

MHST060014352025

R.C.S. NO. 597/2025



HIRACHAND KAKA GADE AND ANR

Vs.

TULSHIRAM PANDURANG GADE AND
ANR

ORDER BELOW EXH. 05

This application is filed by the plaintiffs against Defendant Nos. 1 and 2 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking the grant of a temporary injunction, thereby praying:-

(a) to restrain Defendant Nos. 1 and 2, their agents, servants, or any person claiming through or under them, from dispossessing the plaintiffs or causing any obstruction to their peaceful possession and enjoyment of the suit property.

Subject matter of the suit :-

02. The subject matter of the present suit is agricultural land situated at Village Bodke, Taluka Man, District Satara, bearing Gat No. 469/1, admeasuring 50 Ares, out of which the present suit pertains to 37 Ares 50 Paise. The suit property is bounded as follows:

East: 8-foot-wide road,

West: Gat No. 467,

South: Gat No. 468 &

North: Gat No. 463. (hereinafter referred to as "the suit property").

Facts pleaded by the plaintiffs :-

03. The Plaintiff No. 1 and Plaintiff No. 2 are husband and wife. They are absolute owners and lawful possessors of the suit property by virtue of duly executed registered sale deeds. Plaintiff No. 1

initially acquired possession of 20 Ares out of Gat No. 469 situated at Mouje Bodke, Taluka Man, District Satara, together with irrigation rights and within specified boundaries, from Defendant No.1 under a registered mortgage by conditional sale (Mudat Kharedi) dated 25.02.1997. Thereafter, on 10.12.1999, Plaintiff No. 1 purchased the said 20 Ares absolutely from Defendant No.1 for a valuable consideration of Rs. 50,000/- by a registered sale deed bearing Document No. 2144/1999. On the same day, Plaintiff No. 2 purchased another 20 Ares from one Prakash Pandharinath Phadtare by a registered sale deed bearing Document No.2143/1999 for a consideration of Rs. 50,000/-. The said land had already been lawfully conveyed by the defendants to the said vendor. Since the execution of the aforesaid sale deeds, the plaintiffs have been in peaceful, continuous and uninterrupted possession, occupation and cultivation of their respective portions of the suit property. The defendants have no manner of right, title, interest or concern whatsoever in the suit property belonging to the plaintiffs. Nevertheless, taking undue advantage of certain erroneous revenue entries, the defendants have been making repeated attempts to interfere with and obstruct the plaintiffs' peaceful possession and lawful cultivation.

04. Although the name of Defendant No. 1 continues to appear in the revenue record in respect of an area admeasuring 12.50 Ares, the said land had already been utilized for an 8-foot-wide access road pursuant to the decision passed in R.C.S. No. 84 of 1992. In fact, Defendant No. 1 has neither possession nor cultivation over any portion of the said land. His name has inadvertently remained in the Record of Rights instead of being transferred to the "Other Rights" column, and by

taking undue advantage of such erroneous revenue entry, Defendant No. 1 is illegally obstructing the plaintiffs' peaceful possession and enjoyment of the suit property.

05. On 26.11.2025, while the plaintiffs were carrying out agricultural operations in the suit land, the defendants entered the suit property and caused obstruction to the possession of the plaintiffs. The plaintiffs have established a strong *prima facie* case, the balance of convenience lies in their favour, and they are likely to suffer irreparable loss and injury if the defendants are not restrained by an order of temporary injunction. Hence, present application.

