat Records of property no. 1577. They have also regularly paid the Gram Panchayat Tax regarding the said house property. The property purchased by Defendants being the property under Gunthewari Regulations, the names of Kacharawat, Sutar as well as defendants Defendants were not entered on the revenue records and the said Vidyadhar Bapu Patil joined the hands with original owners of suit property and made the false and unlawful power of attorney in his favour.

17. The first contention raised by Id. Advocate for Defendants is that the sale deed in favour of Plaintiff is illegal, since it is hallow and without consideration. The so called power of attorney holder of original owners of suit property, i.e. Vidyadhar Bapu Patil and Plaintiff Padmashri Vidyadhar Patil are the husband and wife of each other. Looking at the nomenclature of the parties, it can be the case. However, this is not a proper stage to

express any comment thereon. For ascertaining the sale deed in favour of Plaintiff as one without consideration, it will require the detailed evidence and full-fledged trial.

18. The Defendants have also filed some documents on record. At Exh. 27/1, there is the photocopy of sale deed executed by abovesaid Bhausaheb Shripal Sutar in favour of present Defendants. At Exh.27/2, there occurs photocopy of the sale deed executed by abovesaid Raosaheb Keshav Kacharawat in favour of Bhausaheb Shripal Sutar. At Exh.27/3, there is the photocopy of sale deed made in favour of Raosaheb Keshav Kacharawat, looking to be executed by Power of Attorney of original owners, i.e. Lingappa Dhawaleshwar Patil. At Exh.27/4, there occurs the Grampanchayat Extract of the Property no.1577, and the area has been mentioned thereof as 457.5 sq.mtrs. The said property has been mentioned as open plot therein. One thing which is necessary to note here that, all these sale deeds filed by Defendants on record does mention the property no. 1577 itself, and not S. No. 20/4.

19. The case of the Plaintiff is that small portion of 2998 sq.fts out of the area of 0.30 R has been unlawfully possessed by Defendants. The sale deed at Exh.27/2 mentions that area of said Property No. 1577 as 3000 sq.fts, as well as the Photocopy of the Gram panchayat Extract looking to be annexed to the sale deed in favour of present Defendants, also shows the area thereof as 3000 sq. fts. The disputed area mentioned by Plaintiff in his pleading is 2998 sq.mtrs and the area of Gram panchayat Property no. 1577 can be apparently said to be 3000 sq.fts. So also, Defendants have not looking to have denied the existence of suit property. In such case, it is scope to say that, prima facie case exists in favour of Plaintiff.

20. Now, another important factor necessary to decide the application of temporary injunction is balance of convenience. There is a need of striking a fair balance between the two conflicting interests and thereby finding that who will suffer more inconvenience, if injunction order is not issued. As said earlier, the name of the Plaintiff is looking to be entered on the 7/12 extract of S.No.20/4. However, the sale deed in favour of Defendants as well as the power of attorney of original owners of property possessed by Defendants, i.e. Lingappa Dhawaleshwar Patil is looking to be prior to that of claimed by the Plaintiff. The Defendants themselves admitted that, since the property possessed by them is actually hit by Gunthewari Act and hence their names have not been entered on the revenue records of property possessed by them. This also looking to be the matter requiring detailed inquiry and its relevancy to the present set of dispute may require the detailed evidence. The nature of disputed portion of the suit property, is also looking to be question. The Plaintiff has mentioned the nature of suit property as an agricultural land. The Id. Advocate for Plaintiff has mentioned that the Defendants have erected the shed in the portion unlawfully possessed by them. However, according to Defendants this is an open plot. The photocopies of sale deeds filed by Defendants also does not show it as an agricultural land. The Gram panchayat Extract at Exh. 27/4 also shows that it as an open plot (खुली जागा/पडसर). In such case, there is also a dispute regarding nature of the suit property, which cannot be answered sufficiently here. Therefore, I have come to the conclusion that, the balance of convenience, though not in total but partly present in favour of Plaintiff. Accordingly, I answer the point no.2 as partly proved.

21. As mentioned earlier, the name of the Plaintiff appears to be present

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for the 10 R, on the 7/12 extract of the Plaintiff. The name of Defendants also looking to be present on the Gram panchayat Extract of Property no.1755. In my consideration, whether the area of property no. 1755 is the part and parcel of the 10 R as mentioned by Plaintiff, in the Survey no.20/4, is a matter of detailed evidence. So also, the sale deeds filed by Defendants also leads to the prima facie opinion that the possession of property no. 1755 may not be unlawfully possessed by Defendants. The question of better title may be needed to be answered in the course of trial. The Plaintiff has not shown any possibility of any attempt on the part of Defendants to alienate the portion of the property possessed by them. There occurs no material on record to assume anything about it. The Pleadings of Plaintiff seems to possess the averments in that behalf. However, mere averments in pleadings will not suffice the justice, to prohibit the alienation of disputed portion of suit property by the Defendants. However, at the same time there occurs the dispute present as to the nature of disputed portion of suit property. The Plaintiff has claimed it to be the agricultural property having the tin shed. The Defendants have claimed it to be the open plot as per Gram panchayat records. In such case, as claimed by the Plaintiff that the possibility of causing damage to the existing nature of the disputed portion cannot be absolutely negated. If the nature of property is damaged or altered in course of suit proceedings, it may lead to complexity of proceedings and may be detrimental to justice. The preservation of present nature of disputed portion occurs to be of utmost importance. Accordingly, there occurs apparent need to pass the order in that behalf. In such way, I answer the point no. 3 as not proved.

AS TO POINT NO. 4 AND 5 -

22. This issue is concerned with the entitlement of Plaintiffs as to the

relief prayed. From the above-mentioned discussion, it has become clear that there appears *prima facie* case in favour of Plaintiff. Accordingly, point as to Balance of convenience is also answered as partly proved. The remedy of temporary injunction is a discretionary remedy. The discretion of Court is always based on sound principle of justice equity and good conscience. Hence at this stage, I consider that the Plaintiff is not looking to be entitled to the relief of Temporary Injunction completely, in part of that what is prayed by her.

23. At the same time, as many of the facts taken recourse by both the parties such as to the documents, nature of the suit property etc. requires detailed hearing, therefore it would be proper to order parties to bear their own costs. Cumulatively, I tend to pass following order in answer to point 4 and 5.

ORDER

1. Application at Exh. 5 for temporary injunction is Partly allowed.
2. The Defendants are hereby restrained from causing any kind of damage/alteration to the present nature of the portion of suit property possessed by them, till disposal of suit.
3. Parties to bear their own Costs.

Date - 28/08/2024

Onkar S. Shastri

11th Jt. Civil Judge Jr. Division, Sangli.