

MHST010028312025



Presented on : 21.11.2025

Registered on : 24.11.2025

Decided on : 13.03.2026

Duration : 00 Y. 03 M. 22D.

IN THE COURT OF AD-HOC DISTRICT JUDGE-1, SATARA
(Presided over by J. S. Bhatia)

Misc. Civil Appeal No. 107/2025
(CNR No. MHST01002831-2025)
Exh. no. 39

Gorakh Tatyaba Kamble (deceased)
(through Legal Representatives)

1. Sharad Gorakh Kambale
Age: 55 years, Occupation: Service
2. Sandip Gorakh Kambale
Age: 50 years, Occupation: Agriculturist
3. Sandesh Gorakh Kambale
Age: 48 years, Occupation: Agriculturist
4. Deepak Gorakh Kambale
Age: 46 years, Occupation: Agriculturist
Appellant no. 1 to 4 are
Residing at :- Ekambe,
Taluka Koregaon District Satara
5. Ujawala Hindurao More
Age: 60 years, Occupation: Household
Residing at :- Sidhivinayak building,
A-wing, ground floor, room no. 2,
Shilroad, Diva East, District Thane.

Versus

1. Bhausahab Babasaheb ChavanRespondent
Age: 68 years, Occupation: Retired
Residing at: Chavan Sankul, Shrinagar colony,

Satara-Koregaon road, opposite Swaraj Mangal Krayalaya,
Satara, District Satara

APPEARANCE :

Shri. A. D. Bhutkar - Learned advocate for the appellants

Shri. P. K. Barsawade - Learned advocate for the respondent.

1. This is an appeal filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, being aggrieved against the order dated 10/11/2025 passed below Exh. 5 in Regular Civil Suit no. 211/2025 by learned Joint Civil Judge Junior Division, Koregaon. The appellants are the plaintiffs and the respondent is the defendant of R.C.S. no. 211/2025.

2. The parties in appeal are referred by their original nomenclature for the sake of convenience.

Few facts of this litigation :-

3. Anant Digambar Sakhawalkar was the owner of old survey no. 366, new city survey no. 195, situated at village Ekambe, Taluka Koregaon, District Satara. In new gat no. 195 city survey no. 732 admeasuring area 334.90 square meter is situated. Out of said area of city survey no. 732, southern side 114.90 square meter land described in detail in paragraph no. 1(b) of the plaint, is the subject matter of this litigation and is hereinafter referred as 'the suit property'.

4. It is contended by the plaintiffs that to this land of old survey no. 366 of Anant Digambar Sakhawalkar, there were tenants namely Kashinath Vitthu Mahar (Kambale) Gorakh

Tatyaba Kambale (appellant no. 1), Pandurang Tatyaba Kambale. In view of decree of Regular Civil Suit no. 115/1945 of Koregaon Court, Kashinath Vitthu Mahar (Kambale) and others were declared as the tenants of said land. The appeal filed against said decree was dismissed on 13/02/1948. After death of Pandurang Tatyaba Kambale, Kashinath Vitthu Mahar (Kambale) and Gorakh Tatyaba Kambale (appellant no. 1) mutually partitioned their properties. Accordingly, property of old gat no. 366 (new gat no. 195) was given to Gorakh Tatyaba Kambale (appellant no. 1) whereas property of old gat no. 367 was given to Kashinath Vitthu Mahar (Kambale). After getting certificate under Section 32M of the Bombay Tenancy and Agricultural Lands Act, 1958, plaintiff no. 1 Gorakh Tatyaba Kambale has become the owner of said property. Later on, in the year 1986, city survey no. 732, 733, 734, 735 and 736 were reserved in new gat no. 195. Thus, as per present record, total 334.90 square meter land of said city survey no. 732 is reserved for agriculture land.

5. It is further averred that defendant no. 1 had collected the construction material on the suit property, with purpose to raise construction. Therefore, the plaintiffs had verified the extract of the said property and found that on the basis of decree passed in Regular Civil Suit no. 222/2021, name of defendant no. 1 to 5 was mutated to the record of city survey no. 732.

6. According to the plaintiffs, said suit was compounded on 12/03/2022 and the compromised decree is obtained by the parties by committing fraud upon the Court. As the plaintiffs were

not party to Regular Civil Suit no. 222/2021 and said decree is obtained by collusion, according to them therefore, said decree is not binding on the plaintiffs.

