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Duration : Y-00 M-05 D-16

In the Court of District Judge-2, Solapur.

(Presided over by Shri.PPRajvaidya)

Misc. Civil Appeal No.115 of 2025.

EXH.

(CNR No. MHSO-0100-3458-2025)

- | | |
|--|--------------------------------|
| 1.Sonyabapu Baban @ Tukaram Salgar, | } |
| Age – 36 years, Occupation – Agriculture, | } |
| 2.Padmini Baban @ Tukaram Salgar, | } |
| Age – 70 years, Occupation – Agriculture, | } |
| Both R/o. Kolegaon, Taluka Mohol. | } |
| 3.Suvarna Ramdas Deshmukh, | } |
| Age – 34 years, Occupation – Agriculture, | } |
| R/o. Ishwarvathar, Taluka Pandharpur, | } |
| 4.Savita Gorakh Kale, | } |
| Age – 45 years, Occupation – Agriculture, | } |
| R/o. Kalewadi (Near Bitale), Taluka Mohol. | } |
| 5.Kavita Raosaheb Kale, | } |
| Age – 43 years, Occupation – Agriculture, | } |
| R/o. Ropale (Khurd), Taluka Madha. | } |
| 6.Sunita Rajendra Shirmane, | } |
| Age – 38 years, Occupation – Agriculture, | } |
| R/o. Pasalewadi (near Anagar Railway Station)} | } |
| Taluka Mohol, District Solapur. | }... <u>APPELLANTS.</u> |

Versus

- | | |
|---|--------------------------------|
| Brijgopal Bhagwandas Tapadiya, | } |
| Age – 55 years, Occ.: Business, | } |
| R/o. Vishal Nirmiti Pvt. Ltd. (Sleeper Factory) | } |
| Near Wadval Stop, Kolegaon, Taluka Mohol. | }... <u>RESPONDENT.</u> |

Shri. S.B. Kulkarni, learned Advocate for the Appellant.

Shri. S.D. Deshpande, learned Advocate for the Respondent.

ORAL JUDGMENT

(Delivered on 30th April, 2026)

1. Feeling aggrieved by order dated 15/10/2025 passed below Exh.5 in Regular Civil Suit No.94/2025 by learned 2nd Jt. Civil Judge Junior Division, Mohol, District Solapur, appellants have filed this appeal. (Appellants are the plaintiffss and respondent is the Defendant

in the said suit. Parties are hereinafter referred to as per their nomenclature before the learned Trial Court).

2. In brief, case of the plaintiffs may be stated as under;

Suit property bearing field Gat No.146/1/K/1 is owned and possessed by the plaintiffs from their predecessor Baban @ Tukaram. Plaintiffs have expended lakhs of rupees to develop the said land. Plaintiffs are in actual physical possession of the said property. Defendant has purchased 81 Are land out of field Gat No.146/2 in year 1999 from Waghmode Family. By misguiding the revenue authorities, defendant is trying to change the record of field Gat No.146/2. Defendant has filed application on 22/12/2023 to change Gat number of field Gat No.146/2 to Gat No.146/1. On the basis of the report submitted by the Revenue Circle Inspector, without making any inquiry, the Tahsildar Mohol has sanctioned Mutation Entry No.3938 whereby number of said field is changed to Gat No.146/1 from 146/2 illegally though the entry taken in revenue record as Gat No.146/2 was not challenged anywhere.

3. On the basis of the illegal M.E. No.3938, defendant has filed illegal application for effecting measurement of field Gat No.146/1. By fixing date as 12/03/2025 for effecting measurement, field Gat No.146/1 is got measured illegally and false measurement record is created on the basis of which, defendant has started obstructing and interfering into the possession of the plaintiffs over the suit field illegally since March, 2025. Plaintiffs have tried to give understanding to the defendant that Gat number of his field is 146/2. In fact, East-West compound wall is erected by the defendant towards southern side boundary of his property and defendant has no reason to come across

the said compound wall in the suit field, but defendant is not in a mood to listen anything. plaintiffs had filed application with the the concerned authority on 15/04/2025 and 21/04/2025 for complaining that the defendant is trying to take disadvantage of the so-called measurement record. Defendant has no concern with the suit field. Close relative Venugopal of defendant has already fixed boundaries by getting Gat No.146 measured in year 2022. There are different share holders in field Gat No.146/1 and N.A. orders are already passed despite which defendant is trying to encroach over the suit field. On these grounds, plaintiffs have prayed in the suit to declare that field Gat No.146/1/K/1 total admeasuring 0.65 Hectare is owned and possessed by them and to permanently restrain the defendant from interfering and obstructing into their possession over their suit field. In the said suit, plaintiffs had filed application Exh.5 for seeking relief of temporary injunction to restrain the defendant from interfering and obstructing into their possession over the suit field pending final decision of the suit.

4. Defendant has resisted the suit and interim injunction application by filing his written statement below Exh.30. By denying most of the contentions raised in the plaint and injunction application, defendant has contended that he has erected a compound wall in his field towards southern side after leaving some portion, said compound wall is not in dilapidated condition. Defendant is using the southern portion of his field for keeping scrap, firewood, drying the clothes of the labours etc. hence, said portion is shown vacant in the map of measurement. It is contended that defendant has got measured the property on 12/03/2025 and fixed the boundaries on 15/04/2025.

Defendant has contended that original Gat No.146 was measured previously during which, the property of the defendant is given Gat No.146/1 by the measurement department hence, on the basis of the suggestion given by the said department, defendant has got the Gat number of his field changed from 146/2 to 146/1 but, it has not changed the area and location of the field of defendant. It is contended that if plaintiffs are aggrieved by the measurement, they can raise their challenge before the appropriate forum. On these grounds, defendant has claimed dismissal of the suit and rejection of injunction application.

5. By order dated 15/10/2025, learned Judge of the Trial Court has rejected application Exh.5. Plaintiffs have challenged the said order by filing this appeal on the grounds mentioned in the appeal memo. I have heard learned advocate Shri.Kulkarni for the plaintiffs and learned advocate Shri.Deshpande for the Defendant.

6. Following points arose for my consideration. I answered those points for reasons stated thereunder.

<u>POINTS</u>	<u>FINDINGS</u>
i)Whether the plaintiffs have made out the parameters for grant of temporary injunction?No
ii)Whether the plaintiffs are entitled for temporary injunction as prayed?No
iii)Whether the impugned order warrants interference at the hands of this Court?No
iv)What order?	...As per final order.

REASONS

AS TO POINT NOs.(i) to (iii):

7. All the points are taken together for consideration. Learned Advocate for the plaintiffs argued that defendant has illegally got changed the number of his property from Gat No.146/2 to Gat No.146/1. He argued that on the basis of the illegal mutation entry got sanctioned in that regard, the defendant is trying to create false record of measurement with the help of the concerned authorities. He argued that defendant himself has fixed the southern side boundary of his field by erecting East-West compound wall, but not the defendant is illegally trying to claim that said compound wall is not erected at the extreme end of his property from southern side. He argued that defendant is trying to take disadvantage of the illegal measurement and illegal mutation entry, and on the basis of those illegalities, defendant is trying to grab the portion of suit property and thereby trying to disturb into peaceful possession of the plaintiffs over the suit field. He argued that learned Judge of the trial Court has not properly appreciated the factual and legal aspect and erred in rejecting injunction application Exh.5 of the plaintiffs. He argued that if impugned order is not set aside and if temporary injunction is not granted in favour of the plaintiffs pending final decision of the suit, it will cause an irreparable loss to the plaintiffs due to which appeal deserves to be allowed.

8. As against this, learned Advocate for the defendant has supported the impugned order and requested the appeal with costs by submitting that plaintiffs has failed to show that defendant has committed any illegality.

9. Perusal of the averments of the plaint and injunction application prima facie show that the Gat number of property of defendant has been changed to Gat No.146/1 from Gat No.146/2. plaintiffs has contended that said change has been made illegally by the defendant. It does not appear to be in dispute that mutation entry to that effect has been sanctioned by the concerned competent authority. If any illegality is committed in that regard, said fact has to be challenged before the concerned competent authority. Here in the matter in hands, having carefully gone through the averments of plaint, this Court could not find the reasons mentioned by the plaintiffs about the illegality allegedly committed by the defendant in making change in the Gat Number of his property has in any way caused any prejudice or loss to the plaintiffs. It is true that the number of property of defendant in the sale deed executed in his favour by his vendors is mentioned as Gat No.146/2 and mutation entry was also effected in the revenue record for showing the defendant as owner of field Gat No.146/2. It does not appear to be in dispute that said entry was intact for many years and it was not challenged by the defendant however, said fact in itself is not sufficient to hold at this stage that the change effected in the Gat number of the property of defendant from Gat No.146/2 to Gat No.146/1 is illegal.

10. Contention of the plaintiffs is that on the basis of the false mutation entry, defendant has got Gat No.146 measured illegally and on the basis of said false measurement, the defendant is trying to grab the portion of suit field. While dealing with the said aspect in the impugned order, learned Judge of the Trial Court has held that mere act of measuring the suit property by the office of Deputy

Superintendent of Land Records does not amount to causing of disturbance by the defendant into the peaceful possession of the plaintiffs over the suit property. Said observation of the learned Judge of the Trial Court cannot be said to be perverse especially because, the plaintiffs have not produced material to show that defendant is thereby causing obstruction into their possession over the suit property. It does not appear to be the contention of the plaintiffs that themselves have got measured the suit property. The fact that defendant has erected a compound wall towards southern side of his property in itself is not sufficient at this stage for accepting that defendant has thereby fixed the southern side boundary of his property upto the said compound wall. Defendant has got the property measured from the concerned competent authority which the plaintiffs have not done. In absence of any material to show that defendant is illegally trying to grab any portion of the suit property, the contention of the plaintiffs is prima facie not acceptable that defendant is obstructing into his peaceful possession over the suit property.

11. Having gone through the material available on record and the points raised by the plaintiffs in the appeal memo so also, having taken into consideration the points argued before the Court by his learned Advocate, this Court is of the opinion that neither prima facie case nor balance of convenience do lie in favour of the plaintiffs. In the result, there is no question of causing any irreparable loss to the plaintiffs, if temporary injunction as prayed is not granted in their favour. Learned Judge of the Trial Court has properly appreciated the material available before him while passing the impugned order. The order impugned is just, proper and legal and it does not warrant

interference at the hands of this Court while exercising the limited Appellant Jurisdiction. For these reasons, I answered points No.(i) to (iii) accordingly and pass the following order :

ORDER

1. Miscellaneous Civil Appeal No.115/2025 is dismissed.
2. Parties to bear their own costs.
3. Inform the learned Trial Court accordingly.

Date : 30/04/2026.

(PPRajvaidya)
District Judge-2,
SOLAPUR.

CERTIFICATE

I affirm that the contents of this PDF file Judgment is same word to word as per the original Judgment.

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|----------------------------------|---|---------------------------|
| (a) Name of the Stenographer | : | Kurle S.S., Steno Grade 1 |
| (b) Court | : | DJ-2 and ASJ, Solapur. |
| (c) Judgment dictated by P.O. on | : | 30/04/2026. |
| (d) Judgment signed by P.O. | : | 30/04/2026. |
| (e) Judgment uploaded on | : | 30/04/2026. |