

MHWS100004932026

**RCS No.15/2026**
Vaishali Vs. Kiran & Ors.

ORDER BELOW EXH. 05
(Passed on 10th June, 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-applicants for not to disturb her possession of Gat No.48 admeasuring area 1 H 6 R agricultural land out of 1 H 60 R agricultural land situated at Pangari Dhankuti, Tq. Malegaon Dist. Washim till the final disposal of the suit. It is bounded as follows,

- | | | |
|-------|---|--|
| East | - | Land of Arun Sakharam Chavan of Gat No.48. |
| West | - | Government lake and then agricultural land of Limba Patil. |
| North | - | Government Lake |
| South | - | Kondala Shiv and then Government land. |

(Hereinafter, it is called as 'the suit property').

2. Brief averments of the applicant as follows;

It is contentions of the applicant that on 14.07.2014 Gopal Narayandas Agrawal purchased the suit property by way of registered sale-deed bearing no.1591/2014, accordingly, he was an owner and possessor of suit property.

3. It is further contentions of the applicant that on 04.06.2025 she purchased the suit property from Gopal Narayandas Agrawal by way of registered sale-deed bearing no.1823/2025 for a consideration rupees 8,25,000/- (Eight Lakh Twenty Five Thousand Only), accordingly, she became an owner and possessor of the suit property. On 18.06.2025 mutation has been effected.

4. It is further contentions of the applicant that on 15.02.2026

non-applicants forcefully entered in the suit property and obstructed her possession, therefore, on 16.02.2026 she filed a report in police station, Jaulka but police officer did not take any action.

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

6. Non-applicants appeared and filed their say to present application below Exh. 08 dated 30/03/2026, wherein, they denied all contents of the present application except on 04.06.2025 the applicant purchased the suit property from Gopal Agrawal as boundaries mentioned in said sale-deed. On 14.07.2014 Gopal Agrawal purchased the suit property by way of registered sale-deed bearing no. 1591/2014 from Baliram Sakharam Chavhan and Sardar Sakharam Chavhan. Boundaries mentioned in the applicant's sale-deed are factually boundaries of Gut no. 49. The applicant purchased land in Gut no. 48 on paper but intentionally seeking to occupy physical land of Gut no. 49. Four boundaries of the suit property are all together different than four boundaries mentioned in the sale-deed and plaint.

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

8. 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?	No
2	Does the applicant proves balance of convenience lies in her favour?	No
3	Does the applicant proves she would sustain irreparable loss if temporary injunction is refused?	No
4	What order?	Application is rejected.

REASONS

9. Heard learned advocate Mr. S. D. Pophale for the applicant. Also heard learned advocate Mr. R. S. Joshi for non-applicants. An advocate Mr. R. S. Joshi also filed written notes of arguments at Exh.16 dated 06/04/2026 on behalf of non-applicants.

As to Point No. 1:-

10. 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.

11. 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.”

12. 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.

13. 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-applicants contended that there are discrepancies between boundaries and Gat number. Non-applicants further contended that dispute between them and the applicant is related to boundaries of the suit property.

14. An advocate Mr. S. D. Pophale on behalf of the applicant argued that the applicant is an owner and in possession of the suit property and non-applicants are obstructing her possession of the suit property, therefore, the advocate prayed to grant a temporary injunction till final disposal of the present suit.

15. An advocate Mr. R. S. Joshi on behalf of non-applicants argued that there are discrepancies between boundaries and Gat number.

The advocate further argued that dispute between the applicant and non-applicants is related to boundaries of the suit property. The advocate further argued that non-applicants never obstructed possession of the applicant, therefore, the advocate prayed to reject the present application.

16. An advocate Mr. R. S. Joshi on behalf of non-applicants filed following case laws :-

1. In *Vishnu Anant Dessai and Others Vs. Govind Vitthal Sawant and Others, Writ Petition No.868/2016, decided on 14/08/2020, 2020 (5) All M. R. 496, wherein, the Hon'ble Bombay High Court, Bench at Panaji held that " In Subhaga V. Shobha, 2006 AIR SCW 4855, the Supreme Court has held that a property, as is well established, can be identified either by boundary or by any other specific description. Even if there was any discrepancy, normally the boundaries should prevail. There was no occasion to spin a theory, according to Subhaga, that it was necessary to survey all the adjacent lands to find out whether an encroachment was made."*

2. In *Arunima Baruah Vs. Union of India and Others, Civil Appeal No.2205/2007, decided on 27/04/2007, 2007 (3) All M. R. 811, wherein, the Hon'ble Supreme Court of India held that "In this case, however, suppression of filing of the suit is no longer a material fact. The learned Single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the courts jurisdiction may not be invoked but that would not mean that another writ petition would not lie. When another writ petition is filed disclosing all the facts, the appellant would be approaching the writ court with a pair of clean hands, the court at that point of time will be entitled to determine the case on merits having regard to the human right of the appellant to access to justice and keeping in view the fact that judicial review is a basic feature of the Constitution of*

India".

