

Special Civil Suit No.35 of 2018

Order Below Exhibit - 5

- [1] Read the application below Exh.5 and its reply filed by the defendant vide Exh.20.
- [2] Heard, Ld. Advocate Ms.M.T.Nanavati for the plaintiff.
- [3] This suit has been filed by the plaintiff against the defendants for removal of encroachment and along with the suit the plaintiffs have filed application for getting interim injunction and by filing this application plaintiffs have asked the reliefs that neither the defendants nor their agent or persons make any entries regarding correction of revenue record till final disposal of the suit and to grant all other reliefs which are required to be granted as per natural justice and equity.
- [4] Today, Ld. Advocate Ms. M.T.Nanavati on behalf of the plaintiffs has argued that present application has been filed by the plaintiffs to restrict the defendant No.4, who is revenue officer from making revenue entry on the basis of measurement of DILR and correction of revenue record. In this case revenue proceedings were run between the parties and it was reached up to revenue tribunal and matter was remanded back to the Mamlatdar and one entry was rejected by the Mamlatdar and now Mamlatdar is going to make entry for correction of revenue record as per

DILR record and this act is out of purview of the jurisdiction of Mamlatdar and Mamlatdar is trying to act which is beyond his jurisdiction and therefore for protection of his right plaintiffs have come before the court and when the revenue authority is violating the right of the plaintiffs it is bounded duty of the Civil Court to protect right of civilian and therefore application deserve to be allowed. By making this argument Ld. Advocate Ms. M.T. Nanavati has asked to allow the application.

[5] Looking at the suit it seems that no permanent injunction has asked in the plaint. When no permanent injunction is asked in the suit then there is no question to grant interim injunction. Moreover, defendant No.4 is Mamlatdar and to make an entry in revenue record is under his power and if Mamlatdar is doing any act under his power then no civil suit can be directly filed in the civil court because of the reason that provision of appeal against action of revenue authority is provided u/s 203 of Bombay Land Revenue Code and as per Section 9 of CPC when alternative remedy is available then civil court has no jurisdiction and therefore when alternative remedy is available then this court has no jurisdiction and hence, without jurisdiction this court cannot grant the injunction. Moreover, as per Section 41(h) of Specific Relief Act

An injunction cannot be granted—when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust. hence, there is no substance in the application and most important thing is that when plaintiff has not asked any permanent injunction in the suit and when permanent injunction has not been asked then there is no question to grant interim

injunction. In such circumstances there is no substance in the application and therefore I pass following order in the interest of justice.

ORDER

1. This application Exh.-5 is hereby rejected.

Signed and Pronounced in open court today on this 22nd day of July, 2025.

Date : 22.07.2025
Place : Lalpur

(Arafat Abdulkadar Vayda)
Principal Sr. Civil Judge, Lalpur
UID :GJ00986.

DBKaria/PPS

(Arafat Abdulkadar Vayda)
Principal Sr. Civil Judge, Lalpur
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