

MHRG040010992024 	<u>Spl.C.S. No.163/2024</u> Smt. Mathura Bhomkar & Ors. vs. Mr. Ramesh Bomkar & Ors.
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ORDER ON APPLICATION EXHIBIT 76

[Decided on : 29/04/2026]

The present application is filed by the third party applicant Ibrahim Ismail Dharivala and it is submitted that the plaintiffs have filed the present suit for partition of the suit properties and for grant of permanent and temporary injunction and he has not been joined as a party to the present suit and had no prior knowledge of the suit proceedings. The applicant stated that the suit property bearing Survey No. 55, admeasuring 0 Hectare 24 Are 30 sq. meters, situated at Mouje Girvale, is his property, over which he has ownership rights as well as actual physical possession. It is stated that the applicant purchased the said property from Aaba Ganpat Hatmode and Janardan Ganpat Hatmode by a registered sale deed dated 24/11/2005, which was registered before the Sub-Registrar, Panvel No. 1 at Sr. No. 8722/2004. Prior to purchasing the property, the applicant verified the title and ownership of his vendors and made necessary inquiries as expected from a prudent person. After satisfying himself about the title, he purchased the property for valid consideration and since then he is in lawful possession as owner.

2. It is further stated that the applicant's name has been entered in the revenue records as owner of the property. Mutation

Entry No. 184 was effected on 12/01/2006 and was certified on 22/02/2006, and the same is reflected in the revenue record.

3. The applicant further contended that he is a bona fide purchaser for value and lawful owner of the said property. The plaintiffs have no right, title or interest in the said property and have no entitlement to seek partition or any relief in respect of it. It is stated that when the plaintiffs filed the present suit, they were aware of the true facts regarding the property but have not approached the Court with clean hands. The applicant further submitted that he is a necessary and proper party to the suit, but the plaintiffs have not impleaded him as a party nor was any notice issued to him.

4. The applicant stated that he came to know about the pendency of the suit through the online e-court system. Upon making inquiries, he came to know that a status quo order has been passed in respect of the suit properties, which affects his property and his rights. It is contended that the plaintiffs obtained the status quo order dated 13/04/2026 without impleading necessary parties and without giving notice to the applicant, thereby violating the principles of natural justice.

5. The applicant submitted that due to the said order, his rights, title and possession in the property are adversely affected though he is not a party to the proceedings. It is further stated that the plaintiffs have deliberately avoided impleading all necessary parties, though such parties are directly affected by the relief sought.

6. The applicant contended that the order of status quo has been passed behind his back and is therefore liable to be set aside. The applicant has also relied upon a judgment of the Hon'ble Supreme Court in support of his contention that such orders passed without hearing affected parties are liable to be interfered with. The applicant therefore praying that the order dated 13/04/2026 directing maintenance of status quo in respect of the suit properties be quashed and set aside.

7. The plaintiffs have filed reply at Exh.99 and submitted that they have instituted the present suit for partition, separate possession and permanent injunction in respect of the suit properties, which according to them are ancestral in nature. The plaintiffs seek protection of their lawful share and prevention of illegal alienation of the suit properties during pendency of the proceedings.

8. The plaintiffs contended that the present application has been filed by a proposed defendant who is not yet impleaded as a party to the suit. The application filed by him under Order I Rule 10 CPC for impleadment is still pending adjudication. Therefore, according to the plaintiffs, the present application is premature, not maintainable in law and liable to be rejected on this ground alone.

9. The plaintiffs submitted that during pendency of the suit, the defendants, in collusion with third parties including the proposed defendant, have alienated portions of the suit properties. These transactions are alleged to be illegal and carried out with mala fide intention to defeat the rights of the plaintiffs.

10. It is further contended that the learned Tahsildar, Panvel, in Complaint Nos. 41 and 42 of 2025, has recorded detailed findings regarding such illegal transactions and mutation entries. According to the plaintiffs, these proceedings clearly demonstrate that the defendants are attempting to manipulate revenue records and create third-party rights in respect of the suit properties.

