

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.986 OF 2023
WITH
INTERIM APPLICATION NO.17755 OF 2023**

1. Gaurav Rajeshbhai Desai,]
Age: 39 years, Adult, Occ.: Business,]
Indian Inhabitant and presently]
residing at A-1, Carnation Building,]
Godrej Hill, Khadakpada Barave,]
Kalyan West, Dist. Thane - 421301.]

2. Chirag Rajeshbhai Desai,]
Age: 37 years, Occ: Business,]
Indian Inhabitant and presently]
residing at A-1, Carnation Building,]
Godrej Hill, Khadakpada Barave,]
Kalyan West, Dist. Thane - 421301.]

3. Mitul Ramanbhai Desai,]
Age: 48 years, Occ.: Professional,]
Indian Inhabitant and presently]
residing at 805, Chandralok Building,]
Vapi Silvasa Road, Charod, Vapi,]
Gujrat and also having address at:]
Income and Sales Tax Practitioner,]
Dwarkanadas Vithaldas Building, 2nd]
Floor, Opp. Post Office, Station Road,]
Kalyan West, Dist. Thane - 421301.]

... Appellants/
Org. Plaintiffs

V/s.

1. Yagyanarayan Prabhunath Mishra,]
Age: 83 years, Occ.: Retired, Indian]
Inhabitant and present having address]
at Adarsh Hindi High School,]
Rambaug - 4, Santoshi Mata Mandir]
Road, Kalyan West, Dist. Thane - 421301.]

2. Shikshan Prasaran Samiti,]
a charitable trust having its address]
at Aadarsh Hindi High School, Rambaug]
- 4, Santoshi Mata Mandir Rd.,]
Kalyan West, Dist. Thane - 421301.]

3. The Education Welfare Society,	]	
Kalyan,	]	
a charitable trust having its address at	]	
Aadarsh Hindi High School, Rambaug - 4,	]	
Santoshi Mata Mandir Rd.,	]	
Kalyan West, District Thane- 421301	]	... Respondents/ Org. Defendants

Mr. Girish Godbole, Senior Advocate a/w. Adv. Shailendra Kanetkar
i/by Adv. Shivraj Patne & Adv. Bharat Thorat for the Appellants.

Mr. Rakesh Kumar a/w. Adv. Pranay Singh i/by Legal Vision for
the Respondents.

CORAM : KAMAL KHATA, J.
RESERVED ON : 10th February 2026.
PRONOUNCED ON : 17th February 2026.

JUDGMENT :

1. By this Appeal from Order under Section 104, read with Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908, the Appellant/Original Plaintiff challenges the impugned Order dated 3rd May 2023 passed by the learned Civil Judge (Senior Division), Kalyan, Dist. Thane, whereby the Appellants' application for temporary injunction, popularly known as Exhibit-5 Application, against the Respondent/Original Defendants came to be rejected.

Brief facts :

2. The Appellants as joint owners are entitled to agricultural land bearing Survey No. 89, Hissa No. 01A + 1 B/2A admeasuring 5060.00 sq.mtrs. situate at Village Chikanghar Taluka Kalyan,

Kalyan West, District Thane 421 301 (referred to as the '*larger property*').

3. Under a registered Indenture of Lease dated 24th April 1968 (first Lease Deed), one Mr. Madharao Narayan Mahesh, the owner of the larger property, granted rights to the Respondent No.1 to lease land admeasuring 4060 sq.yds bearing survey No. 89, Hissa No. 1 for 50 years on monthly rent of ₹ 200/- per month (hereinafter referred to as the "*suit property*").

4. Under another registered Indenture of Lease Madhavrao Narayan Mahesh dated 16th July 1971 (second Lease Deed), granted rights to Respondent No.1 to lease an area admeasuring 2115.5 sq.yds bearing survey no. 88 Hissa No.1 for 75 years.

5. The Appellants acquired the larger property by a Deed of Conveyance dated 28th August 2014 from the original owners and accordingly, was entitled to recover the land from the Respondent No.1 as the 50 year lease period expired on 23rd April 2018 and the second lease was terminated by notice.

6. The Respondent No.1 instituted a Civil Suit bearing Special Civil Suit No. 194 of 2017 before learned Civil Judge (Senior Division), Kalyan, Dist. Thane for specific performance and declaration that the Sale Deed dated 28th August 2014 executed in favour of the Appellant is null and void. The Court was pleased to allow the Exhibit 5 application for interim injunction in favor of the

Respondents and against the Appellants, thereby, restraining them from dispossessing the Respondent without due process of law and from creating any obstruction in running the school pending the final adjudication.

7. The Appellants accordingly instituted a Special Civil Suit bearing No. 18 of 2023 before learned Civil Judge (Senior Division), Kalyan, Dist. Thane seeking recovery of possession of the Suit property and permanent injunction from creating third party interest against the Respondents. By the impugned Order, the Ld. Trial Court declined to grant interim injunction restraining the Respondent from creating third party rights in the suit property. Consequently, compelling the Appellants to file the present the Appeal.

