

MHWS080002922025 	<u>Namdeo Dajiba Borkar Vs Mamta</u> <u>Dnyaneshwar Gavhane</u> <u>ORDER PASSED BELOW EXH.5 IN</u> <u>R.C.S. NO.21/2025</u>
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The plaintiff has filed this application under Order 39 Rule 1 (c) of the Civil Procedure Code, 1908, praying that defendants be restrained from causing disturbance to the peaceful possession over the agricultural land in Gut No.9, situated at village Koyali, Taluka Risod, District Washim, more particularly described in para No.1 of plaint (for short 'suit Property'), till disposal of the suit.

2. Defendant No.2 has filed her say to this application vide Exh.12. The suit proceeded Ex-parte against defendant No.1

3. In the light of contents of this application, following points arise for determination, and I have recorded my findings thereon for the reasons stated below :-

<u>Sr.No</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiff has made out existence of prima-facie case in his favour?	Yes
2)	Whether balance of convenience lies in his favour?	Yes
3)	Whether irreparable loss would be caused to the plaintiff, if injunction is not granted?	Yes
4)	What order?	Application is allowed

REASONS

4. I have heard Ld. Advocate for the plaintiff & Ld. Advocate for defendant No.2 at considerable length, and have gone through record of the suit.

AS TO POINT NO.1 :-

Case of the plaintiff –

5. It is case of the plaintiff that, the plaintiff is in legal possession of suit property from the year 1978-1979 till today continuously, openly with the knowledge all persons, neighbors, at joining land holders, & others. That the suit land is class II land. That one Baburao Ravji Kalapad, filed R.C.S. No. 8/2008 against this plaintiff on 11/01/2008, suit for possession regarding suit property. That Baburao Ravji Kalapad alleges in R.C.S.No. 8/2008 that the suit property is came from his father to him. The plaintiff Namdeo Dajiba Borkar appeared in R.C.S No. 8/2008 and filed his written statement. There after issues were framed. The plaintiff Baburao Ravji Kalapad filed his evidence by way of affidavit below ex. 20 in R.C.S. No. 8/2008 and in his cross examination he admitted that the Namdeo Dajiba Borkar is in cultivating possession of suit land from the year 1979 continuously and he paid the land revenue of suit property. He also admitted that tahsildar made order against Namdeo Dajiba borkar and as per order fine amount was paid by the Namdeo Dajiba Borkar in the year 1981 and 1989. The Baburao Ravji Kalapad also admitted in cross examination that Namdeo Dajiba Borkar taking crops and income from the suit property from the year 1979. Thereafter on merit the suit was dismissed with cost on 31/12/2009.

6. The plaintiff further submitted that, The Baburao Ravji Kalapad did not filed any appeal against that judgment and decree

which is passed in R.C.S. no. 8/2008. That the plaintiff is in legal cultivating possession of suit property. The name of plaintiff is also recorded in 7/12 extract in cultivation coloum. That the defendant no. 2 is daughter of Baburao Ravji Kalapad and deft No. 1 is daughter of deft No. 2. Both the defendants have no any right, title, interest over the suit property.

7. The plaintiff further submitted that, the plaintiff sown soyabin and toor crop in the suit filed in this year and crop also harvested by the plaintiff. That there is underground pipeline in suit property from another field. That on 12/02/2025 when the plaintiff along with his sons were removing wastage material of toor in the suit property at that time both the defendants along with other unknown two persons came in the suit property on 12/02/2025 and gave threats to the plaintiff not to do work in the suit property, if he continued his work in suit filed then they will be kill him and also gave threats regarding dispossession by saying that the suit property is their ancestral property. The defendants have no any right, title, interest over the suit property but without any right they gave threats to the plaintiff regarding dispossession from the suit property hence there is apprehension in the mind of plaintiff regarding dispossession as the plaintiff is poor aged person having no support from anybody. On the other hand, the defendants are ladies they have man power. The possession of plaintiff is came in danger at the hands of defendants. The defendants cannot take forcible possession from the plaintiff of suit property without due process of law. That the plaintiff went to police station for filling report against the defendants but the police did not take report of plaintiff hence the plaintiff sent the report through

registered post 13/02/2025 to the police station Shirpur but of no use. Hence the plaintiff has no option but to file this suit for permanent injunction.

8. The plaintiff further submitted that, it is necessary to grant injunction in favour of plaintiff and against the defendants and the defendants may kindly be restrained from interfering, obstructing the peaceful possession of plaintiff over the suit property. That the plaintiff has prima facie case. The balance of convenience also lies in favour of plaintiff. If the injunction is not granted then the plaintiff will be put to a great loss which cannot be compensated by any means. With this he prayed for allowing the application.

Case of the defendants –

9. Conversely, it is contention of defendant No.2 that, That the description of the property and its four boundaries are not correct. The possession of plaintiff from 1978-1979 are false. It is admitted that suit land is class 2 land. The filing the suit vide R.C.S.No 08/2008 is denied being this def. was not the party to that suit.

