

MHWS100002062026



R.C.S. 07/2026

Rajkuvar Vrs. Narayan & Ors.

ORDER BELOW EXH. 05
(Passed on 16/03/2026)

The present application filed by the applicant for temporary injunction as per Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, against non-applicant Nos. 1 to 5 for not to disturb her possession of Gat No.189 (old survey No.58/2, later on, renumbered as F. S. No.58/3) admeasuring area 0.89 R agricultural land situated at Malegaon, Tq. Malegaon, Dist. Washim till the final disposal of the suit. (Hereinafter, it is called as 'the suit property').

2. Brief averments of the applicant as follows;

It is contentions of the applicant that on 14/03/1974 she purchased the suit property from Vasantrao Purushottam Raje (father of defendant Nos.6 and 7) by way of registered sale deed, bearing No.1194/1974, accordingly, she is an owner and in possession of the suit property.

3. It is further contentions of the applicant that when she purchased the suit property it was part and parcel of F. S. No.58/2, however, in the year of 1989 F. S. No.58/2 was divided in two sub-division and the suit property was renumbered 58/3, accordingly, an entry has been taken in revenue record vide mutation entry No.1661 dated 25/05/1989. Later on, survey No.58/3 subsequently, renumbered as Gat No.189 during implementation of consolidation scheme.

4. It is further contentions of the applicant that survey No.58 was having total area admeasuring 07 H 5 R agricultural land, which was originally owned by deceased Vasantrao Purushottamrao Raje. Original survey No. 58 was divided into survey No.58/1, 58/2 and 58/3 and which was disposed of by deceased Vasantrao and his successors time to time, therefore, no land remained in an ownership and in possession of deceased Vasantrao and his heirs (defendant Nos. 6 and 7).

5. It is further contentions of the applicant that 0 H 52 R land utilized for Shelu-Malegaon road, accordingly, revenue authorities failed to deduct said area from the holding of original owners in record of rights, therefore, ghost balance continued to reflect in the records in the name of Raje families, accordingly, they took undue advantage of said clerical mistake. On 31/10/2025 defendant Nos.6 and 7 sold out 0 H 34 R land of Gat No.190 to non-applicant Nos. 1 to 5 by way of registered sale deed, said sale deed is sham and bogus.

6. It is further contentions of the applicant that on 29/01/2026 non-applicant Nos. 1 to 5 obstruct her possession of the suit property, accordingly, she tried to give an understanding to non-applicant Nos.1 to 5 but all in vain.

7. It is further contentions of the applicant that she is an owner and possessor of the suit property. Non-applicant Nos.1 to 5 does not have any right, title or interest over the suit property. Non-applicant Nos.1 to 5 are trying to disturb a peaceful possession of the applicant over the suit property. Therefore, the applicant would have suffer irreparable loss if she has been dispossessed from the suit property. Therefore, the applicant filed the present application against non-applicant Nos. 1 to 5 for not to disturb her possession of the suit property till the final disposal of the suit.

8. Non-applicant Nos.1 to 5 appeared and filed their say to present application below Exh.27 dated 27/02/2026, wherein, they denied all the contents of the present application.

9. Non-applicant Nos. 1 to 5 in their say specially contended that the applicant is an owner of the suit property. Non-applicant Nos. 1 to 5 are an owner of Gat No.190. Dispute between the applicant and non-applicant Nos.1 to 5 is related to the boundaries of Gat No.189 and 190. On 13/01/2026 and 29/01/2026 Gat No.190 measured and boundaries were clarified that non-applicant Nos. 1 to 5 is on west side of road. The applicant wrongfully mentioned south boundary in the present application. Panchayat Samiti, Malegaon is necessary party to the present suit.

10. Non-applicant Nos.1 to 5 further contended that the present

application is not tenable in the eyes of law. Non-applicant Nos.1 to 5 would suffer irreparable loss if temporary injunction granted to the applicant. Moreover, non-applicant Nos.1 to 5 further contended that the applicant filed the present suit as well as present application illegally against them. Hence, non-applicant Nos.1 to 5 prayed for rejection of the present application.

11. Initially, the applicant filed the present application against non-applicant Nos.1 to 7 but on 06/03/2026 the applicant not pressed the present application against non-applicant Nos. 6 and 7, therefore, as per an order passed below the present application dated 06/03/2026 the present application is filed against non-applicant Nos. 6 and 7.

