

MHNS020049982022 	<u>REGULAR CIVIL SUIT NO. 851/2022</u> Bhika Nagare & Ors. v/s Kacharu Nagare & Ors.
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ORDER BELOW EXH. 05**(Passed on 30/10/2023)**

1. Present application is filed for the relief of temporary injunction restraining defendants from carrying out any work of demolition or construction in suit property till the final decision of suit.
2. According to plaintiffs, suit property (more particularly described in plaint paragraph no. 1) is owned and possessed by them. In the year 1967, at the time of implementation of Consolidation Scheme, area of G.No. 107 was 1 Acre & 27 Gunthas + 1R potkharaba. In the year 2020-21 on 7/12 extract area thereof is mentioned as 56 Gunthas + 1Guntha potkharaba. Thus, plaintiffs came to know that 11Gunthas area is lessened from the area of suit property. G. No. 97 owned by defendants is adjacent to suit property and defendants have acquired 11Gunthas area out of suit property by way of encroachment. Plaintiffs have asked for measurement of suit property and have paid requisite fees. Even then defendant no. 3 is avoiding to show the boundary marks. Therefore, plaintiffs are constrained to file suit to recover possession of said encroached portion from defendants alongwith present application for temporary injunction.
3. Defendant nos. 1 and 2 filed their written statement/say at Exh. 31 and denied all the contentions of plaintiff. According to them, present suit challenging Consolidation Scheme is not tenable before

this court. Suit is barred by limitation. Defendants have not done any encroachment in suit property. Present suit is filed with ulterior motive to grab property of present defendants. Therefore, they have prayed for rejection of application.

4. Defendant no. 3 filed his written statement/say at Exh. 24 and denied all the contentions of plaintiffs. According to him, there are discrepancies in record of City Survey and Land Record of G. No. 107. Therefore, measurement of suit property cannot be done till correction of said record.

5. In view of rival pleadings, following points arise for determination, to which findings are recorded alongwith reasons given below :-

Sr. No.	Points	Findings
1.	Whether plaintiffs have made out prima facie case in their favour ?	No.
2.	Whether plaintiffs prove that balance of convenience lies in their favour ?	No.
3.	Whether plaintiffs prove that they will suffer irreparable loss, if no interim relief granted to them ?	No.
4.	What order ?	As per final order

:: REASONS ::

AS TO POINT NOS. 1 TO 4 :-

6. Perused application and say. Perused documents on record.

Heard Ld. Advocates for both sides at length. The grant or refusal to grant interim relief is covered by three well established principles viz. 1) whether plaintiff has made out prima facie case; 2) whether plaintiff would suffer irreparable injury in the absence of interim relief; and 3) whether balance of convenience lies in his favour. The burden to prove these three necessities lies on the person seeking interim relief. The court has to see whether the claim is bonafide and whether there is a fair and substantial question to be tried.

7. While determining whether a prima facie case had been made out all that the court has to see is that on the face of it the person applying for an interim relief has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. In arriving at the balance of convenience, the court has to weigh the mischief likely to be caused to the applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted. So also the court has also to consider as to whether grant or refusal to grant interim relief will cause any irreparable injury to party to the proceeding. The injury means a legal injury.

8. From prima facie reading of plaint it is clear that, plaintiffs are challenging the area shown in Consolidation Scheme of the year 1967. Plaintiffs have not clarified as to exact when they lost actual possession of alleged 11 Guntha area out of suit property. Plaintiffs are seeking interim relief to restrain defendants from carrying out any work of demolition or construction in suit property. Therefore, it is incumbent on the part of plaintiffs to made out some kind of efforts on the part of defendants to demolish or construct in suit property.

However, from thorough perusal of plaint as well as present application it is clear that, plaintiffs have not even contended that there is any construction in the area out of suit property, which is allegedly encroached by defendants. So also plaintiffs have neither contended nor produced any evidence to prove that defendants are intending or trying to carry out any construction in alleged encroached area.

9. Thus, no prima facie case is made out that defendants are about to carry out any demolition or construction in suit property. Therefore, in the absence of prima facie case in favour of plaintiffs, it cannot be said that balance of convenience lies in their favour. Thus, plaintiffs have failed to made out any irreparable loss that they will suffer if no interim relief is granted. Therefore plaintiffs are not entitled to any interim relief. Consequently, all the points are answered in the negative and following order is passed :-

:: O R D E R ::

Application at Exh. 5 is rejected with costs.

Nashik.
Date :- 30/10/2023.

(A. G. Behere)
8th Jt. C.J.S.D. Nashik.