

CNR No.MHST180000012026

IN THE COURT OF JT. CIVIL JUDGE SENIOR DIVISION, VADUJ
(Presided over by Smt. F. B. Baig)

Special Civil Suit No.1/2026

Nitin Prakash Dange & Ors - Plaintiffs

Versus

Ajay Krushnat Jadhav - Defendant

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ORDER BELOW EXH.5.

(Passed on day of 1st August, 2026)

This application is moved by the plaintiffs under Order XXXIX, Rule 1 & 2 of the Code of Civil Procedure, 1908, against the defendant in respect of Gat No.1524, admeasuring 0.16R (uncultivated land 0.09R), totally admeasuring 0.25R assessment of Rs.0.41 Paise (whole share), including bore-well, pipeline, electric motor, east-west shop, house, shed, garbage hill, cattle fodder and trees situated at village Pusegaon, Tal. Khatav, Dist. Satara, to restrain him, from causing obstruction to the peaceful possession of plaintiffs and against alienation or creation of any encumbrance over the suit property, in any manner, till the final decision of the suit.

02. It is contended by the plaintiffs that they have filed a suit for declaration that the sale deed dated 07.11.2025 in favour of defendant is illegal and liable to be cancelled. It is also prayed by the plaintiffs that defendant be directed not to alienate the suit property or change the record of the suit property in any manner, by way of perpetual injunction. Plaintiffs have got the suit property from their ancestors.

Their ancestor got it by way of partition. During the lifetime of the ancestor of the plaintiff namely, Tukaram and Raghunath, their ancestral properties were divided by way of partition in the year 1975. Accordingly, the entry of partition was made to the record of rights. An application for effecting the said entry was filed by father of Dilip Tukaram Dange namely, Tukaram. He himself made an application for the mutation entry in respect of partition. In the said partition, the suit property came to the share of plaintiff's ancestor namely, Raghunath. Thereafter, by succession, the suit property came to the father of plaintiff namely, Prakash and after him, it is recorded to the name of present plaintiffs. The plaintiffs are taking crops out of the suit property and cultivating it. Plaintiffs have developed the suit property by availing of loan amount from the bank and out of their own investment. The northern part of the suit property adjacent to east-west road has been given on rent and plaintiffs are taking the said rent amount. There is a bore well, pipeline, electric motor and tin sheds together with houses, dumping ground, cattle fodder, farm house over which, plaintiffs have spent lacs of rupees. The shops which are given on rent by the plaintiffs are welding shop, Auto garage, hardware, irrigation, sport material and marble shops. There is also the hotel namely, Purva which belonged to plaintiffs. In this way, there is an exclusive possession of the plaintiffs over the suit property. Dilip Tukaram Dange etc. never had any legal title to the suit property. Recently, in order to acquire the suit property said Dilip etc, by taking disadvantage of their hollow entry over the record of rights, started causing obstruction to the plaintiff's possession over the suit property. They have brought into existence an illegal sale deed.

03. Plaintiffs further contended that Dilip and others had earlier

filed RCS No.128/2020 in the Court and prayed for partition. Present plaintiffs appeared in that suit and filed their written statement. The temporary injunction application filed by Dilip and others in that suit came to be rejected, hence, on 25.09.2021, said Dilip and others have got that suit withdrawn. Before that said Dilip had also challenged the order of rejection of Exh.5 in Civil Misc. Appeal No.18/2021 before the Hon'ble District Court, Vaduj. On 25.09.2021, that appeal also came to be withdrawn by Dilip and others. One another suit for partition bearing RCS No.262/2021 was filed by Dattatraya Dange and others, in which, present plaintiffs entered their appearance which was occasionally withdrawn by them on 06.11.2025. On 07.11.2025, in order to defeat the lawful right of the plaintiffs over the suit property, in collusion with Sub-Registrar, Phaltan, a registered sale deed bearing No.2025/2025 came to be executed by legal heirs Tukaram in the name of present defendant, which is totally illegal. The said sale deed is liable to be set-aside and not binding on the plaintiffs. By way of the said sale deed, the possession of the suit property was not handed over to the defendant. The sale deed was against the provision of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Without issuing any notice to the plaintiffs, defendant got M.E No.14069 sanctioned by the revenue officer in collusion. It came to be sanctioned on 08.12.2025 by the Circle Officer, Pusegaon. The said mutation entry is also *void-ab-intio*. Defendants is contractor by profession and financially sound. They are causing obstruction to the plaintiff's possession highhandedly. After getting the knowledge of the sale deed, plaintiffs went to Pusegaon Police Station for filing report, but police refused to take cognizance saying that it was a civil dispute. Defendant or his predecessor in title have had no possession of the suit property. By taking disadvantage of his name recorded to the suit

