

**ORDER BELOW EXH. 5**  
**(Passed on 23/07/2025)**

The present application is filed for seeking relief of temporary injunction against the defendants vide Order XXXIX Rule 1 of the Code of Civil Procedure. The suit is filed for perpetual injunction and declaration against the defendants. In the present application, it is prayed that the defendants be temporarily restrained from obstructing peaceful possession of the plaintiff in the suit property on the basis of M.E. No. 3965 entered by virtue of decree in R.C.S. No. 328/2024 till final disposal of this suit. The ld. Advocate for the plaintiff vehemently argued to issue *ex-parte* ad interim injunction against the defendants.

**2. Brief facts of the plaintiffs' case are as under -**

The agricultural land approximately admeasuring 2H-02R bearing Gat No. 164/2/A having old Gat No. 164/2/1 situated at village Varkatane, Taluka Karmala, District Solapur is the suit property 1A and the agricultural land approximately admeasuring 1 H 01 R bearing Gat No. 164/2/A having old Gat No. 164/2/1 situated at village Varkatane, Taluka Karmala, District Solapur is the suit property 1B which are more particularly described in paragraph no. 1 of the plaint. It is submitted that the original Gat number of the suit property was 164 which was owned by Shankar Gaikwad – now deceased. The partition took place among his wife Sakhubai and 3 sons viz. Vikas (the defendant no. 1), Rajendra and Baban in the year 1996 and M.E. No. 1738 was registered accordingly. The defendant no. 1 received 02H 44R along with PK 0H 79R land to his share in that partition and it was given Gat no. 164/2. The defendant no. 1 sold 01H 21R out of his share which was situated at North i.e. Gat No. 164/2 to Shatrughna Maruti Jadhav (husband of the plaintiff) on 18/02/1997. Again, the defendant no. 1 sold 01H 01R out of his share which was situated at

West i.e. Gat No. 164/2 (i.e. the suit property 1B) to the plaintiff on 28/05/2002. She received possession of the suit property from the defendant no. 1 on same day i.e. 28/05/2002. Accordingly, M.E. No. 2004 was entered in the record of rights. But, the suit property was described as New Tenure Land in the record, hence, M.E. No. 2004 was cancelled. Therefore, name of the defendant no. 1 reappeared in the record of the suit property. He took undue advantage of this fact and partitioned the suit property among his wife and 2 children despite the fact that their family is still undivided and is a HUF. Then, the defendant no. 1 filed one suit i.e. R.C.S. No. 328/2024 by way of clever drafting and concealing material facts from the court about the sell of the relevant portions of the suit property to the plaintiff and her husband. The plaintiff was required to be impleaded as the necessary party in R.C.S. No. 328/2024. Therefore, the plaintiff had no idea about that suit. The defendants no. 1 to 5 conspired and by concealing material facts from the court, filed compromise pursis and obtained compromise decree by playing fraud on the court. But, by taking disadvantage of the said compromise decree, the defendants no. 2 to 5 obstructed the plaintiff and her son on 03/07/2025 when they were spraying pesticides on the banana crop in the suit property. Hence, the plaintiff is constrained to institute this suit along with present application. It is vehemently argued by the ld. Advocate for the plaintiff that an ad-interim *ex-parte* injunction be granted against the defendants.

3. Heard detailed argument of ld. Advocate for the plaintiff. On perusal of the copy of the M.E. No. 1738, it *prima facie* transpired that the partition of the suit property took place in the year 1996. 7/12 Extract of the suit property shows that the defendants are in possession of the suit property. The copies of the sale deed 18/02/1997 and

28/05/2002 shows that the sell of the portion of the suit properties took place as averred in the plaint. It can also be seen that the plaintiff moved an application to concern authority to remove the remark in record of rights of the suit property regarding New Tenure Land. But, till the institution of this suit, no order was passed in that regard. However, this is beyond the control of the plaintiff. However, it cannot be overlooked that there is a provision for removing said remark and the plaintiff has already applied for the same. Therefore, merely the names of the defendants appearing in the 7/12 Extract of the suit property are not sufficient to infer at this stage that the defendants are in possession.

4. Section 41 of the Specific Relief Act lists the situations when a court cannot grant an injunction. Specifically, in Section 41(b) it is enumerated that an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought. However, on the very face of the compromise decree obtained in R.C.S. No. 328/2024, it *prima facie* transpired that the plaintiff was not made party to that suit. It means that necessary information was concealed from the court. It can be referred as fraud in the light of the provision of Section 44 of the Indian Evidence Act, 1872 which reads as under -

44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved - Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under Section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.