7. As on 13/07/2025 defendant no. 1 had collected the construction material on the suit property, the plaintiffs apprehended that there is obstruction to their right to have possession of the suit property. Hence, the suit for perpetual injunction restraining the defendants from raising any construction on the suit property and for declaration that the compromise decree passed in Regular Civil Suit no. 222/2021 by the learned Civil Judge Junior Division, Koregaon, is not binding on the plaintiffs. Accordingly, an application for temporary injunction was filed by the plaintiffs in Regular Civil Suit no. 211/2025. As said application of Exh. 5 was rejected, the impugned order is challenged before this Court.

8. Defendant no. 1 had contested the application of temporary injunction by filing say at Exh. 17. Denying the contentions raised in the application, it is submitted by defendant no. 1 that city survey no. 732 was owned by Babasaheb Namdevrao Chavan, i.e. the father of defendant no. 1 since the year 1986. The plaintiffs never challenged said ownership of Babasaheb Namdevrao Chavan for 50 years. Hence, filing of suit in the year 2025, is barred by delay and laches.

9. According to defendant no. 1, the description of suit property given in the plaint is also wrong. Towards northern side of the suit property of 114.90 square meter, there is 100 square

meter share of defendant no. 2 towards northern side of said 114.90 square meter land as described in Regular Civil Suit no. 222/2021. Towards northern side of said property, defendant no. 2 has his share of 120 square meter in which his Grampanchayat house property no. 802 is situated. Said house was constructed in the year 1994. Towards eastern side of said house, there is an open space of the share of defendant no. 2 Daulatrao.

10. It is further stated that southern side 114.90 square meter portion of the suit property is in the share of defendant no. 1. An old tin shed is situated therein from the year 2002 having Grampanchayat property no. 951. Said fact reveals on perusal of photograph dated 30/12/2021. Hence, the contention raised by the plaintiffs that defendant no. 1 is raising construction on the suit property on the date of cause of action, as cited in the plaint, is absolutely false.

11. It is also denied by defendant no. 1 that city survey no. 732 is the part of old survey no. 366 (new survey no. 195). On perusal of inquiry register of city survey no. 732 to 736, it seems that those city survey numbers were never the part of gat no. 366. As the proper entry was not taken in the Koshtak-2 of inquiry register, Jayraj Rangrao Kambale and other 5 had filed S.R. Appeal no. 3754/2022. As per the judgment of said S. R. Appeal, city survey no. 732 to 736 have no concern with gat no. 366. With these contentions, in alternate it is submitted by defendant no. 1 that he has 1 Aana 4 Pai share in city survey no. 732 by Exchange Deed.

12. It is further averred that city survey no. 732 was of Gavthan land and was owned by the father of defendant no. 1. Therefore, the plaintiffs have no concern with the suit property. Before amalgamation of Gat no. 366, there were survey no. 190/1A, 190/1C, 190/1B/1 and 190/1B/3 in it. After amalgamation, it became gat no. 366 having total admeasuring area 6 acre 28 Gunthe. However, the plaintiff intentionally did not file 7/12 extract of gat no. 366. It is also stated that Regular Civil Appeal no. 198/1948 has no concern with the suit property. In view of revenue record of city survey no. 732, the name of the father of the defendants is mutated therein as the owner of the same, as per decree passed in Regular Civil Suit no. 222/2021. The plaintiffs have no right to challenge said decree.

13. In view of judgment of S.R. Appeal no. 3754/2022, the property of city survey no. 732 was not an agricultural land, on the other hand, it was the Gavthan land. Survey no. 190/1A is admeasuring area 11 acre 6 Gunthe. It does not tally with the area of Gat no. 366. Therefore, it has no concern with the suit property. Defendant no. 1 has residential house and tin shed long back in city survey no. 732. Hence, denying the contentions and cause of action mentioned in the plaint, defendant no. 1 had prayed to dismiss the application with costs.

14. In backdrop of these facts, hearing both sides, learned Joint Civil Judge Junior Division, Koregaon, rejected the application of Exh. 5. Hence this appeal.

15. Heard both sides.

16. Considering rival pleadings of the parties and documents filed on record, following points arise before me for determination of this appeal and I have recorded my findings thereon with the reasons given there below.

No	Points	Findings
1	Whether the plaintiffs have a <i>prima facie</i> case to grant temporary injunction?	<u>No.</u>
2	Whether the balance of convenience lies in favour of the plaintiffs?	<u>No.</u>
3	Whether the plaintiffs will suffer irreparable loss in the event of not granting temporary injunction?	<u>No.</u>
4	Whether the impugned order needs interference in the appellate jurisdiction ?	<u>No.</u>
5	What order?	<u>Appeal is dismissed as per final order.</u>

REASONS

As to point no. 1 to 4 collectively :-

17. On perusal of impugned order it reveals that the learned trial Court has gone through all documents submitted by both the parties. It is observed that the plaintiffs did not challenge the mutation entries taken in the name of the defendants. As the plaintiffs could not made out a *prima facie* case showing their

ownership on the suit property, the learned trial Court rejected the application of Exh. 5.