Submissions by the Appellants

8. Mr. Godbole, learned Senior Counsel for the Appellants, submits that by an Order dated 2nd August 2022 passed in Exhibit 5 Application in Special Civil Suit No. 194 of 2017, the Ld. Trial Court has restrained the Appellants from creating any third-party rights in this Suit property. However, the same Trial Court denied a similar relief to the Appellants against the Respondents, in effect, permitted the Respondents to create third party rights pending final adjudication. According to him, such an approach is contrary to law, equity and good conscience.

9. It is submitted that permitting the Respondents to create the third-party interest would result in multiplicity of proceedings, compelling the Appellants to initiate further litigation against subsequent transferees, thereby causing irreparable injury. It is contended that the Ld. Trial Court failed to appreciate that the Respondents' case rests upon misleading and fabricated facts, and that there was no justification for refusing interim protection.

10. Learned Senior Counsel further submits that the Appellant acquired right, title and interest in the Suit property under a registered Deed of Conveyance dated 28th August 2014, which remains valid and subsisting. These rights, he submits, deserve protection pending final adjudication.

11. Respondent No.1 was a lessee under a Lease Deed dated 24th April 1968 for a period of 50 years, which expired on 23rd April 2018. Upon expiry, Respondent No. 1 continued in possession merely as a tenant holding over and was legally bound to hand over vacant possession in terms of the Lease. Continued occupation, it is submitted, amounts to breach of the lease conditions, rendering the Respondent an unauthorized occupant.

12. Mr. Godbole further contends that payment of municipal taxes does not regularize or legalize unauthorized constructions. The Respondents have not placed on record any material to substantiate the claim that institutions are being run by them or

that 1200 students are studying therein.

13. The alleged agreement dated 7th March 1994, relied upon by the Respondents, is unregistered and, according to the Appellants, fabricated. It is submitted that such unregistered agreement cannot negate the rights acquired under a registered conveyance. The Respondents have also allegedly undertaken constructions without requisite permissions.

14. The Appellants being bonafide purchasers without notice of the alleged 1994 Agreement, followed due process of Law. The pendency of Special Civil Suit bearing No. 194 of 2017 filed by the Respondents is stated to be independent and distinct from the present suit.

15. It is further submitted that the Respondent No.1 has failed to pay rent under the Lease Deed dated 24th April 1968 as well as the Lease Deed dated 16th July 1971 since 1994, and that the Lease Deed dated 10th August 1971 stands duly terminated by legal notice. The Ld. Trial Court, however, erroneously proceeded on the basis that the Appellants had suppressed the 1994 Agreement and held that the lease continued to subsist. The apprehension regarding the alleged impact on 1200 students, according to the learned Senior Counsel, is speculative and misplaced.

16. On these grounds, it is urged that the ld. Trial Court erred in refusing interim relief restraining the Respondents from creating

any third-party rights.

Submissions by the Respondents

17. Mr. Rakesh Kumar, learned Advocate for the Respondents, opposed the Appeal, contending that the Appellants suppressed material facts. According to him, the Appellants were well aware of the Agreement dated 7th March 1994 executed by Smt. Vatsalabai Saraf in favour of Respondent No.1. He relies upon the reply dated 28th June 2017 to the Appellants' notice wherein the said Agreement was annexed.

18. It is further submitted that Respondent No. 1 had earlier instituted Special Civil Suit bearing No. 194 of 2017 for specific performance of the 1994 Agreement, prior in time to the present Suit No.18 of 2023. Despite knowledge of such proceedings, the Appellant failed to disclose the same in their plaint, thereby acting mala fide. Reliance is placed upon paragraphs 31, 32, 35, 36 and 37 of the impugned Order.

19. Learned Advocate contends that the 1994 Agreement has neither been challenged nor declared invalid in any proceedings. It is also submitted that there is no material to demonstrate that the Respondents intend to create third-party rights. Reference is made to observations in Appeal from Order No. 240 of 2023 dated 6th September 2023, wherein the Court noted that the Appellants appeared to have knowledge of the pre-emption Agreement.

20. It is urged that a party guilty of suppression is not entitled to discretionary relief. He relies upon the following Judgments in support of his contention:

- i. *Ramjas Foundation and Ors. vs. Union of India (UOI) & Ors.*¹
- ii. *S.P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead) by L.Rs. & Ors.*²
- iii. *Mahadev Lingarkar vs. Shamrao Kesarkar*³
- iv. *Faki Ibrahim vs. Faki Mohiddin*⁴
- v. *Sastha Kumarswamy vs. Joseph Alasius & Ors.*⁵

Analysis and Findings:

21. Having considered the rival submissions and perused the record, including the impugned Order dated 3rd May 2023, the following conclusions emerge:

22. The Ld. Trial Court restrained the Appellants from creating third party rights in the Suit Property in Special Civil Suit No.18 of 2023, yet declined to grant similar relief against the Respondents. When both parties assert competing rights over the same property and their respective Suits are pending adjudication, equity demands that neither side be permitted to alter the status quo by creating third-party interests pending trial.