5. It is pertinent to note that the 'fraud' under Section 44 must be extrinsic fraud, such as prevented a party from placing his evidence before court or in presenting his case.

6. The plaintiff filed certain case laws to support her averment that the decree in R.C.S. No. 328/2024 was obtained by fraud. In *Bhaurao Dagadu Paralkar Vs. State of Maharashtra And Others, (2005) AIR(SC) 3330,* it was observed that fraud is an act of deliberate deception, a benefit or advantage to deceive will almost always call loss or detriment to the deceived. In *S.P. Chengalvaraya Naidu (Dead) By L.Rs. Vs. Jagannath (Dead) By L.Rs. And Others (1994) AIR (SC) 853,* it was held that a litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation, if he withholds vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. In *A.S. Sankara Pandia Thevar Vs. Syed Abdul Rahman Rowther (1957) AIR(Madras) 512,* it was observed that if on the other hand, the decree is set aside not only upon the ground of suppression of summons by fraud but upon the ground that the original suit itself was fraudulent and the plaintiff's claim was false, the suit cannot be restored and retired, for the issue, whether the plaintiff in the original suit had a right to obtain a decree against the defendant on the facts alleged in the plaint has already been determined in the second suit and the same question cannot be agitated in any suit, whether that suit in point of time was instituted before or was subsequently instituted.

7. In *Surendra Singh And Others Vs. Lal Sheoraj Bahadur Singh And Others, (1975) AIR(MP) 85,* it was observed as under -

To sum up, our conclusions are as under:

- (i) The Court is competent to grant a temporary injunction to restrain the execution of a decree or order in a suit in which such a decree or order is challenged irrespective of the consideration whether the plaintiff was a party to the decree or not.
- (ii) There is a strong presumption that a decree or order is valid and, therefore, the burden will heavily rest on the party challenging the

decree or order to adduce strong prima facie evidence to show that it is a nullity or is otherwise vitiated having been obtained by fraud etc. and that he has a prima facie title to the property in dispute.

(iii) A temporary injunction should not ordinarily be granted in such cases without hearing the other side.

(iv) It would be open to the Court to impose suitable terms in such cases.

20. We, therefore, answer the points referred to us as under:--

(1) In a suit instituted by the judgment-debtor on the ground of fraud or any such other ground a temporary injunction can be granted to restrain the decree-holder from executing his decree against the plaintiff with adequate safeguards if there is ample justification for the grant of such an injunction.

(2) Where a suit is instituted on the ground that the decree is not binding on the plaintiff and that the execution of the decree will be prejudicial to the rights of the plaintiff who was not a party to the suit in which the decree was passed, a temporary injunction may be issued to restrain the decree-holder from executing his decree against him if the grant of an injunction is otherwise justified.

Similarly, in *Smt. Nirmala Devi Srivastava Vs. District Judge, Kanpur Nagar And Others, (1998) 2 AllWC 1573,* it was observed that the preliminary decree passed earlier having been obtained by playing fraud upon the court, was nullity.

8. Therefore, on considering above citations and position of law in this regard, I am of the opinion that Section 41 of the Specific Relief Act is not a barrier to issue ad-interim temporary injunction as prayed. If the compromise decree is executed, then the plaintiff's possession, right, title and interest in the suit property would be vanished. It has to be protected in the interest of justice and for disposal of the matter-in-issue on merit after full hearing. Otherwise, it will give rise to multiplicity of proceedings along with unnecessary complications. It will certainly cause irreparable loss to the plaintiff. Therefore, in my considered view, this is the perfect case to issue ad-interim *ex-parte* temporary injunction in favour of the plaintiff. Hence, I proceed to pass the following order -

ORDER

1. The ad-interim *ex-parte* temporary injunction is hereby granted in favour of the plaintiff and defendants are temporarily restrained from obstructing peaceful possession of the plaintiff in the suit property on the basis of M.E. No. 3965 entered by virtue of decree in R.C.S. No. 328/2024 till final disposal of this application.
2. Plaintiff to comply the provisions of Order XXXIX rule 3 of Code of Civil Procedure immediately.

Dated: 23/07/2025.

(S. P. Kulkarni)  
Jt. Civil Judge Junior Division,  
Karmala.