

MHKO100007012025**ORDER BELOW EXH. 05**

1. This is an application filed by plaintiff under Order XXXIX Rule 1, 2 of the code of civil procedure, for the grant of temporary injunction against defendant. Defendant has filed his say at Exh. 21.

2. From the rival pleadings of the parties following points have arisen for my consideration and I have given findings thereon for the reasons stated thereunder :-

Sr No	Points	Findings
1	Whether the plaintiff has made out prima facie case?	Yes.
2	Whether the balance of convenience lies in favor of the plaintiff ?	Yes.
3	Whether the plaintiff will suffer irreparable loss, if temporary injunction is not granted ?	Yes.
4	What order?	The application is allowed.

REASONS FOR FINDINGS

3. I have heard Shri. S. N. Fagare for the plaintiff and learned Advocate Shri. S. B. Desai for the defendant. They argued as per their contents of application and say. Perused proceeding and documents.

AS TO POINT NO. 1 :-

4. In short it is the case of plaintiff that plaintiff and his brother Sahdev have equal share in gat no.382 area 2 H. 4 R., (potkharab 4 R). This property is self acquired property of their father. Their father transferred said property by equal share to plaintiff and his brother by registered gift deed no.1320 dated 23-10-1985. Accordingly, their name was entered to 7/12 extract of property and mutation entry effected. On 15-04-1995 plaintiff and his brother Sahdev partitioned that property in the life time of their father by the mediation of Tatoba Mane and Krishna Kagilkar. Accordingly, separate half share towards west side was given to the plaintiff.

5. As plaintiff and his brother have separate possession his brother without giving any prior intimation for financial need sold 64 R area of his share by mentioning four boundaries to defendant by registered sale deed no. 521 dated 27-02-2017. Thereafter, on 26-04-2022 he sold his remaining share of 38 R of gat no. 382 to defendant by registered sale deed no.1551/2022 by mentioning four boundaries. Accordingly, mutation entry entered and total share of his brother was entered in the name of defendant. His brother gave possession of total area to defendant.

6. Now defendant making construction on open area adjacent to the house owned by plaintiff. This construction is east-west 16 feet and south-north 53 feet i.e. 848 sq. feet. Defendant carrying his construction illegally, said construction shown as 'अ', 'ब', 'क', 'ड' in rough sketch filed along with plaint. He mentioned four boundaries of this construction as follow-

East - Open area of plaintiff in gat no. 382

West - Grampanchayat Milkat No.594/1 and 594/2 in gat no.382

South - Open area of plaintiff in gat no.382

North - Open area of plaintiff in gat no.382

This construction 'अ', 'ब', 'क', 'ड' is mentioned as suit property.

7. Plaintiff filed R.C.S.No.47/2025 for mandatory and perpetual injunction against his brother. Plaintiff filed status-quo application in this suit on 04-04-2025. On 09-04-2025 and 17-04-2025 his brother filed undertaking that he will not continue construction. On 25-04-2025 his brother filed say to Exh. 5 and stated that he is not doing that construction and that construction is of present defendant. Therefore, plaintiff amended suit and add present defendant as party to the suit. On 17-05-2025 in collusion with plaintiff's brother, present defendant tried to start construction. At that time plaintiff resisted to laboures but defendant continued construction. This construction of defendant will grab the property of the plaintiff. So he filed present suit and application. Husband of the defendant is construction contractor, so defendant is in hurry to complete construction. So he prayed for temporary injunction to restrain defendant from carrying this construction.

8. In his say at Exh. 21 defendant mentioned that, plaintiff mentioned wrong description of suit property and four boundaries. He also filed wrong and misguiding rough sketch of the suit property. Share of plaintiff and his brother Sahdev is separate. Defendant purchased said property by paying construction. Defendant is farmer by profession and she is constructing farm house. To keep agricultural instruments, produce of farm and to use as cattle shed. For construction in purchased 1 R area defendant purchased cement, sand, steel and chira worth Rs.4,00,000/-. Defendant started said construction before 2 months and said construction is not in area of plaintiff.