property, if defendant succeeds in alienating it, plaintiffs will suffer irreparable loss which cannot be compensated in money. Hence, this application.

04. Defendant has filed his say to this application at Exh.36 and contended that the description of the suit property given by the plaintiffs in the plaint is wrong. Plaintiffs have only 8 Ana share in the suit property Gat No.1524. Plaintiffs have possession only to that extent. The share of plaintiffs is situated on western side of the said Gat. Accordingly, 8 Ana share situated on the eastern side in the said Gat belonged to Dilip Tukaram Dange, Sanat Tukaram Dange, Dattatraya Shailesh Dange and Usha Shailesh Dange etc. Since January 2025, said eastern portion was in possession of defendant by way of lease. Such notary agreement came to be executed by defendant's predecessor in title namely, Dattatraya Dange in the name of father of defendant. In this way, the eastern portion has been in possession of the present defendant. On 07.11.2025, by way of a registered sale deed, the said eastern 8 Ana share in Gat No.1524 was sold to defendant. Plaintiffs have no concern with the said eastern 8 Ana share.

05. Defendant has further contended that plaintiffs have suppressed the material facts from the Court and obtained the interim orders. The old survey number of Gat No.1524 was survey No.387/3. It belonged to Shriram Kulkarni. The ancestor of plaintiffs namely, Babu was the tenant over suit property. After Babu's death, his wife Nanubai purchased it from original owner Shriram Kulkarni. Her name came to be recorded as a owner. After her death, through M.E No.4115, the name of her son, Tukaram for himself and his brother Raghunath (plaintiff's predecessor) came to be recorded as a joint family manager. Gat No.1236 was acquired by said Tukaram, which was Class-V land by

way of regrant on new tenure. Accordingly, M.E No.4275 came to be effected and the name of Tukaram was recorded to Gat No.1236 also.

06. In the meantime, alleged M.E No.4341 in respect of partition was effected. But out of all the properties of Tukaram and Raghunath, Gat No.1236 was acquired as a new tenure land, hence, it required prior permission of revenue officer. But without seeking any prior permission from the revenue officer, partition held to be illegal, hence, Circle Officer cancelled the said M.E No.4341. No effect was given to mutation entry No.4341. It was not acted upon. Hence, the alleged partition was not legal. Thereafter, Tukaram and Raghunath filed a proper application before Tahsildar, Khatav for recording their names. Accordingly, as per the order of Tahsildar, through M.E No.4399, name of Tukaram and Raghunath were recorded to 8 Ana share each in ancestral and suit property. Accordingly, they are in possession of their half-half respective shares. This facts is suppressed by the plaintiffs. The ancestors of plaintiffs and defendant have mortgaged their respective shares and got the loans on it. After the death of Tukaram and Raghunath, the names of their heirs are recorded to their respective shares. There was no possession or cultivation of the plaintiffs or defendant as per the M.E No.4341. That partition was already set-aside being illegal by the revenue authority. Hence, plaintiffs cannot take support from the said partition. Through M.E No.13906, the remarks regarding "Tukada land" about the suit property is already removed on the basis of Government Resolution dated 08th August, 2023, hence, the said sale deed is not hit by the provision of Fragmentation Act. The said sale deed is legal and defendant has got title to the suit property in view of it. Defendant has lawful possession over his respective share. The sale deed of the defendant came to be executed in the afternoon. As per the

new online process, Gaonkamgar Talathi is bound to note the mutation entry on the same day. However, the entry regarding the sale deed came to effected after one month. The Maharashtra Government has given sanction for executing the sale deed of any property situated anywhere in the district, wherever, the concern seller and buyer wishes to execute. Hence, plaintiffs have no right to take any objection in respect of executing the sale deed at office of Sub-Registrar of Phaltan.