Defence of Defendant No. 2 :-

06. Learned advocate appearing for Defendant No. 2 has filed a detailed reply at Exhibit 24 opposing the application. It is submitted that the present application is founded upon false, fabricated, and misleading averments. It is contended that the description, area, and boundaries of the suit property are incorrect. It is contended that, in respect of the subject matter of present suit, Defendant No. 2 has already instituted Regular Civil Suit No. 93 of 2025 before this Court seeking partition, and the said suit is pending adjudication. In view of the pendency of the partition suit concerning the joint and undivided family property, the plaintiffs are not entitled in law to seek an order of temporary injunction against the defendants. It is further contended that, although the plaintiffs claim to have purchased 20 Ares out of Gat No. 469/1 under a registered Sale Deed dated 10.12.1999, the said transaction was brought about by taking undue advantage of the intoxicated and vulnerable condition of Defendant No. 1. The property in question was, and continues to be, ancestral joint Hindu family

property, and the plaintiffs were fully aware of its joint and undivided character. Nevertheless, the alleged transaction was entered into by suppressing the rights of the other co-sharers and by adopting fraudulent means. Consequently, the plaintiffs did not acquire any valid, legal, or exclusive title over any portion of the suit property by virtue of the said sale transaction.

07. Defendant No. 2 has further submitted that the suit property, along with other ancestral family properties, has not yet been partitioned by metes and bounds. Besides Defendant No. 2, his brother, mother, and other legal heirs also have subsisting shares in the joint family properties. As such, all the co-sharers are proper and necessary parties to the present suit, and in their absence the suit is not maintainable. On the contrary, it is the plaintiffs who are attempting to encroach upon and unlawfully interfere with the portion in possession of the defendants. According to Defendant No. 2, the present suit has been initiated solely with a view to create obstacles in the exercise of the defendants' lawful rights over the joint property. It is contended that, if the relief of temporary injunction is granted, the defendants would suffer irreparable loss and prejudice, whereas no such hardship would be caused to the plaintiffs by refusal of the interim relief. It is, therefore, prayed that the present application be dismissed with costs.

Defence of Defendant No. 1 :-

08. Learned advocate appearing for Defendant Nos. 1 has filed a detailed reply at Exhibit 23 and has substantially reiterated the contentions raised by Defendant No. 2. Defendant No. 1 has further contends that, despite the plaintiffs being fully aware that Defendant No. 2 and the other co-sharers had subsisting rights and shares in the

suit property, the plaintiffs deliberately ignored their lawful interests and brought into existence the alleged sale transaction with an ulterior motive. Defendant No. 1 further submits that the alleged sale transaction purportedly executed through Prakash Pandharinath Phadtare is likewise false, sham, and fraudulent. Consequently, the subsequent sale transaction in favour of the plaintiffs, being founded upon such an invalid transaction, is itself illegal, void, and unenforceable in law and does not confer any valid or enforceable right, title, or interest upon the plaintiffs. Hence, the application for temporary injunction, as well as the suit itself, deserves to be dismissed with exemplary costs.

09. Perused the record. Heard the learned Advocate Shri M. N. Gejage for the plaintiffs, learned Advocate Smt. S. S. Bagal for Defendant No. 1 and learned Advocate Shri. H. R. Katkar for Defendant No. 2. Also perused the written argument notes (at Exh. 32) filed on behalf of the plaintiffs.

10. Upon consideration of the pleadings, documents placed on record, and the submissions advanced by the learned counsel for the parties, the following points arise for determination, along with my findings thereon:-

Sr. No.	Points	Findings
1.	Whether the plaintiffs have established a <i>prima facie</i> case for grant of temporary injunction?	... Yes.
2.	Whether the balance of convenience lies in favour of the plaintiffs?	... Yes.

3.	Whether the plaintiffs is likely to suffer irreparable loss if the application is rejected?	... Yes.
4.	What order? As per final order.	

