

**ORDER BELOW EXHIBIT NO. 5****(Passed on 11<sup>th</sup> March, 2022)**

1. By this application (Exhibit no.5) the plaintiff is claiming temporary injunction to restrain the defendant, his agent, servant from disturbing in plaintiffs possession over the suit property by trying to dispossess the plaintiff without following due procedure of law.

2. Facts giving rise to this application which is filed in the suit for perpetual injunction are that the suit property mentioned in plaint para No.1 is the property owned and possessed by the plaintiff by virtue of sale-deed dated 05-07-1987. Defendants has purchased the adjoining filed of survey No.94/2. On 18/06/2021, the defendant come to the filed alongwith 30 to 40 peoples and after measurement raised quarrel and trying to dispossess the plaintiff from the suit property stating that the plaintiff have encroached on his land. The defendant also abused the plaintiff and intimidation to kill the plaintiff and her husband. Therefore, plaintiff is constrained to file the present suit and present interim application. Plaintiff prayed for issue of interim injunction against the defendant to restrain defendant from obstructing the plaintiff from peaceful enjoyment of suit property and to restrain defendant from making encroachment over the suit property.

3. Defendant appeared and filed his written statement vide Exh.No.20 and reply to injunction application vide Exh.No.21. Defendant admitted the ownership and possession of the plaintiff over the suit property. However, defendant denied the act of obstruction to the plaintiffs possession forcefully by the defendant. Defendant contended that the measurement of survey No. 94/2 it was found that the plaintiff has made encroachment to the tune of 0.12 H.R over defendants filed. Defendant requested the plaintiff to handover the

possession of encroached portion of land but plaintiff got annoyed and refused to do so. Defendant contended that plaintiff is not came with clean hands as she suppressed the fact of encroachment from the court. Plaintiff is encroacher and not entitled for any equitable relief from court. Defendant prayed for rejection of application.

4. Heard Shri. L.R. Meshram, learned Advocate for the plaintiff and Shri. S. P. Prasad, learned Advocate for defendant.

5. In view of the pleadings, material produced on record and arguments advanced at bar, following points arise for my determination. I have recorded my findings thereon for the reasons given herein below.

| Sr.No. | Points                                                                        | Findings                |
|--------|-------------------------------------------------------------------------------|-------------------------|
| [i]    | Whether the plaintiff has made-out prima-facie case ?                         | Yes                     |
| [ii]   | Whether balance of convenience tilts in favour of the plaintiff ?             | Yes                     |
| [iii]  | Whether the plaintiff will suffer irreparable loss if injunction is refused ? | Yes                     |
| [iv]   | What Order ?                                                                  | Application is allowed. |

### **REASONS**

#### **AS TO POINT NO.1:**

6. In order to substantiate his case, plaintiff has relied upon, 7/12 and form No. 8-A extracts of Survey Nos. 94/3 situated at village-Kuhi, Taluka-Kuhi, District-Nagpur. Moreover, plaintiff has filed a copy of

plaint of R.C.S. No. 22/2012, copy of measurement notice and copy of N.C.R. Plaintiff has filed his affidavit in support of his contentions. The defendant filed on record the copy of measurement map and copy of his sale-deed.

7. Plaintiff had filed his affidavit in support of the contention raised by him. Plaintiff contended that defendant is trying to obstruct plaintiffs possession over the suit property by trying to dispose the plaintiff without following due procedure of law. Plaintiff contended that they are the owner and possessor of suit properties. Moreover, plaintiff contended on oath that the defendant is obstructing the peaceful possession of plaintiffs over the suit property.

8. The crux of the matter lies in determining that who is in actual possession of the suit property. On perusal of the 7/12 extracts of the suit properties i.e. property mentioned in para No. 1 of the plaint, it clearly manifest that the plaintiff is the owner and possessor of the suit properties mentioned in para No.1 of the plaint. The presumptive value is attached to the said 7/12 extract.

9. In order to rebut the presumption, defendant had filed on record the copy of measurement map dated 18/06/2021 and the copy of sale deed to show his ownership over survey No. 94/2. However, defendant admitted the ownership and possession of plaintiff over the suit property. Though the defendant alleged that the plaintiff had encroached over survey No. 94/2 at this movement plaintiff is in possession.

10. Now, the core question is that whether the allegations of encroachment entitled the defendant to dispossess the plaintiff from

suit property without following due procedure established by law. The answer is NO, defendant own his own motion can not take law in his hands. Defendant have to adopt legal procedure provided to give effect to his cause by lawful means. The entries of the 7/12 extract has presumptive value. Which shows the plaintiff is in possession which is required to be protected from any act of dispossession except the due procedure prescribed by law.

11. All these facts cumulatively go to suggest that, plaintiffs is in possession of suit property i.e. property mentioned in para No. 1 of the plaint. The measurement as contended by the defendant was carried on the application of defendant. The said map manifest that there is an dispute in between plaintiff and defendant regarding the boundary marks. Therefore, I find prima-facie case in favour of the plaintiff.

**AS TO POINT NOS. 2 AND 3:**

12. The averments in the plaint and in the present application are supported by an affidavit of plaintiff. The pleading made by the plaintiffs are evident to prima-facie show obstruction at the hands of defendants. Plaintiffs has made-out prima-facie case in their favour, the implication of which is that at least at this stage, it can be said that the defendant has no right to obstruct the plaintiff without following due procedure of law from peaceful enjoyment of suit property. At this juncture, it will be apt to say that no loss would be caused to the defendant if they are restrained in comparison with the loss apprehended to be caused to the plaintiff if no injunction is granted, more particularly, in view of the prima-facie establishment of the right of the plaintiff. Thus, the balance of conveniences tilts in favour of

granting interim relief in terms of temporary injunction as irreparable loss would be caused to the plaintiff if it is not granted.

13. Needless to mention here that the observations made herein above are meant to be restricted for the adjudication of this application as being passed upon the prima-facie consideration of the case without prejudice to the hearing and decision on merits in full-fledged trial.

**AS TO POINT NO.4:**

14. In view of my findings recorded to Point Nos. 1 to 3, the application Exhibit No.5 is deserved to be allowed. The costs of this application may leave to be considered at the time of adjudication of the costs of entire litigation. In the conclusion, I pass the following order.

**ORDER**

1. The application (Exhibit No. 5) is hereby allowed.
2. Defendant his agent, servant are hereby temporarily restrained from disturbing in plaintiffs possession over the suit property mentioned in Para No.1 of the plain, by trying to dispossess the plaintiff without following due procedure of law till decision of this suit.
3. Costs in main cause.

Dt. 11<sup>th</sup> March, 2022.

( D. U. Rajput )  
Civil Judge, Junior Division,  
Kuhi

**CERTIFICATE**

I affirm that the contents of this PDF file of temporary injunction order is same word to word as per the original order.

Name of the Stenographer : Suresh Shankarrao Koramkar.  
Attached to Civil Judge, Jr. Dn.  
Kuhi.

Temporary Injunction order passed on : 11.03.2022  
Temporary Injunction order signed by P.O. on : 11.03.2022.  
Temporary Injunction order uploaded on: 12.03.2022.

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