07. Since January, 2025, there has been possession of defendant over the suit property. Defendant has developed it and using it as as parking zone. Defendant has erected new sheds and poles over the suit property. Plaintiffs have filed the photographs of only the western portion. They have not filed the photographs of eastern 8 Ana portion intentionally. The Court has passed ad-interim injunction order against the defendant about non-alienation and obstruction to the possession of the plaintiffs over the suit property. Defendant has never committed any act of obstruction to the plaintiffs western 8 Ana share. Even plaintiffs had no complaint about that. No order of injunction in respect of construction is passed by this Court by way this ad-interim relief. Hence, no disobedience of any order of injunction is committed by the defendant. On the contrary, defendant on his own has stopped his construction. Defendant is parking his vehicles on the eastern portion which is purchased by him from legal heirs of Tukaram. However, plaintiffs have sought an order on Exh.24 behind the back of defendant. By taking disadvantage of this order, plaintiffs are trying to cause obstruction to the defendant's possession. Plaintiffs are in attempt to dispossess the defendant out of his share. On the contrary, plaintiffs have erected a shade over western 8 Ana portion which they have given on rent and collecting rent out of it. But it is the intention of the

plaintiffs that defendant should not get any kind of income out of his share. He who seeks equity has to come to Court with clean hands. Plaintiffs and defendant are co-owners, hence, no injunction can be claimed by the plaintiffs against defendant as prayed. Plaintiffs have suppressed material facts, hence, this application is not tenable. There is no possession of the plaintiffs over the eastern 8 Ana portion on the date of filing of the said suit. Defendant is in possession of his eastern 8 Ana portion on the basis of his sale deed. Hence, defendant has prayed for rejection of this application.

08. Heard arguments on both the side at length.

09. Points for determination and findings thereon along-with the reasons stated thereto are as under.

Sr. No.	Points	Findings
01]	Whether plaintiffs have made out : prima-facie case ?	“Partly yes”
02]	Whether there is balance of convenience in favour of plaintiffs ? :	“Partly yes”
03]	Whether irreparable loss would be caused to plaintiffs, if injunction is : withheld ?	“Partly yes”
04]	What order ? :	“As per final order”

REASONS

10. In support of this application, plaintiffs have relied upon the affidavit of plaintiff No.1 at Exh.6, documentary evidence such as 7/12

extract of Gat No.1524 at Exh.8, the certified copy of Exh.5 in RCS No.128/2020 at Exh.9, M.E No.4341, xerox copies of Exh.29, Exh.1 in RCS No.128/2020, xerox copy of Exh.1 in RCS No.262/2021, its copy of roznama, order on Exh.1 in RCS No.262/2021, the certified copy of sale deed dated 07.11.2025 in the name of defendant, M. E No.14069 at Exh.10, application filed by father of plaintiffs to Gaon kamgar Talathi for entry of bore on Gat No.1524, the purchase receipt of electric material purchased by father of plaintiffs from Vijay Electrical shop, deposit receipt of quotation submitted to M.S.E.D.C.L for the electric connection, electricity bills, the letter issued by Bank of Maharashtra to Gaon Kamgar Talathi, Pusegaon in respect of payment of loan amount taken by the father of plaintiffs, Namuna 8 extracts, of Grampanchayat property No.2562/1, 2562/2, 2562/3, 2562/4, 2562/8, 2562/9 and 2562/10, photographs of the suit property, the copy of N.C complaint filed by plaintiff No.1 against the defendant and Affidavit of witnesses Pradeep Tatyrao Jadhav at Exh.53 and affidavit of Mukund Ramchandra Jadhav etc at Exh.54.