-: R E A S O N S :-

Rival Submissions of the Learned Advocates :-

11. The learned advocates for both side during their arguments narrated the facts and referred documents filed on record. The learned advocate for the plaintiff has also filed written notes of arguments at exhibit 32. So in order to avoid the repetition the facts which are narrated in the argument are not reproduced. The material points raised by both side are as under :-

12. The learned advocate Shri. M. N. Gejage, for plaintiffs argued that the documents filed on record clearly proves the title and lawful possession of the plaintiffs over the suit property. The plaintiffs have registered sale deed which is not challenged by the defendants. It is argued that the R.C.S. No. 93/2025 is in respect of 12.50 Ares land and it is filed by defendant No.2 against defendant No. 1. So from the said suit, it is seen that the defendants have possession over the 12.50 Ares land only. But said area of 12.50 Ares is acquired for the purpose of road. So that the alleged land of defendants is not in existence. It is, therefore, submitted that the plaintiffs have established a prima-facie case and that the balance of convenience lies in their favour. If the application for temporary injunction is rejected, the plaintiffs will suffer irreparable loss and injury which cannot be adequately compensated in terms of money. Hence, it is prayed that the present application be allowed by granting the relief of temporary injunction as prayed for.

13. The learned advocate for plaintiffs relied on **Baban Anantrao Naik Vs. Pramila Uttamrao Yenare and others 2011 (6) ALL MR 15**. In this case, the Hon'ble Bombay High Court held that *at the time of determination of an application for temporary injunction, the factum of possession would only be the relevant factor. Whether the possession is lawful possession or not would not be the subject matter of inquiry. Whether the amount of consideration has been paid or not, whether the plaintiff was ready and willing to perform his part of contract or not, would all be the issues which can be decided only after the parties adduce evidence. It would be premature at this stage to give findings on the said issue.*

14. On the contrary, the learned advocate Shri. H. R. Katkar for the defendant Nos. 2 argued that the suit for simplicitor injunction is not tenable. The description of suit property are not sufficient and not described as per Order VII Rule 3 of the CPC. It is submitted that the suit is bad for non-joinder of necessary parties. It is argued that suit is not tenable on the said technical ground and there is no evidence on record to show that the 8 Ares land is acquired for the purpose of road. The learned advocate referred the documents filed on record and submitted that the title and lawful possession of the plaintiffs is not proved. The defendants are also in joint possession of the suit property. At this stage, it is not clear as to which portion is possessed by the plaintiffs. Hence, discretionary relief cannot be granted in favour of plaintiffs. It is submitted that the plaintiffs have no prima-facie case and balance of convenience, if the injunction is granted then the defendants will suffer irreparable loss and prejudice. Accordingly, it is prayed to reject the application.

15. The learned Advocate Smt. S. S. Bagal for Defendant No. 1 adopted the points raised by the learned Advocate of Defendant No. 2. In addition, it is argued that actual possession of plaintiffs is not proved. On the contrary, the documents shows the possession of defendants over the suit property. It is argued that the plaintiffs or not exclusive possessor of the suit property rather they are co-sharer. Therefore, injunction cannot be granted against the co-sharer. Accordingly, it is prayed to reject the application.

16. The learned advocate for defendant No. 1 relied on *Sanjay Paliwal and another Vs. Bharat Heavy Electricals Ltd, through its Executive Director in Civil Appeal No. 6075/2016*. In this case, the Hon'ble Supreme High Court held that where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. But where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simplicitor will lie.

AS TO POINT NOS. 1 TO 3 :—

17. According to plaintiffs, they are absolute owners and possessors of the suit property on the basis of registered sale-deed. On the contrary, the defendants have submitted that the suit property is ancestral and joint family property of the defendants. The defendants also submitted that, the defendant No. 1 was habitual to drink alcohol and he has executed the sale-deed under influence of alcohol. Both sides have filed affidavits of witnesses in support of their contentions.

18. At this stage it is necessary to see that, whether the plaintiff has a prima-facie case or not. **Order 39 Rule 1 & 2 of Code of Civil Procedure** confers discretionary power on civil court to grant temporary injunction where it is proved by affidavit or otherwise that, the suit property is in danger of being wasted, damaged or alienated by the party to the suit or where the defendant threatens to dispossess the plaintiff or to cause injury. The purpose of granting temporary injunction is to protect the subject matter of suit during the pendency of the suit. But for getting the relief under this rule the plaintiff must prove that, he has a prima facie case, the balance of convenience is lies in his favour and more hardship will cause to him if injunction is not granted.