12. In view of rival contentions of both parties following points arises for my determination, to which I recorded my findings thereon as under for the reasons given below:-

Sr. No.	Points	Findings
1	Does the applicant proves the prima facie case in her favour ?	Yes
2	Does the applicant proves balance of convenience lies in her favour ?	Yes
3	Does the applicant proves that she would sustain irreparable loss if temporary injunction is refused?	Yes
4	What order ?	Application is Allowed.

REASONS

13. Heard learned advocate Mr. R. S. Joshi for the applicant. An advocate Mr. R. S. Joshi also filed written notes of arguments at Exh.28 dated 06/03/2026 on behalf of the applicant. Also heard learned advocate Mr. R. C. Rathod for non-applicant Nos.1 to 5.

As to Point No. 1:-

14. Now coming towards legal position, the present application of temporary injunction filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, which is as follows :-

Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 :-**Rule -1 :- Cases in which temporary injunction may be granted :-**

Where in any suit it is proved by affidavit or otherwise -

- (a) that any property in dispute in a suit is in a 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 intends, to remove or dispose of his property with a view to defrauding his creditors,*
 - (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, or make such other order for the purpose of staying and preventing the wasting, damaging, alienating, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.*

Rule -2 :- Injunction to restrain repetition or continuance of breach :-

- (1) in any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing a breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.*
- (2) the court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the*

court thinks fit.

15. For temporary injunction applications filed under Order 39 Rule 1 and 2, said applications are also related to legal provisions of section 36 and 37 of the Specific Relief Act, 1963, which are as follows :-

The Specific Relief Act, 1963 :-

Section 36 :- Preventive Relief How Granted :-

“Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual”.

Section 37 :- Temporary and Perpetual Injunctions :-

“(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of the suit, and are regulated by the Code of Civil Procedure, 1908.

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit, the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.”

16. The court may grant temporary injunction to any party if he proved that property in dispute in a suit is in danger of being wasted, damage, alienation, sale, removal, dispossession and dispose or any other way. Before issuing a temporary injunction pending disposal of a suit, the applicant has to make out, firstly that he has got a prima facie title to properties. Secondly, the applicant must establish that he will suffer irreparable injury which is a matter which cannot be adequately compensated for by damages. Thirdly, the applicant must prove that the balance of convenience is in his favour, who is likely to suffer substantial mischief if the injunction is refused when compared to the mischief which might be caused to the non-applicant if the injunction is granted. Fourthly, the status quo must be maintained. The court has take into consideration all these points while granting a temporary injunction.

17. Now, considering this legal position the present application needs to be decided. The applicant filed the present suit for perpetual injunction. By deciding the present injunction application I am not deciding an ownership of the suit property. Now coming towards the present application, it is contentions of the applicant that she is an owner and possessor of the suit property. On the contrary, non-applicant Nos.1 to 5 contended that they are an owner of Gat No.190 and the applicant is an owner of the suit property. Non-applicant Nos.1 to 5 further contended that dispute between them and the applicant is related to the boundaries of Gat Nos.189 and 190.

18. An advocate Mr. R. S. Joshi on behalf of the applicant argued that the applicant is an owner and in possession the suit property and non-applicant Nos.1 to 5 are obstructing her possession of the suit property, therefore, the advocate prayed to grant a temporary injunction till final disposal of the present suit.

19. An advocate Mr. R. S. Joshi on behalf of the applicant filed following case laws :-

1. In *Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) By Lrs., Civil Appeal No.7662/1997 decided on 15/12/2003, wherein, the Hon'ble Supreme Court* held that a person in settled possession is entitled to protect that possession even against the true owner, except by due process of law.

2. In *Subhaga and Others Vs. Shobha and others, Civil Appeal No.2836/2006 decided on 07/07/2006, wherein, the Hon'ble Supreme Court* held that "*The High Court has also upheld the title claimed by the plaintiff over the plot, Plot No. 1301/1 Ba. Once we accept the identification made by the Commissioner as was done by the first Appellate Court, it is clear that the plaintiff has the right to have the disputed construction removed and the well filled up. That a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the*

Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail. There was no occasion to spin a theory that it was necessary in this suit to survey all the adjacent lands to find out whether an encroachment was made in the land belonging to the plaintiff. In this situation, we are satisfied that the judgment and decree of the High Court calls for interference. We are also satisfied that the Lower Appellate Court was justified in affirming the decree granted in favour of the plaintiff on the pleadings and the evidence in the case."

