

**ORDER BELOW EXHIBIT- 05**

(Passed on 13/11/2025)

1. The present application is filed under Order 39/ Rule 1 & 2 R/w Section 151 of the CPC to restrain defendant from creating third party interest in the suit property. Say filed by the defendant at Exh.14. Heard Shri. R.D.Thakare learned advocate for the plaintiff/applicant and Shri. G. R. Rathod learned advocate for the defendant/non-applicant. (Hereinafter parties are referred to as the "**Plaintiff**" and "**Defendant**"). Perused the plaint, application for T.I., reply and affidavits filed in support of the application for temporary injunction and the documents.

2. filtering unnecessary details in short it is the contention of the plaintiff that, defendant is his real brother. They have joint property situated at Mouje-Lohara, Tq. Manora, Dist.Washim bearing Gat No.115, adm.1.62 HR share full having boundaries as towards East and West land of defendant, towards North Government land and towards South Nala. (Here in after the property as described in para No.1 of the plaint is the subject matter of the suit and referred to as the '**Suit Property**').

3. It is the further contention of the plaintiff that, their father Nilkanthrao had six sons and two daughters. One son and one daughter passed away, and later their father also died. Their father had ancestral land (Survey No. 47, Adm.20 acres and 39 gunthas), which was divided among the six sons. The plaintiff received six acres as his share, and the mutation was recorded accordingly. The defendant's land was next to his, and both lands together came to be known as Gat No.115. Around 2010–11, the defendant decided to start a private business named Murlidhar Fertilizer at

Dhamangaon and needed a loan. Since the defendant's land area was insufficient for loan requirements, he asked the plaintiff to execute a nominal sale deed so that he could get the loan. He promised to transfer the land back once the loan was cleared, and possession was to remain with the plaintiff.

4. It is the further contention of the plaintiff that on 30/09/2011, based on trust, he executed a sale deed bearing Reg. No. 1313/2011. He still remains in possession of the Suit Property. Mutation was not done immediately, but after two years, on 27/06/2013 vide Mutation No.171, the land was entered in the defendant's name in the 7/12 extract. The said sale deed was only nominal, and no actual sale took place. Due to old age, the plaintiff gave the land on a crop-sharing basis to one Vinod Rathod last year. In May 2025, he learned that the defendant was trying to sell the property because land prices had increased and mutation was in his name. When the plaintiff asked him to re-transfer the land, the defendant avoided him. There is every possibility to create third party interest in the suit property. Therefore, he has prayed for temporary injunction for the purpose cited supra.

5. The defendant filed say at Exh.14 and denied all the material contentions of the plaintiff. It is submitted on his behalf that sale-deed supra was legally executed, and the mutation entry was rightly made in his name. The plaintiff himself purchased the stamp paper for the sale-deed. The defendant alleges that the plaintiff, along with witnesses Subhash Chavan and Rameshwar Ade, illegally created a false Maktepatra, which he (the defendant) never signed. He has even lodged a complaint about this at the Manora Police Station. He states that since the date of the sale deed, he has been in possession of the Suit Property. The sale-deed supra does not mention anywhere that the transaction was only a nominal or fake one. He never had any connection with the fertilizer company as mentioned by the

plaintiff. There is no law that requires a person to mortgage agricultural land for starting a commercial business.

6. It is the further contention of the defendant that the plaintiff was financially unstable and addicted, and in 2011 needed money for his son's education and family expenses. Because of this financial need, the plaintiff chose to sell the property, and while others in the village were offering a lower price, the defendant bought it by paying a proper amount. The plaintiff has filed this suit only to harass him and extract money. The plaintiff is not honest, has misled the Court with false statements. Therefore, he prayed for rejection of application with compensatory costs.

7. I have gone through the rival submissions of both sides. I have also perused the documents placed on record in support of their respective contention. Following points arose for my determination. I record my findings for the reasons given below.

Sr.No.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the plaintiff has made out prima facie case ?	NO
2.	Whether balance of convenience lies in favour of plaintiff ?	NO
3.	Whether any irreparable loss would cause to the plaintiff, if injunction as prayed is not granted ?	NO
4.	What order ?	As per final order

REASONS

8. In order to substantiate the case of plaintiff he has relied on documents such mutation entries, extract 8-A, sale-deed, 7 X 12 extract, Adhar card and maktepatra as well affidavit of one Manish Chavhan and

Vinod Rathod on record. Ld . adv. For the plaintiff has further relied upon Hon'ble authority in the case of ***Narne Rama Murthy Vs. Ravula Somasundaram & Others*** [AIR Online 2005 SC 1082] On the point of limitation.

AS TO POINTS NO.1 TO 3:-

9. As these points are interconnected thus same are being taken together for discussion. It is the case of the plaintiff that the suit property is jointly owned and possessed by him and defendant and he had executed supra sale deed nominally for the collateral purpose of the loan of the defendant. Now the defendant is in process of selling the same.