1 (2010) 14 SCC 38.
2 AIR 1994 SC 853.
3 AIR 1972 Bombay 100.
4 AIR 1921 Bombay 459.
5 AIR (37) 1950 Travancore Cochin 61.

23. It is well settled that the grant of temporary injunction is governed by the three cardinal principles, namely, the existence of a prima facie case, balance of convenience, and likelihood of irreparable injury, see *Dalpat Kumar v. Prahlad Singh*⁶. In the present case, the competing claims of title are yet to be adjudicated. If, pending such adjudication, either party is permitted to create third-party interests in the suit property, the same would not only alter the status quo but would also give rise to multiplicity of proceedings and complications which may render the final decree infructuous.

24. The Supreme Court in *Maharwal Khewaji Trust (Regd.) v. Baldev Dass*⁷, has held that in disputes relating to immovable property, Courts should ordinarily maintain status quo so as to preserve the subject matter of the litigation. The object of interim protection is to safeguard the property in dispute so that the rights of the parties are not irreversibly prejudiced before final adjudication. Permitting alienation at this stage would virtually result in grant of final relief to one side.

25. Failure to restrain one party while restraining the other creates an imbalance and confers an unwarranted advantage which may render the final adjudication infructuous. On this ground alone, the impugned Order warrants interference.

6 (1992) 1 SCC 719.

7 (2004) 8 SCC 488

26. Though an Appellate Court would ordinarily be slow to interfere with a discretionary order, interference is justified where discretion has been exercised on erroneous principles or relevant considerations have been ignored, see *Wander Ltd. v. Antox India (P) Ltd.*⁸. In the present case, the Ld. Trial Court failed to consider the consequences of denying parity of interim protection.

27. The contention of suppression based on non-reference to the 1994 Agreement does not merit acceptance at this stage. The plaint refers to Special Civil Suit No.194 of 2017. Merely, because the 1994 Agreement itself is not specifically mentioned or reproduced in detail, it cannot, in the facts of the present case, be construed as a deliberate suppression so as to disentitle the Appellants from interim relief.

28. The said Agreement dated 7th March 1994 is admittedly unregistered. Knowledge of an unregistered agreement cannot automatically be imputed to a subsequent purchaser. The Appellants were aware of the Respondents' possession as lessees under lease deeds. Such awareness cannot be equated with notice of a superior or independent contractual right.

29. The law is clear that rights in immovable property can be transferred only by a registered instrument, and an unregistered document cannot confer proprietary rights capable of enforcement

8 1990 Supp SCC 727

in law, see *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana*⁹; *K.B. Saha & Sons Pvt. Ltd. v. Development Consultant Ltd.*¹⁰. The enforceability and effect of the 1994 Agreement are matters to be adjudicated in the pending Suit.

30. Pending such adjudication, the Respondents cannot claim an unrestricted right to deal with the property in a manner that may prejudice the Appellants claimed title. To permit creation of third-party interests at this stage would, in effect, amount to granting substantive relief without trial.

31. In these circumstances, the Ld. Trial Court failed to properly appreciate the legal consequences of refusing interim protection.

32. Accordingly, the impugned order dated 3rd May 2023 is set aside. The Respondents are restrained from creating any third-party rights, title or interest in the suit property pending the final disposal of the suit.

33. All other issues are left open for determination at the stage of final hearing.

34. The Trial Court is directed to dispose of the Suit expeditiously.

35. In view of the disposal of the Appeal, Interim Application also stands disposed of.

(KAMAL KHATA, J.)

9 (2012) 1 SCC 656

10 (2008) 8 SCC 564

List of citations relied upon:

- *Ramjas Foundation & Ors. vs. Union of India (UOI) & Ors. [(2010) 14 SCC 38]*
- *S.P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead) by L.Rs. & Ors. [AIR 1994 SC 853]*
- *Mahadev Lingarkar vs. Shamrao Kesarkar [AIR 1972 Bombay 100]*
- *Faki Ibrahim vs. Faki Mohiddin [AIR 1921 Bombay 459]*
- *Sastha Kumarswamy vs. Joseph Alasius & Ors. [AIR (37) 1950 Travancore Cochin 61]*
- *Dalpat Kumar vs. Prahlad Singh [(1992) 1 SCC 719]*
- *Maharwal Khewaji Trust (Regd.) vs. Baldev Dass [(2004) 8 SCC 488]*
- *Wander Ltd. vs. Antox India (P) Ltd. [1990 Supp SCC 727]*
- *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana [(2012) 1 SCC 656]*
- *K.B. Saha & Sons Pvt. Ltd. vs. Development Consultant Ltd. [(2008) 8 SCC 564]*