11. On the other hand, defendant has relied upon 7/12 extract of Gat No.1524 of the year 1966-1967 to 2017-2018, 7/12 extract of Gat No.1175 of the 1966-1967 to 2000-2001, M.E No.4115, 4275, 4341, 4397, 4603, 7445, 7881, 8271, 9361, 9905, 9801, 11087, 10898, 11316, 13906, the certified copy of mortgage deed dated 23.01.2026, xerox copy of notarized agreement dated 14.03.2017 and 04.03.2025, affidavit of Swapnil Vijay Jadhav, 7/12 extract of Gat No.1296, certified copy of Gat map, 7/12 extract of Gat No.1226, affidavit of witness Swapnil Vijay Jadhav.

12. Defendant has relied upon the following case laws, in support of his defence.

- i). **Nagorao and Ors Vs The Nagpur Improvement Trust & Ors, (2001) AIR (Bombay) 402**, wherein, it is held by the Hon'ble Bombay Court (Nagpur Bench) that “ Court must be satisfied about existence of prima facie case and must record reasons before passing such orders. Where the judge directed parties to maintain status-quo even though the judge was not satisfied that prima facie case was not made out, the order was in utter disregard of mandate of Order 39 Rule 3.”
- ii). **Baban Anantrao Naik Vs. Sau Pramila Uttamrao Yenare, AIR (2011) 6 ALL MR 15**, wherein, it is held by the Hon'ble Bombay High Court (Aurangabad Bench) that “ At the time of determination of an application for temporary injunction, the factum of possession would only be relevant factor. Whether the possession is lawful possession or not would not be the subject matter of enquiry. ”
- iii). **Bhavana Vs. Navneet, (2015) 5 ALL MR 95**, wherein, it is held by the Hon'ble Bombay High Court (Nagpur Bench) that “ a prima facie case is the case which raises debatable and serious issue, which enables the plaintiff to say something in his favour and which therefore necessitates the matter to be proceeded to trial. Once it is found that there is no prima facie case established, further aspect of conduct of appellant, balance of convenience etc are immaterial and need not be considered. ”
- iv). **Abid Shiraz Merchant Vs. State of Maharashtra & Ors, 2025 BHC AS 39002**, wherein, it is held by the Hon'ble Bombay High Court that “plaintiff seeking equitable relief must approach Court clean hands. Suppressing material fact disentitles a litigant from seeking relief, especially, equitable relief like an injunction. ”

v). **Bir Singh Vs. Tirath Raj & Anr, 2025 HHC 45673**, wherein, it is held by the Hon'ble Himachal Pradesh High Court that “ a co-sharer cannot be restrained from raising construction over the joint land unless it shown that such an act would constitute prejudice and the mere raising of construction does not amount to any prejudice as laid down by the Hon'ble High Court. It is settled law that injunction cannot be granted against a co-sharer. ”

As to Point Nos. 01 to 03 :-

All the three points are interconnected, hence discussed and decided together.

13. Plaintiffs have filed this suit for a declaration that the sale deed of the suit property dated 07.11.2025 in the name of defendant is illegal and liable to be set-aside, together with the consequential relief of perpetual injunction in respect of any alienation or obstruction to possession or change in the record of the suit property. It has to be mentioned here that the partition of the ancestral properties of plaintiffs and the family of Tukaram Dange is not in dispute. Plaintiffs are saying that all their ancestral properties inclusive of suit property were partitioned in the year 1975 during the lifetime of their predecessor namely, Raghunath and his brother Tukaram, who is the ancestor of Dilip, Sanath, Dattatraya and Usha Dange. Said Dilip Dange etc. had filed RCS No.128/2020 and RCS No.262/2021 for partition in which they have also admitted that in the year 1986, oral partition took place between them. Defendant is not the family member of plaintiff or Dilip Dange. He is the purchaser of suit property. Hence, it is immaterial, whether he accepted the partition or not. Hence, I hold that fact of partition is not in dispute. It is also not in dispute that present

defendant Ajay Krushanat Jadhav has purchased 0H-12.50R land in Gat No.1524 which is the suit property, from said Dilip, Sanath, Dattatraya and Usha on 07.11.2025. In fact, the said sale deed dated 07.11.2025 is under challenge.