9. Defendant previously filed R.C.S.No.47/2025 by mentioning different facts. So this suit is barred by suppression of material facts. Plaintiff not carried measurement and not filed evidence that defendant is making construction by encroachment in his area. If temporary injunction granted more loss will be caused to defendant. Plaintiff has no prima facie case. So he prayed for rejection of application.

10. I perused entire proceeding, say and documents on the record. It is admitted fact that half share of plaintiff's brother Sahdev in gat no.382 is purchased by defendant. Defendant purchased this share by two sale deeds respectively for 64 R and 38 R. It is also admitted that plaintiff and his brother partitioned land of gat no.382 and they have separate possession.

11. It is contention of the plaintiff that defendant is making construction adjacent to his house in gat no.382. By partition he get area towards west side of gat no.382. The construction of defendant will grab the property of plaintiff.

12. It is the contention of the defendant that plaintiff mentioned wrong description of suit property and four boundaries. Defendant not constructing farm house in the share of plaintiff.

13. Learned advocate for the plaintiff argued that said construction obstructs plaintiff to cultivate his property. Defendant have her share at east side of gat no.382 and she has no concern at west side of gat no.382 where she is constructing suit property. By this construction loss will cause to the plaintiff's property. So prayed for stay of construction.

14. Learned advocate for defendant argued that plaintiff has burden to prove that on the date of filing of the suit he had

possession of suit property. Plaintiff has to prove that by partition suit property given to his share. Plaintiff not challenged sale deed and four boundaries mentioned in the sale deed. Defendant is farmer and she is constructing farm-house. To fix the boundaries plaintiff has efficacious remedy of measurement of land and when there is efficacious remedy injunction cannot be granted. So prayed for rejection of application. In support of his argument he relied on following case laws-

1. *Gorakh Mahadev Survey and others Vs. Narayan Balu Dhombe since deceased through his Lrs. And others, 2012(2) Mh.L.J0 215, Grant of injunction is necessary to protect possession of immovable property. Parties must substantiate their case of possession by corroborative material. Parties must be able to substantiate their case of possession, which is the most vital aspect in so far as the grant of injunction is concerned.*
2. *M/s. DCM Shriram Consolidated Ltd. Vs. Jai Singh, AIR 2007 P & H 17, wherein it is held that if the raising of construction does not amount to ouster of a co-sharer, which is not prejudicial or adverse to the interest of the co-owner out of possession or if it does not diminish the value or utility of the land in question or if the same is not detrimental to the interest of other co-sharer/co-owner only then he can be allowed to raise such construction.*

As per legal principles of above citations it is necessary for plaintiff to substantiate his case of possession. If construction not diminish the value or the utility of the land or it not detrimental to the interest of other co-sharer or co-owner then only permission can be granted to raise such constructions. In the present case even though plaintiff not claiming the area of construction as in his possession then also raising construction of defendant will

detrimental to the interest of the plaintiff as this construction will obstruct him to enjoy his property which is rounded by four boundaries of construction of defendant. So these citations are helpful to me to come to the conclusion for granting temporary injunction to protect the interest of the plaintiff in land in gat No.382.

3. *Harcharanjit Singh Thind (Capt.) Vs. Deeksha Thind and others, 2008(3) Mh.L.J., 587, wherein it is held that relief of injunction is discretionary and equitable relief. The party who suppresses material facts from the Court, does not deserve the grant of any discretionary relief, much less a temporary injunction.*

Plaintiff stated about previously instituted R.C.S.No. 47/2025. Defendant not stated that which material facts plaintiff suppressed from the Court. So with due respect I mention that this citation is not applicable here.

4. *Metro Marins and another Vs. Bonus Watch Co. Pvt. Ltd. and others, this citation is regarding temporary mandatory injunction. In the case in hand plaintiff not prayed at this stage temporary mandatory injunction by removing construction of defendant. So with due respect I mention that this citation is not applicable here.*

15. From perusal of plaint it is seen that plaintiff mentioned construction of defendant as suit property. He not pleaded that plaintiff constructing suit property in his share. He also not pleaded that how defendant encroached in his portion and started construction. His only pleading is that this construction will grab his property. Admittedly, plaintiff not brought on record evidence regarding separate shares by partition between him and his brother.