3. In *Dalpat Kumar Vs. Pralhad Singh, Case No.5054/1991 and 5055/1991, decided on 16/12/1991, 1993 AIR (SC) 276, wherein, the Hon'ble Supreme Court of India* held that Undoubtedly in a suit seeking to set aside the decree, the subject matter in the earlier suit though became final, the court would in an appropriate case grant ad interim injunction when the party seeks to set aside the decree on the ground of fraud pleaded in the suit. If ultimately the respondents succeeds at the trial they can be compensated by awarding damages for use and occupation from the date of dispossession till the date of restitution. Moreover, if the alienation made it would be subject to doctrine of its pendency under Section 52 of the Transfer of Property Act.

4. In *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By LRs and Others, Civil Appeal No.6191/2021, decided on 25/03/2008, 2008 AIR (SC) 2033, wherein, the Hon'ble Supreme Court of India* held that "*As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession*".

5. In *S. P. Chengalvaraya Naidu Vs. Jagannath, Case No.994/1972 decided on 27/10/1993, wherein, the Hon'ble Supreme Court of India* held that "*The facts of the present case leave no manner of doubt that jagannath*

obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Nonproduction and even non-mentioning of the release deed at the trial tantamounts to paying fraud on the Court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party. "

17. Perused the record. After perusal of record it appears that the applicant relied on xerox copy of sale-deed bearing no.1823/2025 at serial No.1 along with list of document below Exh.3. After perusal of xerox copy of said sale-deed it prima-facie appears that on 04.06.2025 the applicant purchased the suit property from Gopal Narayandas Agrawal for a consideration of rupees 8,25,000/- (Eight Lakh Twenty Five Thousand Only). After perusal of xerox copy of said sale-deed it also prima-facie appears that in said sale-deed boundaries are mentioned as follows :

"East - Land of Arun Sakharam Chavhan

West- Land of Limba Patil

North- Government Land

South - Siv Kondala and Government Land"

18. The applicant also relied on digital copy of mutation entry no.952 at serial No.2 along with list of document at Exh.3. After perusal digital copy of said mutation entry it prima-facie appears that on the basis of sale-deed bearing no.1823/2025 dated 04.06.2025 the applicant's name mutated in the suit property.

19. The applicant also relied on digital copy of 7/12 extract of the suit property at serial No.3 along with list of document at Exh.3. After perusal of digital copy of said 7/12 extract it prima-facie appears that it is of the year of 2023-2024 to 2025-26 and in the name of the applicant.

20. The applicant also relied on digital copy of Form no.8-A at serial No.4 along with list of document at Exh.3. After perusal of digital copy of said Form no.8-A it prima facie appears that, it is of the suit property and in the name of applicant.

21. The applicant also relied on original letter issued by Central Bank of India, Branch-Washim at serial No.5 along with list of document at Exh.3. After perusal of said letter it prima-facie appears that the applicant obtained crop loan of rupees 2,00,000/- (Two Lakh Only) on the suit property.

22. The applicant also relied on xerox copy of report at serial No.6 along with list of document at Exh.3. After perusal of xerox copy of said report it prima-facie appears that on 16.02.2026 the applicant filed a report in Police Station, Jaulka against non-applicants on the ground that they were obstructed her possession of the suit property and also they are threatening to her.

23. The applicant also relied on xerox copy of Map of village

Pangare Dhankuti at serial No.1 along with list of document at Exh.13. After perusal of xerox copy of said Map it prima-facie appears that there is a lake from north and west side of Gut no. 48.

24. On the contrary, non-applicants relied on xerox copy of sale-deed bearing No.1591/2014 dated 14.07.2014 at serial No.1 along with list of document below Exh.9. After perusal of xerox copy of said sale-deed it prima-facie appears that on 14.07.2014 Gopal Agrawal purchased the suit property from Baliram Sakharam Chavhan and Sardar Sakharam Chavhan for a consideration of rupees 5,42,000/- (Five Lakh Forty Two Thousand Only). After perusal of xerox copy of said sale-deed it prima-facie also appears that in said sale-deed boundaries are mentioned as follows:

*"East - Land of Arun Sakharam Chavhan
West- Land of Limba Patil
North- Government Land
South - Siv Kondala and Government Land"*

25. Non-applicants also relied on digital copy of 7/12 extract of Gut No.49 at serial No.2 along with list of document at Exh.9. After perusal of digital copy of said 7/12 extract it prima-facie appears that it is of the year 2023-2024 and 2024-2025 and in the name of Ramdhan Maniram Chavhan.