3. In V. Chandrasekaran and Others Vs. Administrative Officer and others, Civil Appeal Nos.6342-6343/2012 decided on 18/09/2012, wherein, the Hon'ble Supreme Court held that no person can transfer a better title than what they themselves possess. A sale deed executed by a party with no title is void *ab initio*.

20. An advocate Mr. R. C. Rathod on behalf of non-applicant Nos.1 to 5 argued that non-applicant Nos.1 to 5 are an owner of Gat No.190 and the applicant is an owner of the suit property. The advocate further argued that dispute between the applicant and non-applicants is related to the boundaries of Gat Nos.189 and 190. The advocate further argued that non-applicant Nos.1 to 5 never obstruct possession of the applicant, therefore, the advocate prayed to reject the present application.

21. Perused the record. After perusal of record it appears that the applicant filed xerox copy of sale deed bearing registration No. 1194/1974 at serial No.2 along with list of documents below Exh.3. After perusal of said xerox copy of sale deed it prima-facie appears that on 14/03/1974 deceased Raje Vasant Purushottamrao Deshmukh executed said sale deed in favour of the applicant in respect of the suit property for a consideration of rupees 5,000/- (Five Thousand Only). After perusal of said xerox copy of sale deed it also prima-facie appears that the applicant is in possession of the suit property.

22. The applicant also filed on record digital copy of 7/12 extract of the

suit property at serial No.3 along with list of document below Exh.3. After perusal of digital copy of said 7/12 extract it prima-facie appears that it is of the year 2023-24 and 2024-2025 and in the name of the applicant.

23. The applicant also relied on xerox copy of mutation entry No.1661 at serial No.13 along with list of document below Exh.3. After perusal of xerox copy of said mutation entry it prima-facie appears that on 08/04/1989 joint land of survey No.58/2 of deceased Vasant and the applicant was divided, accordingly, survey No.58/2 mutated in the name of deceased Vasant and survey No.58/3 mutated in the name of the applicant.

24. The applicant also relied on xerox copy of Jamabandi Patrak at serial No.14 along with list of document below Exh.3. After perusal of xerox copy of said Jamabandi Patrak it prima-facie appears that is of the year 1971-72 in the name of deceased Vasantrao Purushottamrao Raje in respect of survey No.58 total area 7 H 5 R.

25. The applicant also relied on certified copy of consolidation extract at serial No.4 along with list of document below Exh.3. After perusal of certified copy of said consolidation extract it prima-facie appears that survey No.58/3 renumbered as Gat No.189.

26. The applicant also relied on certified copy of map of Gat No.189 of Village Malegaon at serial No.5 along with list of document below Exh.3.

27. The applicant also filed on record xerox copy of 7/12 extract of Gat No.58/1 at serial No.6 along with list of document below Exh.3. After perusal of xerox copy of said 7/12 extract it prima-facie appears that it is in the name of Panchayat Samiti, Malegaon to extend of 3 H 61 R.

28. The applicant also relied on xerox copy of mutation entry No.3063 at serial No.08 along with list of document below Exh.3. After perusal of xerox copy of said mutation entry it prima-facie appears that on 12/05/1995 defendant Nos. 6 and 7 along with Sudhabai Raje sold out 75 R land of survey No.58/2 to Ukandrao Haribhau Raut for consideration of rupees 2,10,000/- (Two Lakh Ten Thousand

Only).

29. The applicant also relied on xerox copy of mutation entry No.1921 at serial No.09 along with list of document below Exh.3. After perusal of xerox copy of said mutation entry it prima-facie appears that on 21/10/1992 defendant Nos. 6 and 7 along with Sudhabai Raje sold out 40 R land of survey No.58/2 to Shantabai Hanumanlas Kalani for consideration of rupees 1,54,000/-(One Lakh Fifty Four Thousand Only).

30. The applicant also relied on xerox copy of mutation entry No.1922 at serial No.10 along with list of document below Exh.3. After perusal of xerox copy of said mutation entry it prima-facie appears that on 21/10/1992 defendant Nos. 6 and 7 along with Sudhabai Raje sold out 91 R land of survey No.58/2 to Hanumanlal Parasram Kalani for consideration of rupees 2,66,000/-(Two Lakh Sixty Six Thousand Only).

31. The applicant also relied on xerox copy of sale deed bearing registration No. 3639/2025 at serial No.11 along with list of documents below Exh.3. After perusal of said xerox copy of sale deed it prima-facie appears that on 31/10/2025 defendant Nos. 6 and 7 executed said sale deed in favour of non-applicant Nos. 1 to 5 in respect of land bearing Gat No.190 in respect of area 0 H 34 R agricultural land for a consideration of rupees 23,81,000/- (Twenty Three Lakh Eighty One Thousand Only).