10. The defendant No.2 further submitted that, the plaintiff has made false allegation in fact suit land is ceiling land received to the grandfather of the this def. and he is in cultivation of said land after his death this def. cultivating the suit land being her father was not in position to cultivate it. It is to be noted that on the day of filing suit plaintiff is required to be in possession of suit field, he is not in possession of suit land on the day of filing of suit more over judgment passed in R.C.S. No 08/2008 is not binding on this def. being she is not party to that suit and therefore it cannot be useful against this def. It is necessary to mention here that some referable right is require to be

shown for his possession. Plaintiff is not in possession of suit land any time but he is going to take the disadvantage of the judgment and decree passed in R.C.S.No 08/2008 for filing this suit under this circumstances suit of the plaintiff is liable to be dismiss with Exh.5. There is no any prima facie case in favour of plaintiff and there is no balance of convenience in favour of plaintiff. Thus, the application of the plaintiff is liable to be rejected with cost.

11. The plaintiff hinges upon following documents, viz. -

- i) Digital copy of 7/12 extract
- ii) photocopy of 7 -B
- iii) Certified copy of Judgment & Decree RCS No.08/08
- iv) Certified copy of Plaint, W.S, Evidence in RCS No.08/08
- v) photocopy of Map
- vi) Copy of report and postal receipt dated 13/02/2025
- vii) Affidavit of Mr. Malahari Namdev Bhuktar
- viii) Affidavit of Mr. Devanand Datta Kharat

12. On the other hand, defendants have not filed any document in their support.

13. Ld. Advocate for the plaintiff has vehemently submitted that, the plaintiff is in legal possession and cultivating the suit property. He further submitted that, the revenue records of suit property stands on his name. further submitted that, the Mr.Malahari and Devanand given the affidavit stating that the plaintiff is in possession and cultivation of suit property. The suit RCS No.8/2008 decided between the father of the defendant No.2 and the plaintiff. According to the findings in that suit the plaintiff is in possession of the suit property. Lastly, he submitted that, he has shown prima facie case, balance of

convenience lies in their favour and will suffer irreparable loss if injunction is refused.

14. Conversely, Ld. Advocate for defendants has emphatically argued that, the plaintiff is not in possession of the suit land. The defendant received suit property from her grandfather. As her father was not in position to cultivate the suit property, she is cultivating the same. At the date of filing of the suit the plaintiff was not in possession of the suit property. The judgment in RCS No. 08/2008 is not binding on this defendant. Further submitted that the plaintiff has failed to show prima facie case, balance of convenience does not lie in favour of the plaintiff, defendants will suffer irreparable loss if injunction is granted.

15. Before proceeding any further, I shall at the threshold mention that there is no dispute between the parties as to suit property being class 2 land. Further the case of plaintiff lingers around only documents, viz. – Digital copy of 7/12 extract and 7/12 extracts below Exh.16, Tax receipts, photocopy of 7 -B, Certified copy of Judgment & Decree RCS No.08/08, Affidavit of Mr. Malahari Namdev Bhuktar and Mr. Devanand Datta Kharat. According to the plaintiff, suit property is in his legal possession since 19-78-1978 and also the 7/12 extract of suit land stand on his name as Cultivator. It is, thus, contention of the plaintiff that on the basis of above documents, he establishes his legal possession over the suit property.

16. Conversely, the defendants have disputed the possession of plaintiff over the suit property. Here it is pertinent to note that, the plaintiff has placed on record the copies of 7/12 extracts of the suit property filed below Exh.16. On perusal of the same it appears that

name of the plaintiff is appearing as cultivator of the suit property. The revenue document below Exh.4 photocopy of 7 -B shows the plaintiffs name as cultivator of the suit property. The plaintiff below Exh.16 also filed tax receipts of suit property which stands in the name of the plaintiff. Moreover the Mr. Malahari and Devanand filed their affidavit on oath stating that the plaintiff is in possession of the suit property.

17. It is argued by the Ld. Advocate for defendant No.2 that the Judgment decree passed in RCS No.08/2008 is not binding on the present defendant as they were not party to the suit. It is settled position that the finding of the suit is binding on the parties to the suit and not on 3rd person. It was another argument of the Ld. Advocate for the defendant No.2 that the plaintiff was not in possession of the suit property at the time of the filing of the suit. Here on perusal of the 7/12 Extracts filed in present case prima facie it seems that the plaintiff is cultivating the suit property since year 1989-1990. According to the Section 114 illustration (d) once the thing or the state of thing once shown to exist it continues for reasonable time. In present case the possession is the thing, which the plaintiff on prima facie shown to be, therefore it continues unless contrary is proved. The defendant has not filed anything on record to show the contrary. Therefore, prima facie the possession of the plaintiff is seems to be there on the suit property.

18. It is worth to note that while deciding an application for temporary injunction, the prime factor which is required to be taken into consideration by the Court is that whether the plaintiff has a *prima-facie* case. Here, I would like to mention that *prima-facie* case which means a case which requires trial, and not a case which is based on false & vexatious claim.