26. Non-applicants also relied on certified copy of 7/12 extract of Gut No. 50 at serial No.1 along with list of document at Exh.15. After perusal of said 7/12 extract it prima-facie appears that, it is of the year 2024-2025 and in the name of Nimbaro Sakharam Sarnaik.

27. Non-applicants also relied on digital copy of 7/12 extract of Gut No. 42 at serial No.2 along with list of document at Exh.15. After perusal of digital copy of said 7/12 extract it prima-facie appears that, it is in the name of Maharashtra Government.

28. It is pertinent to note here that after perusal of plaint and the present application the applicant mentioned boundaries of the suit property

as follows :

"East - Land of Arun Sakharam Chavhan

West- Government lake and Land of Limba Patil

North- Government Land

South - Siv Kondala and Government Land"

However, after perusal of xerox copy of sale-deed bearing No.1591/2014 dated 14.07.2014 at serial No.1 along with list of document below Exh.9 it prima-facie appears that on 14.07.2014 Gopal Agrawal purchased the suit property from Baliram Sakharam Chavhan and Sardar Sakharam Chavhan for a consideration of rupees 5,42,000/- (Five Lakh Forty Two Thousand Only) and boundaries are mentioned as follows :

"East - Land of Arun Sakharam Chavhan

West- Land of Limba Patil

North- Government Land

South - Siv Kondala and Government Land"

Furthermore, after perusal of xerox copy of sale-deed bearing no.1823/2025 at serial No.1 along with list of document below Exh.3 it prima-facie appears that on 04.06.2025 the applicant purchased the suit property from Gopal Narayandas Agrawal for a consideration of rupees 8,25,000/- (Eight Lakh Twenty Five Thousand Only) and boundaries are mentioned as follows :

"East - Land of Arun Sakharam Chavhan

West- Land of Limba Patil

North- Government Land

South - Siv Kondala and Government Land"

29. It is pertinent to note here that after perusal of record it prima-facie appears that boundaries mentioned in plaint and in the present application are different than boundaries mentioned in a sale-deed at serial No.1 along with list of document at Exh.3 and Exh.9. Therefore, it prima-facie appears from the record that the applicant has not come before the

court with clean hands. However, it prima-facie appears from the record that there is dispute between the applicant and non-applicants in respect of boundaries of the suit property. After perusal of record it prima-facie appears that the applicant relied on original letter issued by Central Bank of India at Sr. No.3 and xerox copy of report dated 16.02.2026 at Sr. No.6 along list of document at Exh.3. It is pertinent to note here that mere filing of said original letter and xerox copy of report which does not mean that the applicant is in actual possession of the suit property. It is pertinent to note here that facts and circumstance of the present case in hand and Arunima Baruah (Cited Supra) and Dalpat Kumar (Cited Supra) are different, therefore, Arunima Baruah (Cited Supra) and Dalpat Kumar (Cited Supra) are not helpful to non-applicants. Furthermore, as discussed above case laws filed by non-applicants Vishnu Dessai (Cited Supra), Anathula Sudhakar (Cited Supra) and S. P. Chengalvaraya Naidu (Cited Supra) are helpful to non-applicants.

30. It is pertinent to note here that prima-facie appears from the record that there is dispute between the applicant and non-applicants in respect of boundaries of the suit property, therefore, it cannot be stated that non-applicants are causing obstruction to the possession of the applicant. Furthermore, as discussed above it prima-facie appears from the record that the applicant failed to prove that she is in actual possession of the suit property. Therefore, the applicant failed to prove prima-facie case in her favour. Therefore, I recorded my findings as to point No.1 in a negative.

As to Point No. 2 and 3 :-

31. As to the findings given to point no. 1 it is crystal clear that the applicant failed to prove prima-facie case in her favour. As to findings given to point no.1 it prima-facie appears from the record that there is dispute between the applicant and non-applicants in respect of boundaries of the suit property, therefore, it cannot be stated that non-applicants are causing obstruction to the possession of the applicant. Therefore, I hold that the

applicant failed to prove balance of convenience in her favour and she would suffer irreparable loss if the injunction is refused. Therefore, I recorded my findings as to point no. 2 and 3 in a negative.

As to Point No. 4 :-

32. Considering, all the legal principles required for granting the temporary injunction and as to findings given to point no. 1 to 3, I hold that the applicant is not entitled to the relief of temporary injunction. Therefore, I proceed to pass the following order.

ORDER

1. The present application Exh. 5 is hereby rejected.
2. Parties to be bear their own costs.

[Pronounced and dictated in the open Court.]

Date:- 10/06/2026

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	T. R. Ugale (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	10/06/2026
Judgment/Order signed by the PO on	10/06/2026
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