11. The plaintiffs assert that the sale deeds executed during pendency of the suit are hit by the doctrine of lis pendens under Section 52 of the Transfer of Property Act. Any transfer made during pendency of litigation does not confer absolute rights and remains subject to the final outcome of the suit. Therefore, such transactions cannot be relied upon to seek vacation of the status quo order.

12. It is further submitted that the conduct of the defendants and the proposed defendant in executing sale deeds is a deliberate attempt to create third-party interests, thereby complicating the proceedings and leading to multiplicity of litigation. Such acts are intended to frustrate the plaintiffs' lawful claim and defeat the ends of justice.

13. The plaintiffs reiterate that the suit properties are ancestral properties originally owned by Karta late Dagdu @ Dagdya Ragho Bhomkar. The revenue records and statements before the Tahasil office substantiate this fact. The defendants' contention that the properties are self-acquired is stated to be false, misleading and a matter requiring strict proof during trial.

14. It is stated that considering the conduct of the defendants in systematically alienating the suit properties one by one, this Hon'ble Court was pleased to pass a status quo order dated 13/04/2026. The said order is necessary to preserve the suit properties in their existing condition and to prevent further illegal transfers.

15. The plaintiffs contended that if the status quo order is vacated, the defendants and the proposed defendant will proceed to complete mutation entries and further alienate the properties, causing irreparable loss and injury to the plaintiffs which cannot be compensated in terms of money.

16. It is further contended that the present application is filed in collusion with the defendants, solely with the intention of defeating the interim protection granted by this Court and to continue illegal dealings in the suit properties. The plaintiffs submitted that the issues raised regarding ownership, title and validity of the transactions are serious triable issues requiring detailed evidence and adjudication during trial. Such issues cannot be decided at the interim stage while considering an application for vacating the status quo order.

17. It is further submitted that there is no change in circumstances warranting interference with the status quo order. According to the plaintiffs, the present application is devoid of merits and is filed only to circumvent the effect of the subsisting order.

18. The plaintiffs contended that the balance of convenience lies entirely in their favour, as they seek preservation of the suit properties, whereas the defendants intend to alter the nature of the properties by continued alienation.

19. Heard both sides and perused record. It appears that third party applicant has come with the specific case that by registered sale deed bearing no.7822/2005 dt.24/11/2005 he has purchased suit property S.No.55 from Ambo Ganpat Hatmode and Janardan Ganpat Hatmode. The plaintiffs have produced on record copy of 7x12 extract of suit properties S.No.55 along with list Exh.4 at Sr.No.3. It appears on perusal of the 7x12 extract of S.No.55 that the name of third party applicant is mutated in the revenue record of the said suit property S.No.55 by mutation entry no.949 dt.22/2/2006, i.e. much prior to the institution of the present suit. It is pertinent to note that the plaintiffs in the prayer clause 3 has specifically sought relief that, 'while effecting partition, sales made by defendants be taken into account and adjusted towards the share of defendants so that plaintiff receive their full 1/3rd share from all properties'. It is pertinent to note that the plaintiff has not impleaded the third party applicant as defendant to the suit and in consonance to the prayer clause 3 as mentioned above.

20. It appears from the record that the status quo order has passed on exh.68 & 69 against all the suit properties and applicable to S.No.55 which stands in the name of present third party applicant, in the revenue record. If the status quo order dt.13/04/2026 is

continued against S.No.55, that will certainly cause hardship to the present third party applicant since passed without him being heard on these applications. Hence in my considered opinion it is justified to vacate the status quo order dt.13/04/2026 to the extent of suit property S.No.55 and the present third party applicant Ibrahim Ismail Dharivala. Hence I pass following order;

ORDER

1. The application Exh 76 is allowed.
2. The status quo order on application Exh.68 & 69 is partially vacated to the extent of the suit property S.No.55 in respect of the present third party applicant Ibrahim Ismail Dharivala.
3. No orders as to costs.

Panvel.
Date : 29/04/2026.

(Vaishali Hangargekar)
Jt. Civil Judge Sr. Divn., Panvel.