18. Perused record. Copy of paper book is filed on record which is inclusive of copy of documents filed upon by the plaintiffs (page no. 51 to 154 of paper book) and by the defendant (page no. 155 to 278 of paper book). The plaintiffs have also relied upon the photograph enlisted with Exh. 14. Defendant no. 1 has also relied upon photographs submitted with Exh. 16 and copy of Revision Appeal no. 3754/2025 filed by Jayraj Kamble and others against the plaintiffs. As per judgment dated 14/10/2025 of said appeal, entries of land owners of city survey no. 734 and 736 is modified.

19. Needless to state that to seek equitable relief of temporary injunction, the plaintiffs have to prove their possession in the suit property. With list document of Exh. 3 7/12 extra of Gat no. 772, 931, 773, 736-B, 745, 195, 540, 554, 736-A, 697, and Namuna no. 8 of Grampanchayat no. 111 is filed. The suit property is 114.90 square meter land of city survey no. 732. The aforesaid extracts filed at Exh. 6 to 18 with Exh. 3 have no relevance with the suit property. Copy of decree passed in Regular Civil Suit no. 222/2021 is filed on record. It is pertinent to note that in view of Order XXIII Rule 3-A of the Code of Civil Procedure, there is an explicit bar to the present suit. Said provision is as follows.

No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.
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20. In view of this clear provision, if a decree is passed on a compromise that was not lawful or was obtained by fraud, misrepresentation or coercion, it must be challenged by filing an application before the Court upon which such fraud, misrepresentation or coercion was allegedly committed, the proper remedy is filing of an application and not the suit.

21. A profitable reference is required to be taken from the verdict of Pushpa Devi Bhagat Vs. Rajinder Singh ((2006) SCC 566) wherein the Hon'ble Supreme Court in such context, articulated that the Court can be instrumental in effecting an agreed compromise and at the same time, the Court should never be a party to the imposition of a compromise upon an unwilling party; and therefore, it would still be open to question the compromise by an application made under Order XXIII, Rule 3 of the Code of the Civil Procedure. In view of the bar on a suit under Rule 3-A, it is further declared that the non-party to the compromise could indeed invoke the proviso to Rule 3 and approach the very court that approved the compromise.

22. Thus, no independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of bar contained in Rule 3-A of Order XXIII of the Code of Civil Procedure. Now the question arises if the main suit itself is not maintainable or not tenable for the final relief claimed, whether the court can grant interim relief such as an injunction. The answer will be in the negative. The reason for the same is that an interim injunction is only ancillary or temporary relief meant to

preserve the subject matter of the suit until the Court decides the final relief. If the final relief cannot legally be granted, then granting interim protection would serve no legitimate purpose. When the main relief is not maintainable, interim relief cannot be granted because it would amount to granting indirectly what cannot be granted directly. In view of said legal position, this Court has held that the prayer of interim relief cannot be considered.

23. Add to this, it cannot be lost of sight that the contentions of the plaintiffs that they are having possession on the suit property is also not supported by any convincing document. It is rightly observed by the learned trial Court that in view of decree of Regular Civil Suit no. 222/2021, name of defendant no. 1 to 5 are mutated as per mutation entry no. 638 to the extract of city survey no. 732. As the plaintiffs have not proved their possession on the suit property, they cannot seek the interim relief of temporary injunction.

24. In view of these circumstances, the observations of the learned trial Court that *prima facie* case is not made out by the plaintiffs, need not be intervened. The learned trial Court has rightly observed that balance of convenience lies in favour of defendant no. 1 to 5 and not in favour of the plaintiffs.

25. In view of this discussion, this Court is of a view that if temporary injunction is granted as prayed, irreparable loss will be caused to defendant no. 1 to 5 and not to the plaintiffs. Resultantly, the order passed by trial Court below Exh. 5 does not

warrant any interference. Thus, this appeal deserves no merit. Accordingly, I answer point no. 1 to 4 collectively in the negative. To conclude and in answer to point no. 5, I proceed to pass the following order.

ORDER

- 1 Appeal is dismissed.
- 2 Under given circumstances parties bear their own costs.
- 3 Trial Court be informed accordingly.

(Dictated and pronounced in open Court.)

Date: 13.03.2026

(J. S. Bhatia)
Ad-hoc District Judge – 1
Satara