19. Coming to determination of the question as to whether the plaintiff has a *prima-facie* case The Hon'ble Supreme Court in **Dalpat Kumar & Anr. vs. Prahlad Singh & Ors., 1991 SCC OnLine SC 345**, has held that, "*to claim interim injunction, plaintiff must establish a bona fide dispute supported by documentary evidence, which shows a serious question to be tried.*" In present case the plaintiff claiming to be in legal possession of suit property. On perusal of the revenue records filed by the plaintiff to establish his possession *prima facie*, it seems that the plaintiff is cultivating the suit property and is in legal possession of the suit property. Moreover the Mr. Malahari and Devanand filed their affidavit on oath stating that the plaintiff is in possession of the suit property. Therefore, *prima facie* it can be said that the plaintiff was and is in possession of suit land.

20. The plaintiff in his application alleged that the defendants has obstructed the enjoyment of peaceful possession of the suit land. On 12/02/2025 when the plaintiff and his son were doing work in the suit property. At that time all the defendants with ill intention came in the suit land and gave threats to the plaintiff regarding dispossession. The defendants in their say to present application has denied the possession of the plaintiff over the suit property. The plaintiff to show the obstruction has brought on record complaint send to the Shirpur police station dated 13/02/2025, moreover it is settle principle of law that the mere denial of the right of the plaintiff from enjoyment of property is itself amount to obstruction. Moreover, *prima facie* the plaintiff has established his legal possession over the suit property, in such circumstances his possession needs to be protected. *Prima facie* plaintiff appears to be in possession of suit property, his possession needs to be protected otherwise he will suffer irreparable loss.

Resultantly, I have no impediment to hold that the plaintiff has made out that he has a prima-facie case. Holding so, I have answered point No.1 in affirmative.

AS TO POINT NO.2 :-

21. In **Best Sellers Retail (India) Pvt. Ltd. vs. Aditya Birla Nuvo Ltd., (2012) 6 SCC 792**, it has been observed that, “*the Court must weigh the comparative hardship or inconvenience to the parties.*” The plaintiff has asserted that defendants are obstructing the peaceful enjoyment of the suit land. If injunction is refused and defendants are permitted to interfere, plaintiff will be deprived of his right over suit land. Granting injunction would merely restrain them from disturbing the plaintiff’s possession until final decision, which is a lesser inconvenience. Therefore, the balance of convenience tilts in favour of plaintiff’s possession. Therefore, I have no hesitation to hold that the plaintiff has made out that balance of convenience tilts in her favour. Hence, I have answered point No.2 in the affirmative.

AS TO POINT NO.3 :-

22. I have already held that the plaintiff has a *prima-facie* case, and balance of convenience tilts in her favour. Therefore, it is the plaintiff who will suffer irreparable loss if injunction is not granted. In the case of **Seema Arshad Zaheer & Ors. vs. Municipal Corporation of Greater Mumbai & Ors., (2006) 5 SCC 282**, Hon’ble Supreme Court held that, “*Irreparable injury*” means *injury which cannot be adequately compensated by damages.*” In the present case, if the plaintiff is dispossessed, monetary compensation cannot restore his longstanding peaceful possession and cultivation, nor would it adequately compensate the loss of livelihood and the hardship to plaintiff and his family. Current days are peak period for cultivation, the

plaintiff sown the soyabean, tur crop in the suit property in this season. In such circumstances as the prima facie plaintiff appears to be in possession of suit property, his possession needs to be protected otherwise he will suffer irreparable loss. Moreover, refusal of injunction is likely to lead to further litigation, complaints and law and order problems, which the law aims to avoid. Hence, the plaintiff has established that he would suffer irreparable loss and injury if the interim injunction is not granted. Resultantly, I have no hindrance to hold that the plaintiff has made out that he will suffer irreparable loss if injunction is not granted in her favour. Therefore, I have answered point No.3 in the affirmative.

AS TO POINT NO.4 :-

23. My aforesaid findings left me with no option but to arrive at inevitable conclusion that the present application deserves to be allowed. With this, I proceed to pass the following order -

ORDER

- 1) Application Exh.5 is allowed.
- 2) Defendants, their agents, servants or persons claiming through them are hereby restrained from causing obstruction to plaintiff's possession over, or enjoyment of the suit land; till disposal of the suit.
- 3) Costs in cause.
- 4) Parties to the suit shall take note of this order.

Risod.
Date- 17/04/2026.

Sd/-
(Shri. Kiran .D. Lukde)
2nd Jt. Civil Judge,J.D.,
Risod.

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/Order are same word to word, as per the original Judgment/Order.

Name of the Stenographer	: M.A.Siddiqui (Jr. Clark)
Name of court	: 2 nd Jt. C.J.J.D.& JMFC; Risod
Date	: 17.04.2026
Judgment/Order signed by the Presiding Officer	: 17.04.2026
Judgment/Order uploaded on	: 17.04.2026