

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.7956 OF 2025**

1. Kumar Shankar Mudgal,
Age: 64 Yrs., Occ: Agri,
2. Jagdish Shankar Mudgal,
Age: 62 Yrs., Occ: Agri.
3. Nandkumar Shankar Mudgal,
(Since deceased through Lrs)
- 3A. Shobha Nandkumar Mudgal,
Age: 59 Yrs., Occ: Housewife
- 3B. Omkar Nandkumar Mudgal,
Age: 59 Yrs., Occ: Housewife,
All 1 to Residing at, Ramnagar,
Rendal, Tal: Hatkanagale,
Dist: Kolhapur.

..Petitioners
(Plaintiffs)

Versus

1. Vishnuvardhan Abhaysingh Ghorpade,
Age: 26 Yrs., Occ: Business,
R/o. 303, Vardhaman Terrace,
Rajarampuri, Galli No.7,
Kolhapur, Ta: Karveer,
Dist: Kolhapur 416008.
2. Shantabai Pila Karde,
Age: 66 Yrs., Occ: Housewife,
R/o. Mangur, Tal: Chokodi,
Dist. Belgavi 591 215.

..Respondents
(Defendants)

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Mr. Omkar Nagwekar, Advocate for Petitioners.

Mr. S. S. Patwardhan i/by Ms. Mrinal Shelar, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 22nd DECEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.

2. The petitioners/original plaintiffs impugn order dated 08.05.2025 passed by District Judge, Ichalkaranji in Miscellaneous Civil Appeal No.37/2021, thereby upholding order dated 12.10.2021 passed by Civil Judge Junior Division, Ichalkaranji below Exhibit-5 in Regular Civil Suit No.145/2021, thereby refusing to grant temporary injunction.

3. The petitioners contend that suit land was originally owned by Pilaji Karde. He handed over possession of suit property to plaintiffs under registered agreement to mortgage by conditional sale and agreement to sale of 1990. The plaintiffs are in possession of suit property. They have constructed house, Durga Mata Temple and poultry farm. They obtained electricity connection and paying necessary taxes. Their possession can be ascertaining from panchnama made by Circle Officer. It was agreed by Pilaji Karde to execute sale deed within two months after conversion of land. After death of Pilaji defendant no.2 sold land to defendant no.1 by registered sale deed, which has been executed without any right, title and interest. On 07.05.2020, defendants damaged tin shed of plaintiffs. The plaintiffs are in settled possession. Therefore, present suit is filed. The plaintiffs have also filed application for grant of temporary injunction.

4. The defendants filed written statement at Exhibits-23 and 25 contending that defendant no.2 has purchased suit property from defendant no.1 under registered sale deed for total consideration of

Rs.21,00,000/-. She has handed over possession to defendant no.1. Accordingly, defendant no.1 is in possession over suit property. It is further contended that in Regular Civil Suit No.104/1984 between defendant no.2 and her husband, injunction was granted against husband not to alienate or create third party interest in suit property vide order dated 25.09.1984. The suit ended into compromise. The defendant no.2 became owner and possessor of entire property after death of her husband. In Regular Civil Suit No.394/2012, interim injunction was granted in favour of defendants. On other hand, in Regular Civil Suit No.76/2013 filed by plaintiffs for specific performance of alleged agreement to sale dated 16.02.1990, application filed by plaintiffs seeking injunction was rejected on merits. Subsequently, their Miscellaneous Civil Appeal No.37/2021 is also rejected by District Judge.

5. The Trial Court after considering rival contentions rejected plaintiffs' application for interim injunction. The plaintiffs filed Miscellaneous Civil Appeal No.37/2021 before District Judge, which came to be allowed and injunction order was passed against defendants. However, this Court in Writ Petition No.10452/2022 set aside order of Appellate Court and remanded matter back to District Judge for fresh consideration. Finally District Judge passed fresh order in Miscellaneous Civil Appeal No.37/2021 and dismissed Appeal and application for injunction filed by petitioners.

6. Mr. Omkar Nagwekar, learned Advocate appearing for petitioners would submit that petitioners' claim is based on two registered documents. The husband of respondent no.2 executed registered agreement of mortgage by conditional sale in favour of predecessors of plaintiffs. There are stipulations of delivery of possession. Later on Pilaji/original owner executed registered agreement to sale dated 16.02.1990 in favour of predecessors of plaintiffs and sale deed was to be executed after conversion of land to free hold from restricted holding. Even this document clearly stipulates delivery of possession in favour of petitioners. Mr. Nagwekar would further invite attention of this Court to certain photographs and panchanama dated 17.01.2012 to contend that plaintiffs continues in possession of suit property.

7. Per contra, Mr. Patwardhan, learned Advocate appearing for respondents relying upon judgment in case of ***Mulji Umershi Shah Vs. Paradisia Builders Pvt. Ltd. and others***¹ would submit that in a suit for perpetual injunction Court may be called upon to hold inquiry in right, title and interest or status of plaintiff to find out whether he is entitled for protection of possession by decree of injunction. The same consideration, *prima facie*, is required to be seen while deciding application for temporary injunction. The question of possession presupposes lawful possession and for adjudication of that question at any stage of suit, the inquiry into title, right, interest or status of plaintiff is not foreign to the subject matter.

¹ 1997 (3) Mh.L.J. 532.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that on 17.03.1986, Pilaji Karde entered into compromise with his wife Shantabai/respondent no.2. Eventually, name of Shantabai was recorded as owner over suit property since 28.11.1986. After death of Pila Karde, name of respondent no.2 Shantabai has been recorded as owner of entire suit property. *Prima facie*, it can be observed that in view of compromise and interim orders passed in Regular Civil Suit No.104/1986, respondent no.2 had acquired ownership of suit property and Pila Karde had no right to transfer property by any means. Therefore, plaintiffs cannot assert better right over suit property on the basis of documents relied upon by them.

9. So far as issue as to possession is concerned, undisputedly petitioners could not substantiate their contentions regarding continuous possession from 1986 onwards on the basis of revenue record or any other impeccable document. Mr. Nagwekar endeavours to point out certain photographs depicting presence of tin shed and poultry farm. However, *prima facie*, such evidence is not sufficient to hold that construction is in part of suit property and owned by plaintiffs. The plaintiffs will have to lead evidence on aforesaid aspect and prove their possession. Mr. Nagwekar relying upon observations of this Court in case of ***Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare & Anr.***² contends that at the time of determination of an

² 2011 (6) ALL MR 15.

application for temporary injunction, factum of possession would only be relevant factor. The enquiry as to whether possession is lawful or not would not be germane at this stage. He would, therefore, urge that considering stipulation in two registered documents coupled with photographs and panchanama drawn by Circle Officer, possession of plaintiffs needs to be protected.

10. Apparently, in present case defendants hold title to property. Per contra, plaintiffs could not bring any material to show their better right. The factum of possession is not established by bringing sufficient material, so as to grant temporary injunction. The Trial Court as well as Appellate Court have concurrently held that plaintiffs could not establish *prima facie* case, balance of convenience does not tilt in their favour and declined to grant temporary injunction as prayed.

11. In that view of matter, this Court do not find any jurisdictional error in impugned order. Hence, no case is made out to cause interference in exercise of powers under Article 227 of Constitution of India. Hence, Writ Petition stands dismissed.

12. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE