

**ORDER BELOW EXHIBIT NO.5**

(Passed on- 10/02/2026)

**01.** This is an application filed by the plaintiffs for grant of temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure (for short “CPC”) for restraining the defendants from causing any sort of interference or obstruction to their peaceful possession over the suit properties which consists of field properties situated at mauje Jeur, Tal. Akkalkot bearing Gat No.223/1 having ad-measuring area of 00-75 H.R, Gat No.223/4 having ad-measuring area of 00-75 H.R, Gat No.220/2/B having ad-measuring area of 00-48 H.R, Gat No.220/2/A having ad-measuring area of 00-20 H.R, Gat No.220/1 having ad-measuring area of 00-69 H.R, Gat No.236/1/B/1 having ad-measuring area of 01-21 H.R, Gat No.236/1/B/2 having ad-measuring area of 01-67 H.R and 1/2 share in the Well situated in Gat No.223/1 in any manner till the decision of the suit.

**02.** The plaintiffs claim that, Gat No.223 was their joint family property held along with the defendants but, there was partition effected in it between plaintiff No.2 and 4 as well as defendant No.1 and 3 in the year 2002 and the said partition was effected by metes and bounds. The partition was acted upon and the allottees started cultivating their respective share separately and independently. The revenue record underwent changes by way of mutation entry No.4300 and this entry was never challenged by anybody till date. The suit property bearing Gat No.220/2/A and 220/2/B were purchased in the year 2003 by plaintiff Nos.1 and 4 from Subhash Gurav by applying their self-acquired income. Gat No.220/1 was purchased by plaintiff No.4 from Choulagi in the year 2005. Gat No.236/1/B/1 was purchased by plaintiff No.1 from Sutar and she applied her *Stridhan* to pay the consideration. Gat No.236/1/B/2 was purchased by plaintiff No.2 out of his own income in the name of plaintiff No.3 in the year 2019. Thus, all the above mentioned field properties except Gat No.223/1 and Gat No.224/4 are the separate and self-

acquired properties of the plaintiffs and they are cultivating it for earning their livelihood. The defendants are the relatives of the plaintiffs and they have got their respective share in Gat No.223 and they have no concerned in any manner whatsoever with the suit properties. The defendants, despite of this, started abusing, threatening the plaintiffs in June-2022 and caused interference to their peaceful possession over the suit property. The defendants caused interference to their possession at the beginning of sowing season in July-2022, on 16/09/2022 when they assaulted the plaintiffs by means of axe and wooden stump and they put up a lock to the room situated in the suit property and threaten the plaintiffs of dire consequences if they dare to remove the lock and finally, in October-2022, they destroyed the standing sugarcane crop of the plaintiffs. The report of all these incidents were lodged at the police station and the police officials issued a non-cognizable offence receipt to them on several occasions but, an offence was registered against the defendants under Section 324 of IPC for allegedly causing hurt to the plaintiffs. The menace of the defendants is increasing day by day and they have resolved to dispossess them from the suit property. They have prima facie case in their favour and would suffer irreparable loss if the equitable relief is not granted in their favour and the balance of convenience also shifts in their favour. They relied upon several documents like 7/12 extracts of the suit properties, certified copy of mutation entry register, sugarcane weight receipt, legal notice issued on 24/06/2022, complaints made before Superintendent of Police, Solapur (Rural), Collector Solapur, Non Cognizable receipts, copy of FIR.

**03.** Ld. Advocate Shri.Boralkar for the plaintiffs submitted that, the documents pertaining to partition are filed on record and the defendants have no right, title and interest over the suit properties. The repeated invasion caused by the defendants over the suit properties is reflected from the reports lodged at the police station. The aspect of possession shall be required to be seen while deciding the application for temporary injunction

and the plaintiffs have proved their rights over it. The fact of proving the application of joint family funds for purchasing other properties than Gat No.223/1 and 223/4 is a part of evidence during trial and no inference can be drawn of that kind at this stage of the suit. The separate 7/12 extract in favour of the plaintiffs support their case and the entries so recorded were never put to any challenge by the defendants. The defence taken by the defendants is totally false and the alleged division of Gat No.223 was made only to prevent the family members from any sort of trouble being caused to them from the Civil Suit No.300/1998 claiming maintenance and filed by the defendant No.2 against defendant No.1 is fictitious. There is no documentary or oral evidence at this stage of the suit to prove the alleged theory put forth by the defendants. There is no cloud of doubt on the title of the plaintiffs and the defendants cannot even take a plea of that kind due to the previous partition. He relied upon the ratio laid down by the Hon'ble Bombay High Court in **Baban Anantrao Naik Vs. Sou.Pramila Uttamrao Yenare reported in (2011) 6 ALL MR 15** in support of his contentions.

**04.** The defendants filed their written statement and reply at Exh.25 and denied all the contentions regarding partition of the Gat No.223 amongst them and about the alleged interference and obstruction caused to the possession of the plaintiffs over the suit properties. According to them, the suit properties are the joint family properties of the family and there was no partition of it by metes and bounds. There was only a family arrangement between them to protect themselves and their ancestral properties from the decision which would be passed in civil suit filed by the defendant No.2. It was thus a temporary arrangement without any intention to act upon the formal division of the properties. The other properties were purchased out of the income earned from the yields of the

joint family property and hence, the nature and status of those other properties is also the same and the plaintiffs cannot claim any separate or independent right over them. The mutation entry No.4300 is also illegal and it cannot, by itself, confer and extinguish any right of the defendants in the suit properties. The plaintiff No.3 was not having any independent source of income to purchase the suit property in her name. The matrimonial dispute between defendant No.1 and 2 was resolved and she has started cohabiting with him and this fact could not be digested by the plaintiffs and hence, they started claiming independent possession and right over the suit properties. The possession of the parties over the joint family property continues to be joint even now. The plaintiffs have filed false complaints at the police station for harassing the defendants. There is no prima facie case against them and would not suffer any irreparable loss and the balance of convenience also tilts in their favour and not the plaintiffs. They relied upon the judgment and decree passed in O.S. No.300/1998 dtd.02/02/2002, complaint filed by the plaintiff No.1 before the Collector Solapur on 24/09/2022.

**05.** Ld. Advocate Shri. Patil for the defendants submitted that, the suit is not maintainable as there cloud over the title of the plaintiffs and simpliciter suit for permanent injunction is not maintainable without claiming the relief of declaration. According to him, mutation entries do not confer or extinguish the title and there is no registered partition deed between the parties and the order passed by Tahsildar, on the strength of which mutation entry No.4300 was taken is also not on record. The purpose of mutation entry is purely for fiscal purposes and nothing more than that. The plaintiff No.1 has admitted that, Gat No.223 is ancestral in nature and that Gat number 236/1/B/1 was given to her out of the properties which were forming part of the partition. It means that, she is admitting that, field

property Gat No.236/1/B/1 is ancestral in nature. In view of this, the application deserves to be rejected as the mutation entries were not recorded and certified on the strength of any partition. He relied upon the ratio laid down by the Hon'ble Supreme Court of India in **Nagpur Metro Rail Corporation Ltd; Vs. Orbit Motels and Inns Pvt. Ltd, Nagpur and others in Civil Appeal No.8582/2022, decided on 06/12/2022, Suraj Bhan Vs. Financial Commissioner, reported in (2007) 6 SCC 186, Balwant Singh Vs. Daulat Singh reported in (1997) 7 SCC 137** in support of his submissions.

**06.** The following points arise for my consideration and I record my findings against each of them with reasons therefor.

<b><u>Sr. No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
1.	Whether the plaintiffs prove that, a prima-facie case in their favour?	.. Affirmative
2	Whether the plaintiffs prove that, irreparable loss would be caused, if injunction is not granted in their favour?	..Affirmative
3	Whether the plaintiffs prove that, balance of convenience lies in their favour?	..Affirmative
4	What order?	Application Exh.5 is allowed with costs.

### **REASONS**

#### **AS TO POINT NOS. 1 to 3:-**

**07.** All the points are inter-connected and hence, they are taken for discussion together. The suit is for permanent injunction and in order to maintain it, the factum of possession of the parties over the suit properties

is an essential part of fact which needs to be looked into. The plaintiffs have filed the certified copy of mutation entry register No.4300 in which there is a reference of some order dtd.04/12/2002 whereby, there was a partition between the defendant No.1, defendant No.3, plaintiff No.2 and plaintiff No.4. The land Gat No.223 was the only land which was put to partition between the parties as could be gathered from this document. According to this document, the defendant No.1 got Gat No.223/2 lying towards Northern side in the said partition whereas plaintiff No.2 got Gat No.223/4 lying towards South to his share whereas plaintiff No.4 got Gat No.223/1 lying towards North to his share whereas defendant No.3 got Gat No.223/3 lying towards South in his share. The ad-measuring area of all the above mentioned Gat numbers was 00.75 H.R each and this mutation entry came to be certified on 26/12/2002. There is mention of even equal rights in the Well which is situated in Gat No.223/1 for all the members to the partition. The document No.1 and 2 filed along with the list Exh.4 reflects the name of plaintiff No.2 and plaintiff No.4 as owners and holders of the field respectively allotted in their share in the partition whereas, all the other properties appear to be either purchased from different persons from time to time and the names of the concerned purchaser/plaintiffs appears to be recorded in the 7/12 extract of the concerned field property. There is admittedly no challenge to any of the mutation entries which were recorded on the strength of the sale deeds. The mutation entries do have a presumptive value under Section 157 of the Maharashtra Land Revenue Code (in short the Code) and those entries shall be deemed to be correct, unless and until, contrary is brought on record or a new entry is lawfully substituted in its place. Admittedly, there is no new entry to the record of right and register of mutations. The defendant No.1 and 3 have not filed the 7/12 extract of Gat No.223/2 and 223/3 on record for the perusal of the Court. There appears no reason for avoiding that and if such a thing is

avoided then, inferences that the document is not favourable to the party may also be drawn.

**08.** Thus, the submission of Ld. Advocate Shri.Boralkar that, there was a partition of Gat No.223 appears to be correct and merely, the order of Tahsildar invoking powers under Section 85 of the Code even if is not placed on record would not make any difference. The mutation entries appear to be having a long standing existence for about more than 20 years. The entries in the record of rights is a relevant piece of documentary evidence in support of the fact to prove the partition and it is not necessary that, the said partition should always be made by way of registered partition deed when, it is allegedly effected before 20/12/2004. It means that, the Hindu Succession Amendment Act, 2005 is not applicable as the partition of Gat No.223 was already made in the year 2002. The other properties were purchased by applying the funds of the joint family is not proved by way of any affidavit or any other material by the defendants and inferences of that kind cannot be formed without any evidence.

**09.** The submission of Ld. Advocate Shri. Patil that, those entries are meant only for the fiscal purposes and would not confer or extinguish title is correct. In the joint family property held by the parties, each and every coparcener or member is owner and by bringing partition of such a property, the separate share is carved out for the purposes of separate enjoyment and such a partition would not either create or extinguish any title unless and until, outser is pleaded and proved. In the present suit, the plaintiffs are not claiming any right in Gat No.223 adversely to the defendant No.1 or defendant No.3. The submission that, there was a family arrangement between the parties to protect defendant No.1 and his properties from the claim of maintenance made by defendant No.2 is of no consequence. If it was so, then, the factum of partition of the joint family

property is bound to happen because, the members of the joint family property would not be desirous of keeping it joint anymore so that, their share or interest in it is not burdened with any liability and the share of defendant No.1 alone would face such burden. It may be the primary and sole purpose for the plaintiffs and the defendants behind getting separated from the joint family property.

**10.** The decision in O.S.300/1998 was given on 02/02/2002 and there is no reference of any particular Gat number of the defendant No.1 which was facing the liability or was put under charge to satisfy the claim of defendant No.2. The partition of Gat No.223 was effectuated after the said suit of maintenance was decided and not at any earlier point of time. The theory of partition putforth by the plaintiffs gains support from the documents and it is just and legal to believe it to exist rather than doubting it if, the said reason is coming forth before the Court. The suit properties are also liable to be protected from the alleged threats, invasion of the defendants.

**11.** The submission of Ld. Advocate Shri. Patil that a suit for simpliciter injunction is not maintainable unless, relief of declaration is claimed because there is cloud over the title of the plaintiffs appears to be primitive at this stage of the suit. The claim of defendants that, the entire suit properties are joint family property despite of the fact that, separate revenue entries are there then, this itself proves the existence of apprehension of dispossession in the minds of the plaintiffs. The submission of Ld. Advocate Shri.Boralkar that, a co-owner cannot claim any injunction against another co-owner and title itself is admitted appears to be proper in normal circumstances. However, if, there is no joint family property due to partition amongst its members then, the question of co-ownership would not arise. He cannot stand on both footings at one and the

same time. If, defendant No.1 is co-owner then, there was no partition as claimed by the defendants but, the documents on record show that, there was separation of shares and exclusive possession of the owners of Gat No.223 since 26/12/2002. There is however, no pleading of that kind in the plaint and his submission of that kind may be said to be an attempt to tackle the ratio laid down in Nagpur Metro (supra).

12. I am guided by the ratio laid down by the Hon'ble Supreme Court of India in **Digambar Adhar Patil Vs. Devram Girdhar Paul (Dead) and another reported in AIR 1995 SUPREME COURT 1728** wherein it was held that, *under the Hindu law, it is not necessary that, the partition should be effected by a registered partition deed and even a family arrangement is enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment thereof. Under those circumstances, when the factum of partition was evidenced by entries in the Record of Rights, which was maintained in official course of business, the correctness thereof was not questioned, it corroborates the theory of partition.*

13. The non production of title deeds of the other properties than Gat No.223 would not make any difference as revenue entries are before the Court. The possession of the parties reflected from the entries in column No.12 and it is not showing anything contrary. The possession of the plaintiffs and defendants do not appear to be joint. Thus, the plaintiffs have prima facie case in their favour and the conduct of the defendants whereby they are putting the claim of joint title and possession is sufficient to raise apprehension in their minds and hence, it is essential to restrain them, their agents, servants or anybody acting on their behalf from causing any sort of obstruction or interference, in any manner whatsoever, to their possession over the suit properties till the decision of the suit. Hence, I answer point

:10:

**R.C.S NO.04/2023**  
Kamalabai Vs. Apanna  
Order below Exhibit 5  
CNR No.MHSO150001482023

Nos.1 to 3 in the affirmative.

**AS TO POINT NO.4:-**

**14.** I have answered point Nos.01 to 03 as affirmative and in answer to point No. 4, I proceed to pass the following order.

**ORDER**

- 1] The application below Exh.5 is hereby allowed with costs.
- 2] The defendants, their agents, servants or anybody acting on their behalf are hereby restrained by way of temporary injunction from causing any sort of obstruction or interference, in any manner whatsoever, to the possession of the plaintiffs over the suit properties till the decision of the suit.

Date : 10/02/2026

(M.M.Kalyankar)  
Civil Judge Jr. Dn., Akkalkot

:11:

**R.C.S NO.04/2023**  
Kamalabai Vs. Apanna  
Order below Exhibit 5  
CNR No.MHSO150001482023

**C E R T I F I C A T E**

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Stenographer : S.S.Mitragotri (Grade-III).  
Court : C.J.J.D. and J.M.F.C., Akkalkot.  
Date : 10/02/2026  
Judgment / Order signed by P. O. on : 11/02/2026  
Judgment / Order uploaded on : 12/02/2026