

MHND020046602023



R.C.S. 581/2023

Sayed Shaukat Ali

Vs.

State & another

Order below Exh. 5
(Passed On 11/07/2025)

1. The plaintiff has filed present application under Order 39 Rule 1 and 2 of Code of Civil Procedure for temporary injunction. Perused application and written statement filed by the defendants below Exh. 24 along with pursis filed below Exh. 26. Heard argument of learned advocates for the parties at considerable length.

2. Following points arise for my determination and I have recorded my findings with reasons thereon as under.

Sr. No.	ISSUES	FINDINGS
1.	Whether plaintiff is having prima-facie case ?	No
2.	Whether balance of convenience lies in favour of the plaintiff ?	No
3.	Whether plaintiff will suffer irreparable loss if interim injunction is refused ?	No
4.	What order ?	As per final order.

::REASONS::

3. **As to point nos. 1 to 3 :-**

Point nos. 1 to 3 are inter-linked with each other therefore, I have decided these points together. The plaintiff

has come with the case that, he is a owner and possessor of the house property situated at Talav Galli, Tq. Ardhapur, Dist. Nanded bearing gut No. 540 old gram panchayat No. 1324, present Nagar Rachana No. 1608/23 adm. 380 sq.ft. More particularly described in para No. 1 of the application (hereinafter referred as “suit property” for sake on brevity).

4. It is submitted by the plaintiff that, the suit property is purchased by him from one Saberabi in the year 1998 by executing the bond and on the day of execution of bond possession of suit property was also delivered to the plaintiff. The plaintiff made tin shade construction over the suit property and resided there with his family. The family members of Saberabi also executed consent bond dated 14/12/2021 in favour of plaintiff. The plaintiff time to time approached to the defendant authority for mutation his name to the record of suit property and to regularies the possession of his over the suit property.

5. Plaintiff submits that, the defendant authority having knowledge that, suit property is legally transferred in the name of plaintiff but, in spite of having knowledge to the defendant authority in respect of ownership of plaintiff, defendant authority issued illegal notices to the plaintiff as on 15/09/2023, 06/12/2023 for taking action against him. Therefore, circumstances constrained the plaintiff to file the suit against the defendants along with present application for temporary injunction. Hence, plaintiff prayed to allow

the application.

6. Defendants submit that, the suit filed by the plaintiff is bad in law for non-joinder of necessary parties. The suit is also not filed within limitation. The gut No. 540 situated at village Ardhapur is the property of is a gavthan land belongs to government. The plaintiff and one Saberabi are the encroacher. They are not having any ownership over the gut No. 540. The plaintiff has not come to the court with clean hand. He has suppressed material facts from the court. The action taken by the defendant authority is according to law for removal of the encroachment. Therefore, the suit and present application for temporary injunction is not tenable. Hence, defendants prayed to reject the application.

7. Considering the rival contention of both the sides, I have perused the documents placed on record, from it appears that, as per the 7/12 extract the gut No. 540 adm. 2 H. 6 R. land is **class-II** land and the holder of said land is defendant No. 2. The plaintiff has relied upon the one xerox bond executed by one Saberabi and the consent of one Mirza Farukh Baig and others executed in favour of Chief Officer of Nagar Panchayat, Ardhapur. Both the documents are not registered documents and having no any legal force in eye of law. The defendant authority before taking the action have issued notices to the plaintiffs for removal of encroachment, the copies of notices dated 25/07/2023,

06/12/2023, 17/05/2024 are placed on record, which goes to show that, the action taken by the defendant authority against the plaintiff is appears to be in accordance to provision of law.

8. In the present case the plaintiff has not filed any lawful documents of his ownership and possession over the suit property. Plaintiff has placed on record the xerox copies of tax receipt but said document is not mentioned above the property number and same is not proof of ownership and possession. The notices issued by the defendant No. 2 is as per the provision of Maharashtra Regional Town Planning Act, 1966 and under the said law the defendant authority having power to remove the encroachments upon the public property. Therefore, considering the above facts and circumstances this court came to the conclusion that, plaintiff having no prima-facie case, no balance of convenience lies in favour of plaintiff and there is no any irreparable loss will be caused to the plaintiff if interim injunction is not granted. Hence, I answer point no. 1 to 3 in the negative and proceed to pass following order.

::ORDER::

1. Application stands rejected.
2. Costs in cause.

Dt. 11/07/2025. **(A. P. Karad)**
4th Jt. Civil Judge, Senior Division,
Nanded.