16. Defendant stated that plaintiff mentioned wrong four

boundaries and description of suit property. Defendant also filed rough sketch along with his say. As per four boundaries mentioned in description of suit property, it is seen that suit property is covered by four sides by land of plaintiff. For a moment if we consider that plaintiff stated false four boundaries then I have to look into sale deeds of defendant as she not stated the four boundaries of suit property i.e. her construction in her say.

17. I perused photo copy of sale deeds on record. The first sale deed of 64 R is having four boundaries as follows-

East - Property of Sambhaji Ghevade and Bacharam Ghevade
West – Property of Sahdev and plaintiff
South- Property of Baburao Kurale
North- Property of Ganpati Mandekar

18. The Second sale deed of 38 R is divided in two parts. Four boundaries Part-I are as follows-

East -Defendant's property
West – Property of plaintiff
South- Property of plaintiff
North- Property of Baburao Kurale

Four boundaries Part-II are as follows-

East -Property of plaintiff
West – Stream
South- Property of plaintiff
North- Well.

19. In view of above four boundaries, I observed rough sketch filed by defendant along with her say. In that sketch construction of suit property shown. I found that sketch filed by defendant is wrong as per four boundaries mentioned in the sale deed because plaintiff's share not shown towards south side of 38 R area. Further property of Babu Kurale shown to the south side of 64 R area and at the north side of 38 R area in sale deeds, but it is not

gathered as such from rough sketch of defendant. Defendant shown her area in rough sketch in gat no. 382 by pink colour and area of plaintiff by green colour.

20. As per four boundaries mentioned in sale deeds I observed rough sketch of defendant but I cannot gather that in which area defendant is carrying construction, as spot of suit property shown in rough sketch is not resembling with four boundaries mentioned in sale deeds.

21. In sale deed defendant also not mentioned how much area of 38 R in Part-I and Part-II. As per four boundaries mentioned of Part-II of 38 R area defendant also not shown stream at west side and shown well is so remote in area of plaintiff. So it is seen that defendant is not constructing suit property as shown in rough sketch filed by her.

22. In Second sale deed it is mentioned by plaintiff's brother that he has no concern with the house and well in the gat no.382. Defendant not mentioned in her say that in which purchased area i.e. in 64 R or in 38 R in Part-I or Part-II she is constructing suit property. From the four boundaries mentioned in the sale deed itself shows that land of plaintiff in 38 R area Part-I is at towards west and south area and in Part-II towards east, north and south area.

23. In the sketch of the defendant large area purchased by her shown towards east side and a small area shown towards west side. So from this sketch if it is presumed that defendant is constructing suit property in small area i.e. 38 R then that area is covered from four sides by plaintiff as per four boundaries mentioned in the sale deed. So prima facie it is seen that defendant is constructing suit property at the area which has four boundaries of

plaintiff's land. So this construction will cause hardship to the plaintiff to cultivate his property and it will result in damage of property of the plaintiff. So plaintiff has prima facie case. So, I answered point no.1 in the affirmative.

AS TO POINT NO. 2 :-

24. Defendant is residing at Gadhinglaj. She is constructing farm-house which is not a basic need. If that construction will result in loss to the plaintiff then it is necessary to grant stay to that construction to protect the property of plaintiff. Defendant purchased 1 Hecter 2 R area of gat no. 382, but present construction will result in damage to the property of the plaintiff. So balance of convenience lies in favour of plaintiff. So, I answered point no.2 in the affirmative.

AS TO POINT NO. 3 :-

25. If temporary injunction not granted more loss will cause to the plaintiff as it is permanent structure, vice versa if temporary injunction granted no loss will cause to the defendant and it will necessary to prevent damage of plaintiff's property. So it is necessary to confirm status-quo granted in favour of plaintiff. So, I answered point no. 3 in the affirmative and in answer to point no. 4 I pass following order.

ORDER

- 1) Application is allowed.
- 2) Defendant or any person on her behalf is restrained from making construction in suit property till disposal of suit.
- 3) Costs in main cause.

Place. Gadhinglaj.
Date : 23/07/2025

D. M. Pawar
2nd Jt. Civil Judge Jr. Dn.
Gadhinglaj.