

MHST080000552024

**REGULAR CIVIL SUIT NO.38/2024**

Ramchandra @ Ramdas Sopan Shelke

V/s.

Laxman Sopan Shelke

**ORDER BELOW EXH.25**

The present application is filed by defendant for relief of temporary injunction under Order XXXIX Rule 1 so as to restrain plaintiff from disturbing alleged peaceful possession of defendant and also to restrain from obstructing crop cutting in suit properties.

**Facts of Plaintiffs' Case in Brief:**

**02.** The agricultural lands bearing survey No.24/5 admeasuring 1H 23R and survey No.24/6 admeasuring 0H 77R situated at Mouje Lonand, Tal. Khandala, Dist. Satara are subject matter of present application as well as main suit and hereinafter, these are referred as suit properties. As per contention of defendant, there was previous partition of ancestral properties of both parties and mutation entry No.379 was passed on basis of said partition. The properties are separately under cultivation of defendant since 1982. The plaintiff and his family, now, obstructed defendant from entering into suit properties and cutting of crops. Hence, he moved present application for interim relief of injunction.

**03.** Defendant filed his say to the present application at Exh.33 and contended that, both the plaintiff and defendant were residing separately since 1980 and the plaintiff alone took

responsibility of their parents. The defendant, as per allegation of plaintiff, fraudulently added his name to the suit properties. The mutation entry No.411 was passed by deceiving plaintiff and now, the defendant has obstructed his alleged possession over suit properties. Hence, he prayed for rejection of present application. He further filed his additional say to the present application at Exh.39 and contended that fraud was committed by defendant for grabbing of suit properties.

**04.** I heard arguments of both parties and perused documents on record. Considering documents on record and rival submissions of both parties, following points are arose for my determination and my reasoned findings to them are as follows:-

<b>Sr. No.</b>	<b>Points for determination</b>	<b>Findings</b>
1	Whether plaintiff proves that there is prima facie case in his favour ?	No
2	Whether balance of convenience tilts in favour of plaintiff ?	No
3	Whether irreparable loss would cause to the plaintiff if the relief of temporary injunction is rejected in his favour?	No
4	What Order?	Application is rejected.

### **REASONS**

**05.** The defendant, to substantiate his claim, relied upon 7/12 extract of suit properties, bills of purchase of crop seeds,

decision of Sub-divisional Officer dated 30.12.2024, certificate of Talathi Khandala regarding survey No.24/5 and photographs. The plaintiff, on the other hand, relied upon copy of sale-deed dated 31.10.1996, copy of application to the Sub-Divisional Officer, mutation entry No.397 and 411, Gunakar (गुणाकार) Book of Survey No.24/5 and 24/6, application filed by defendant to Talathi for partition, copy of mutation entry No.5426, 5109 and 5300, copy of sale-deed of survey No.24/4 dated 06.02.1976, copy of Criminal Miscellaneous Application No.32/2024 filed by defendant against plaintiff, copy of N.C. against defendant dated 18.09.2025, supportive affidavits of adjacent land owners and villagers and photographs.

**06.** The advocate for defendant relied upon following ruling of Hon'ble Supreme Court in case of **Narasamma and Ors. V/s. State of Karnataka and Ors., 2009(4) ALL MR 969(S.C.)**, in which it was held that, *"The entries in the revenue record cannot create any title in respect of the land in dispute, but it certainly reflects as to who was in possession of the land in dispute on the date the name of that person had been entered in the revenue record."*

**07.** He further relied upon ruling of Hon'ble Supreme Court in case of **Bant Singh and Anr. V/s. Niranjan Singh(D) By LRS and Anr., 2008 ALL SCR 721**, in which it was held that, *"An entry made in the revenue records may not be decisive to as regards the status of the parties but a presumption in regard to possession can be raised on the basis thereof."*

**08.** The defendant placed reliance upon ruling of Hon'ble Supreme Court in case of **Rame Gowda (D) By LRS V/s. V. M. Varadappa Naidu (D) By LRS and Anr., 2004 AIR SCW 4205**, in which it was held that, *"The Court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession': (I) that the trespasser must be in actual physical possession of the property over a sufficiently long period; (ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case; (iii) the process of dispossession of the true owner by the trespasser must be complete and final must be acquiesced to by the true owner; and (iv) that one of the usual tests to determine the quality of settled possession in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. When title of either party was not prove and plaintiff was found to be in settled possession he would be entitled to relief of injunction restraining defendant from interfering with his possession."*