32. On the contrary, non-applicant Nos. 1 to 5 relied on xerox copy of consolidation extract at serial No.1 along with list of document below Exh.25. After perusal of xerox copy of said consolidation extract it prima-facie appears that survey No.58/2 renumbered as Gat No.190.

33. Non-applicant Nos. 1 to 5 also relied on xerox copies of two maps at serial Nos.2 and 3 along with list of document below Exh.25.

34. It is pertinent to note here that after perusal of xerox copy of Jamabandi Patrak at serial No.14 along with list of document below Exh.3 it prima facie appears that original survey No.58 was having total area 7 H 5 R agricultural

land. After perusal of xerox copy 7/12 extract, xerox copy mutation entry 3063, xerox copy mutation entry 1921, xerox copy mutation entry 1922 and xerox copy sale deed at serial Nos.6, 8, 9, 10 and 2, respectively, along with list of documents below Exh.3 it prima facie appears that deceased Vasantrya and his heirs sold or dispose off entire land of 7 H 5 R agricultural land of original survey No.58.

35. It is pertinent to note here that after perusal of xerox copy of sale deed at serial No.11 along with list of documents below Exh.3 it prima facie appears that on 31/10/2025 defendant Nos.6 and 7 executed said sale deed in favour of non-applicant Nos. 1 to 5 in respect of land bearing Gat No.190 in respect of area 0 H 34 R agricultural land for a consideration of rupees 23,81,000/- (Twenty Three Lakh Eighty One Thousand Only). It is also pertinent to note here that as discussed above it prima facie appears that there is no agricultural land remained in the name of deceased Vasantrya and his heirs then on what basis they executed sale deed at serial No.11 along with list of documents below Exh.3. Furthermore, no person can transfer a better title than he himself has.

36. It is pertinent to note here that as discussed above after perusal of xerox copy of sale deed, digital copy of 7/12 extract, certified copy of consolidation extract and certified copy of map at serial Nos.2 to 5, respectively, along with list of documents below Exh.3 it prima-facie appears that the applicant is in possession of the suit property. Furthermore, if there is dispute in respect of boundaries then property is primarily identified by boundaries. Furthermore, as discussed above case law filed by the applicant Rame Gowda (Cited Supra), Subhaga and Others (Cited Supra) and V . Chandrasekaran and Others (Cited Supra) are helpful to her. Therefore, as discussed above it prima-facie appears that the applicant is in possession of the suit property. Therefore, the applicant proves prima-facie case in her favour. Therefore, I recorded my findings as to point No.1 in an affirmative.

As to Point Nos. 2 and 3:-

37. As discussed in point No.1 it prima facie appears that the applicant is in possession of the suit property. Furthermore, it prima-facie appears that non-

applicant Nos.1 to 5 are obstructing possession of the applicant of the suit property. Therefore, if possession of the applicant over the suit property is not protected during pendency of the present suit then it would caused irreparable loss to her. Therefore, I hold that the applicant prove balance of convenience in her favour and she would suffer irreparable loss if the injunction is refused. Therefore, possession of the applicant needs to be protected from non-applicant Nos.1 to 5 by granting a relief of temporary injunction in favour of the applicant. Therefore, I recorded my findings as to point Nos. 2 and 3 in an affirmative.

As to Point No. 4:-

38. Considering, all the legal principles required for granting the temporary injunction and as to findings given to point Nos.1 to 3, I hold that the applicant is entitled to the relief of temporary injunction. Therefore, I proceed to pass the following order.

ORDER

1. The present application Exh. 5 is allowed.
2. Non-applicant Nos. 1 to 5 or their agents, servants and any other persons on their behalf is hereby restrained from interfering and disturbing possession of the applicant over the suit property till the final disposal of the present suit.
3. Parties to be bear their own costs.

[Pronounced and dictated in the open Court.]

Date : 16/03/2026.

Mohmad Wasim Akram
s/o Mohmad Jalal Sheaikh
Civil Judge Junior Division, Malegaon.

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 Stenographer	C. R. Lande (Grade III)
Name of Court	Shri. M. W. A. M. J. Sheaikh, C.J.J.D. & J.M.F.C., (Court No.1), Malegaon, Distt. Washim.
Date of Dictation	16/03/2026
Judgment/Order signed by the PO on	16/03/2026
Judgment /Order uploaded on	16/03/2026