

MHTH17001792025



R. C. S. No. 51/2025
Parag Lolekar & Ors.
Vs.
Gaurang Patil

(Order on application for temporary injunction)

ORDER BELOW EXH. 5

This is an application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. The suit is for declaration and injunction.

2. Description of suit property : -

Sr. No.	Property	Area	Village
1	Out of 1/1/1	0.24.50R	Girale, Palghar Tal. Palghar.

Afore mentioned property is here in after referred as 'suit property'.

3. Plaintiff's case in short :

The suit property is purchased by plaintiff from the father of defendant by registered sale deed on 02/05/2017 for consideration amount of Rs. 9,00,000/-. The plaintiff has erected cactus compound and took possession of the suit property. The plaintiffs resides at Mumbai and not usually went in suit property. The suit property is in possession of the plaintiff. the defendant after death of his father obstructed the plaintiff form entering into the suit property. On 09/09/2024 the defendant denied the sale deed and quarreled with the plaintiff. the plaintiff has send him notice through his advocate. The defendant has no right over the suit

property. however he started digging pond over the suit property. The plaintiff tried to restraint him but defendant threatened the plaintiff. Therefore, the plaintiff has constrain the present suit.

Say of the defendants:

4. The defendant has filed say on exhibit 16 and oppose the application. It is submitted that the defendant is in possession of the suit property and he cultivate the property. The plaintiff has not paid consideration amount of sale deed therefore the deed is illegal. There is no cause of action to the plaintiff to file present suit. There is no prima-facie case in favor of the plaintiff. If the injunction granted the defendant will suffer irreparable loss. the balance of convenience is in favor of the defendant. hence prayed for reject the application.

5. Heard arguments advanced by learned advocate for plaintiff and defendant. Perused documents filed on record.

6. On hearing both the sides, following points arise for my determination and I have recorded my findings thereupon as follows:-

Sr. No.	Points for determination	Findings
1	Whether plaintiffs are having prima-facie case?	Yes
2	Whether balance of convenience tilts in favour of plaintiffs?	Yes
3	Whether plaintiffs will suffer irreparable loss if injunction is not granted?	Yes
4	What Order?	Application is allowed.

REASONS

7. It is settled principle of law that while deciding application for temporary injunction, mini trial should not be conducted. Three cardinal principles to be assessed while deciding this application are prima-facie case, balance of convenience and irreparable loss.

As to point No.1 :-**Prima-facie**

8. To claim injunction, the plaintiff has to show prima-facie case in his favour. The term prima-facie case means a case which involves a fair and substantial question to be tried. A prima-facie case does not mean a case proved in its entirety but a case which can be said to have established if the evidence which is led in support of the same were believed. A triable issue is the crux of the expression prima-facie case.

9. To show prima-facie case plaintiffs have filed on record 7/12 abstract on record. He has filed sale deed No. 2347/2017 dated 02/05/2017, ME No. 785 and also filed notice and notice reply on record. the sale deed is registered document executed between the plaintiff and father of defendant. however, the execution is not challenged by the defendant, it is in dispute that the consideration amount is not paid by the plaintiff to the father of defendant. the 7/12 abstract shows the name of plaintiff in column of occupant. The sale deed shows that the plaintiff is Bonafide purchaser of the suit property. the clause of the sale deed shows that Rs. 9,00,000/- paid to the second party i. e. father of the defendant. however, it is issue of adjudication whether the consideration amount is paid or not and the sale deed is null and void or not. It will decide after adjudication of the matter. At this primary stage, considering the documents on record it appears that the plaintiff has proved the prima-

facie case in his favor. Accordingly, I answer point No.1 in affirmative.

As to point No. 2 and 3 :-

Balance of convenience & irreparable loss

10. Balance of convenience is balancing right of the parties. Balance of convenience means that comparative mischief or inconvenience which is likely to issue from with holding the injunction will be greater than that which is likely to arise from granting it. It is necessary to weigh the amount of substantial mischief that is likely to be done to the applicant if the injunction is refused and compare it with that which is likely to be cause to the other side if the injunction is granted.

11. As discussed, and held in point no.1 prima-facie case is in plaintiffs favour regarding suit property. The plaintiff has prima-facie proved that the suit property is his purchased property by registered sale deed and therefore if the defendant disturbs their possession in suit property or alienate the property, the plaintiff will suffer irreparable loss and it will create multiplicity of the proceeding and hurdle in the trial. Order 39 of the Code of Civil Procedure (in short 'the C.P.C') not only protects injury to the legal right but also protects from its apprehension. In such circumstances if defendants not restrain from alienating and disturbing possession of the suit property then plaintiffs will suffer irreparable loss. Accordingly, I answer point No. 2 and 3 in affirmative.

As to point No. 4:-

12. In view of reasons discussed above, I am inclined to allow the present application by passing following order:-

ORDER

- 01.** The application **Exh. 5** is partly allowed.
- 02.** The defendants are hereby restrained from disturbing possession in the suit property and create any third-party interest in suit property particularly mentioned in para No. 1 of the plaint in any manner whatsoever, till the final disposal of the suit.
- 03.** Costs in main cause.

Date: 05.05.2026.
Place: Palghar

(Sujata R. Bandal)
Jt. Civil Judge Jr. Division,
Palghar.