14. Plaintiffs have come with a case that they are the owners and possessors of the whole suit property in view of the partition which took place in the year 1975. In this respect, plaintiffs are solely relying upon M.E No.4341. The said mutation entry is filed on record by the plaintiffs which stated that on 27.06.1975, Tukaram filed an application and prayed for the recording of the partition between himself and his brother Raghunath (predecessor of plaintiffs), of their all the ancestral properties which were recorded in the name of Tukaram alone. It is true that M.E No.4341 shows that there were in all six ancestral properties, which were accordingly divided between the two. Tukaram has been given Gat No.992, 1161, 1236 Pai and 189/52 Pai. Raghunath was given Gat No.1175, 1524 (suit property), 1236 Pai and 189/52 Pai. It is mentioned that they have effected the partition between them as per the above shares. Prima facie, it appears that whole suit property was given to predecessor of plaintiffs. However, it has to be mentioned here that in the endorsement column of M.E No.4341, it is specifically mentioned that the said entry came to be cancelled on the ground that Gat No.1236 was new tenure land hence, the prior permission of the concerned authority was not sought by the parties. Hence, it is clear that M.E No.4341 was not sanctioned by the revenue authority and from the perusal of the 7/12 extract of the suit property, it appears that no effect was given to the said mutation entry as on the 7/12 extract of Gat No.1524, the names of plaintiffs and legal heirs of Tukaram appear to the extent 0H-8R each along with the uncultivated land to the extent

of 0H-04.50R each. After the sale deed of suit property, the name of present defendant appeared in place of heirs of Tukaram, over 7/12 extract of suit property.

15. Plaintiffs are solely relying on the said M.E No.4341, but it appears that the said mutation entry was cancelled by the revenue officer for the reasons stated above. Hence, it cannot be said that the suit property was given to the share of plaintiff's predecessor namely, Raghunath. On the contrary, defendant has relied upon certain documents like M.E No.4397, which came to be sanctioned on 28.06.1976, which shows that in view of the order passed by the Tahsildar dated 28.04.1976, to the name of Tukaram Babu Dange and Raghunath Babu Dange 8 Ana share each was recorded in their ancestral properties i.e. Gat No.992, 1161, 1175, 1524, 1236, 189/52. It has to be mentioned here that the said mutation entry No.4397 is effected after M.E No.4341 which was cancelled. In view of the said M.E No.4397, the names of Tukaram and Raghunath are recorded to their ancestral properties including the suit property. Hence, at present, there is no evidence on behalf of the plaintiffs to show that M.E No.4341 was sanctioned and acted upon. On the contrary, the 7/12 extract of the suit property shows that since the year 1966-1967 till 2025, the suit property has been shown in the name Tukaram and Raghunath in 8 Ana share each. 7/12 extract also shows that M.E No.4341 was cancelled. In possession column also, there appears to be the possession of the Tukaram and Raghunath and after them their legal heirs. Further, it appears that through M.E No.4115, after the death of their mother Nanubai Babu Dange, the names of Tukaram and Raghunath were recorded and Tukaram was mentioned as a Karta of the family. In view of M.E No.7881, after the death of Raghunath, his legal heirs i.e.

plaintiffs were recorded to all the ancestral properties including the suit property Gat No.1524. In the same way, through M.E No.8271, after the death of Tukaram, his legal heirs i.e. Dilip, Sanath, Amit, Sharda, Meena, Kamal and Usha were recorded to all their ancestral properties including suit property Gat No.1524. At present, this Court is concerned only with suit property Gat No.1524. All these mutation entries are also suggesting that no effect was given to the M.E No.4341 on which, plaintiffs are solely relying. It is an admitted position that plaintiffs have not challenged the cancellation of M.E No.4341 till date. It is also apparent from the face of record that M.E No.4397 sanctioned in the year 1976 is still in effect.