19. In view of the guidelines of the Hon'ble Supreme Court, Hon'ble High Court, and aforesaid provisions, it is to be seen that, whether the plaintiffs are entitled for the relief of temporary injunction as prayed. The plaintiffs have filed on record sale-deed No. 2144/1999 and 2143/1999 dated 10.12.1999. On perusal of those sale-deeds, it appears that the plaintiff No. 1 has purchased 20 Ares land in Gat No. 469 from defendant No. 1 for consideration of Rs. 50,000/- and the plaintiff No. 2 has purchased 20 Ares land in Gat No. 469 from one Prakash Pandharinath Phatdare for consideration of Rs. 50,000/-. Recent 7/12 extract of the suit property shows that the name of plaintiff No. 1 and 2 is recorded in cultivation column of the suit property. 7/12 extract of the suit property for the period of 2015-16 is also filed on record. It appears that the name of plaintiffs is appearing in the PikPahani column of the suit property. Aforesaid documents shows that, the suit property is purchased by the plaintiffs from defendant no.1 and from one Prakash Phadatare for valuable consideration in the year

1999. So the plaintiffs are claiming their ownership and title over the suit property on the basis of registered sale-deeds which are executed in year 1999. The name of plaintiffs are recorded in the Record of Right on the basis of said sale-deeds. Long standing entries are in the name of plaintiffs. Those entries are not either challenged by the defendants before revenue authority nor cancelled by the competent authority. So it carries the presumptive value as to its correctness as per section 157 of the Maharashtra Land Revenue Code.

20. The defendants have mainly raised the objection on the ground that the suit property is ancestral and joint family property of defendant No.1. They have filed copy of plaint in R.C.S. No. 93/2025. On perusal of said document it is seen that the partition suit by defendant No. 2 Chaitanya Tulshiram Gade against his father Tulshiram Gade and other. It appears that, subject matter of present suit is also added in the said partition suit including others properties. However, the plaintiffs are not party to the said suit. But defendants have not filed any document to show that the suit property is their ancestral property inherited from their forefather. Therefore, mere contention that the suit property is ancestral property is not sufficient. Moreover, in view of the guidelines of the Hon'ble Supreme Court in Sanjay Pariwal's Case (as Cited above), the present suit is based on the possession and it is tenable. Mere contention that, the plaintiffs title is under cloud is not sufficient. Because the alleged sale deeds are executed in the year 1999. The plaintiffs are appearing to be lawful possessor of the suit property. The defendants have not filed sufficient evidence at this stage to show their better title over the suit property. Hence, it cannot be said that the title of the plaintiff is under cloud.

21. As stated above, the plaintiffs are claiming ownership of the suit property on the basis of registered documents. The documents filed on record supports the contentions of the plaintiffs. I am of the view that, the plaintiffs have established their prima facie possession over the suit property. Hence, they have a prima facie case to proceed with the suit. The defendants are claiming their rights over the suit property by denying the entire right of the plaintiffs. But no supporting document is filed on record. This fact itself shows the apprehension or possible obstruction at the hand of defendants. Hence, I am of the view that the prima-facie case and balance of convenience is in favour of plaintiffs. If the injunction is not granted then the plaintiffs will suffer hardship and more inconvenience as compare to the defendants. Hence, the plaintiffs are entitled to the relief of temporary injunction. Accordingly, I answer **Point Nos. 1 to 3 in the affirmative.**

AS TO POINT NO. 4:—

22. In view of my findings on Point Nos. 1 to 3, I proceed to pass the following order:-

:- ORDER :-

1. The application is allowed.
2. The defendant Nos. 1 and 2 or any other persons on their behalf are hereby temporarily restrained from dispossessing the plaintiffs or causing any obstruction to their peaceful possession and enjoyment of the suit property till the final decision of the suit.

Date:- 17.07.2026

Place:- Dahiwadi.

(Waman D. Jadhav)
Civil Judge Junior Division,
Dahiwadi.