**09.** He further relied upon ruling of Hon'ble Supreme Court in case of **Maroti s/o Jairam Kadam V/s. Mahadu s/o Govind Kadam and other, 2010(4) Mh. L.J.**, in which it was held that, *"Appellant – plaintiff was in settled possession of the land in question as on the date of the suit. Appellant entitled to injunction against obstruction by the defendants until he is evicted by due process of law."*

**10.** On the other hand, the learned advocate for the plaintiff relied upon ruling of Hon'ble Bombay High Court in case of **Philomena John D'souza and others V/s. Brij Bihari Nayar and others, 1994(2) Mah LR 885**, in which it was held that, *“Stray entries in revenue record in remarks column held, does not support the case of defendants. They does not carry any weight. In the absence of any evidence regarding possession, trial Court was justified in issuing interim injunction.”*

**11.** He further relied upon ruling of Hon'ble Bombay High Court in case of **Gorakh Mahadev Survase and others V/s. Narayan Balu Dhombe and others, 2012(2) ALL MR 508**, in which it was held that, *“Parties have not produced any other material to substantiate their case of possession which is vital aspect for granting injunction. Injunction granted in favour of defendants by Appellate Court liable to be set aside. Property liable to be kept Custodia legis, till adjudication of suit.”*

**12.** He placed reliance upon ruling of Hon'ble Bombay High Court in case of **Ramchandra s/o Ganpati Shedam and Others V/s. Sub-Divisional Officer (SDO), Chandrapur and Others, 2008(6) ALL MR 852**, in which it was held that, *“Record of rights maintained as such for revenue purposes does not create or extinguish title. However, it carries a presumption in view of Section 157 of the Code. Thus, entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or new entry is lawfully substituted therefor. Such presumption is rebuttable by the person interested or party not accepting the mutation entry. The Revenue authorities are, therefore, requested to*

*observe due care and precaution while passing orders with due regard to the principles of natural justice.”*

**As To Point No.1 to 3:-**

**13.** Provisions of Order XXXIX Rule 1 of the Code of Civil Procedure provide that temporary injunction may be granted, if in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, or c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act until the disposal of the suit or until further orders.

**14.** It is now well settled that the party seeking temporary injunction has to satisfy the triple requirements of prima facie case, balance of convenience and irreparable loss. In case of ***Mandali Ranganna and Ors. V/s. T. Ramachandra and Ors., AIR 2008 SC 2291***, the Hon'ble Supreme Court held that *“while considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto, i.e. existence of prima facie case, balance of convenience and irreparable injury, it must be also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. Grant or refusal of injunction has serious consequences depending upon the nature thereof”*.

**15.** Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that the contentions which the plaintiff is raising, require consideration on merit and are not liable to be rejected summarily. In the backdrop of above discussion, facts of the present case are required to be analyzed thoroughly.

**16.** In the present case, main suit is filed by the plaintiff on 09.02.2024. The defendant appeared on 04.10.2024 and application for temporary injunction in the main suit is still pending. The present application at Exh.25 is filed by the defendant for relief of injunction so as to restrain plaintiff from obstructing his peaceful possession in the suit property. While filing reply, the plaintiff has come up with the case that plaintiff is in possession of suit property since many years and the father of plaintiff and defendant already partitioned their ancestral properties between both plaintiff and defendant. It is the contention of plaintiff that, the defendant fraudulently executed mutation entry of his name in the records of rights of suit properties and deceived the plaintiff. On the other hand, the defendant specifically averred that, he is in possession of suit properties and also has cultivated suit properties from many years.

**17.** After perusal of documents on record, it appears that, 7/12 extract of suit properties reflect name of defendant. However, mere entries in records does not suffice title over any property when the fact of possession is disputed by other party. In the present case, the very fact of settled possession over suit property is not prima facie proved by the defendant with sufficient evidence on record. In such case, relief of injunction which is equitable and discretionary,

cannot be granted without application of judicial mind. The possession over suit property is required to be decided after evidence to that effect from both parties at later stage of the suit. Mere photographs does not ascertain exact situation in the dispute between parties and hence, they are not relied upon by this Court. Therefore, relief of temporary injunction, in the present case, is not seem to be reasonable and appropriate. Accordingly, I answered point No.1 to 3 in negative and in answering point No.4, following order is passed :

**ORDER**

1. The application at Exh.25 is rejected.
2. No order as to costs.

Date: 14.10.2025.  
Khandala.

(Smt. S. G. Kuvalekar)  
Civil Judge Junior Division  
Khandala