16. It is the stand taken by the defendant that his predecessor-in-title were the owners and possessors of $\frac{1}{2}$ share in suit property Gat No.1524 towards eastern side and the predecessor of plaintiffs namely, Raghunath was given western half portion of Gat No.1524. The documentary evidence on record supported the contention of defendant that he is the owner of half portion to the extent of 0H-8R with uncultivated land in Gat No.1524. On the contrary, it is the case of the plaintiffs that in view of the partition in the year 1975, they became the full owner of the suit property. Since then, they are in possession of the suit property. Plaintiffs in order to be entitled to the relief of temporary injunction have to prove their possession over the suit property first. In this respect, plaintiffs have relied upon the electricity bill, photographs, purchase receipts of electric material and affidavit of witness. However, these documents and affidavit of witness alone are not sufficient to establish that plaintiffs are the possessor of the whole gat number or that M.E No.4341 was acted upon. On the contrary, the 7/12 extract and the other documents supported the contention of defendant

regarding his prima facie title and possession to the $\frac{1}{2}$ share in the Gat No.1524.

17. If for the sake of moment, the contention of the plaintiffs regarding M.E No.4341 is accepted, then Tukaram was not given Gat No.1175 in partition. It was given to Raghunath. But still, it appears from M.E No.7445 and 9361 that Tukaram had mortgaged Gat No.1175 for obtaining loan. In the same way, Prakash (legal heir of Raghunath) mortgaged Gat No.1161 and 992 with bank. Had M.E No.4341 been really acted upon, then there was no reason for plaintiffs to mortgage the land Gat No.992 and 1161, which were given to Tukaram as per M.E No.4341. Defendant has relied upon one consent deed (संमतीपत्र) executed by the present plaintiffs in the name of one, Shobha Nalawade resident of Pusegaon, by which, they have given her 1 Guntha land in Gat No.1524 i.e. the suit property. It is clearly admitted by the plaintiffs that they have 8 Ana share in Gat No.1524, out of which, they have given 1 Guntha towards the western side. The lease agreement in the name of the father of defendant executed by legal heirs of Tukaram, also shows that they have leased $\frac{1}{2}$ portion in Gat No.1524 on the eastern side.

18. It has to be mentioned here that by way of this suit, plaintiffs are merely challenging the sale deed in the name of defendant. They have not added the legal heirs of deceased Tukaram, who are the necessary parties in this suit. Further, plaintiffs are claiming the relief of declaration regarding the sale deed only. It is well settled principle of law that whenever cloud is casted on the title of the plaintiffs to the suit property, the relief of declaration of ownership is must. Plaintiffs are the claiming to be owner of the whole Gat No.1524, hence, they have to pray for the declaration of ownership in this respect.

19. Considering the above discussion, I hold that plaintiffs failed to prove their possession over the whole suit property. Prima facie it appears that there is possession of the plaintiffs over the western $\frac{1}{2}$ portion of the suit property. Under such circumstances, there is no prima facie case for plaintiffs for grant of temporary injunction against obstruction over the whole suit property. Further, defendant cannot be restrained from changing the nature of the suit property, as it is established by him prima facie that there is his possession on eastern $\frac{1}{2}$ portion. However, considering the nature of this suit, it is necessary to preserve the suit property from any transfer of permanent nature like sale, agreement to sell, mortgage or gift, in order to avoid any further complications. Hence, plaintiffs are entitled only to the relief of temporary injunction in respect of non-alienation of the suit property. Balance of convenience is partly on the side of plaintiffs so far as relief of non-alienation of suit property is concerned. Plaintiffs will suffer irreparable loss, if suit property is permanently transferred by sale, agreement to sell, mortgage or gift. However, defendant can lease out his $\frac{1}{2}$ eastern portion of the suit property, as he has made the construction of shed for commercial purpose. The case laws relied upon by the defendant (cited supra), are helpful to him, considering the facts and circumstances of this case in hand. Considering overall discussion, I hold that plaintiffs have partly succeeded in this application. Hence, I answer points No.1 to 3 as “partly yes” and in answer to point No.4, I pass following order:

ORDER

1. The application below Exh.5 is partly allowed as under:

2. Defendant is temporarily restrained from transferring the suit property by way of sale, agreement to sell, mortgage or gift, till final decision of this suit.
3. The reliefs claimed by the plaintiffs for temporary injunction against the obstruction by defendant over the whole suit property as well as the relief claimed against the creation of encumbrance of banks or financial societies over the suit property are rejected.
4. Costs in cause.

Date : 1st August,2026.

Place: Vaduj.

(F. B. Baig)

Jt. Civil Judge Senior Division,
Vaduj.