10. In view of the present facts of the case it is necessary for the plaintiff to establish the alleged threat and injury to his legal right and possession by the defendant. As with respect to the prima-facie case of the plaintiff, the relation between the parties, sale-deed no. 1313/2011 dated 30/09/11 and updating of mutation entries in the year 2013 in defendants name with respect to suit property is not disputed.

11. Perused the documents filed by the plaintiff. Admittedly, the sale-deed no.1313/2011dated 30/09/2011 is a registered document, and is silent about any nominal purpose or any obligation on the defendant to re-convey the property. A registered sale-deed carries a presumption of legality and correctness, unless challenged and set aside in appropriate proceedings. The plaintiff has admitted execution of the sale-deed supra. The plea of nominal sale is raised after a lapse of about 14 years, which casts serious doubt on its genuineness. Admittedly, Mutation entries were completed in 2013 in defendant's name. The plaintiff has approached the Court in 2025 without explaining the satisfactory reasons for delay. It is the contention of plaintiff that the transaction was only nominal is prima facie unsupported by any contemporaneous document.

12. The plaintiff further relies on the affidavit of one of the attesting witnesses namely Manish Chavan (Exh.18) to the sale-deed, who stated that the document was executed only for loan purposes. However, such affidavit cannot override the contents of a registered document, because the sale-deed is silent about the alleged arrangement. In view of Section 91 and 92 of the Evidence Act, any oral agreement contrary to the recitals of a registered sale-deed cannot be considered. It is settled principle that, attesting witnesses testify only to the execution, not to private arrangements between parties unless recorded in the document. Contradicting a registered deed by affidavit amounts to introducing a collateral oral agreement, which is barred. Therefore, the statement of the witness in affidavit regarding the nominal nature of the sale-deed cannot prima-facie displace the legal effect of the registered document.

13. Another witness Vinod Rathod also stated at Exh.19 that plaintiff is in possession of the suit property and he cultivates the same. Further the plaintiff has executed Maktepatra for the year 2024-25 in his favour. Admittedly, possession of the plaintiff is not disturbed or obstructed by the defendant. Therefore, the statement of this witness cannot be helpful to the plaintiff at this juncture.

14. Considering the discussion supra, plaintiff failed to prima-facie establish the alleged harm or injury to his legal right. Considering the contention of the plaintiff, his legal right is not violated. Further, the material available on record does not clear the actual facts on record as both the parties being real brothers have made allegations and counter allegations against each other. However, at this juncture no cogent documentary evidence produced by the plaintiff to prove his case. The documents filed by the plaintiff is not sufficient to decide the matter in question. Plaintiff did not prima-facie establish that the defendant illegally tried to create any third-party interest in the suit property.

15. Hence, at this stage it will not be just to hold that there is an injury or threat to the legal right of the plaintiff. In such facts and circumstances of the case the fact of illegality of the act of the defendant is required to be proved by detailed evidence and same is a part of merit. While granting temporary injunction the plaintiff has to prove his prima-facie case on the date of the filing of the suit. In absence of cogent documents on record mere general contentions/ allegations are not sufficient to grant the relief as prayed by the plaintiff. The plaintiff has not made out a strong case in his favour. In such case it will not be appropriate to grant temporary injunction as prayed at this juncture. However, due to distinguishable facts and circumstance Hon'ble authority cited supra can not be applied to the facts of the case at such interim stage. Thus, I came to the conclusion that, plaintiff did not make out a prima-facie case. Hence, in view of the above discussion point No. 1 is answered in negative.

16. It appears that the plaintiff approached the Court and prayed for restraining the defendant from selling or creating third party interest in the suit property. The suit property stands in the defendant's name for more than a decade on the strength of a registered deed. Granting injunction against the defendant, would cause greater inconvenience to the defendant. However Plaintiff is not in danger of dispossession, as he himself admits that defendant has not obstructed his possession. Hence, balance of convenience does not support him. The plaintiff's alleged apprehension of future alienation cannot be termed as irreparable loss when title is already transferred under a registered deed. Therefore, in the given sets of the facts there did not appear a chances of irreparable loss to the plaintiff, which can not be compensated in terms of money. Considering the above discussion, plaintiff did not establish balance of convenience and chances of irreparable loss in his favour. Hence, considering the facts and circumstances of the case both these points goes against the plaintiff. Accordingly point no. 2 and 3 are answered in negative.

AS TO POINT NO. 4

17. In view of the findings given to points no. 1 to 3 the application deserves to be rejected. Hence, in answer to the point no. 4, I am inclined to pass the following order.

ORDER

1. Application Exh.5 is rejected.
2. Costs in main cause.

(Dictated and pronounced in open Court).

Date:- 13.11.2025

(Ms. Trushna G. Bansod)
Jt.Civil Judge (Jr.Dn.)
Manora.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

Name of the Stenographer	-	Smt. R. K. Chavhan(L.G.)
Court	-	(Smt. T. G. Bansod) Jt. CJJD & JMFC, Manora.
Date of Judgment/Order	-	13/11/2025
Judgment/Order signed by the Presiding Officer on	-	13/11/2025
Judgment/Order uploaded on	-	17/11/2025