


<p><u>ORDER BELOW EXH.5 IN R.C.S. No.595/2024.</u> (Kisan Bhimraj Pete Vs. Avghadnath Umaji Pete & Ors.)</p>	<p>MHAH140010522024</p> 
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The present application is filed by the plaintiff under Order XXXIX Rule 1 and 2 of Code of Civil Procedure seeking temporary injunction against the defendants to restrain them from obstructing the possession of the plaintiff over the suit property till the final disposal of the suit.

The plaintiff's case in brief as under:

2. Agricultural land situated at Devgaon, Tal. Newasa, Dist. Ahmednagar.

Sr. No.	Gat No.	Admeasuring		Four Boundaries			
		H	R	West	South	East	North
1	262/1/K	1	70	<i>Property of defendants</i>	<i>Dedgaon Shiv</i>	Property of Laxman Pete	Road
		<i>Potkharaba</i> 16 R					
2	262/2/A	2	2	<i>Jeur Shiv</i>	Property of defendants	Property of plaintiff	Property of Sakhare
		Out of this 0.40					
3	262/1/U	1	23	<i>Jeur Shiv</i>	<i>Dedgaon Shiv</i>	Property of defendants	Property of plaintiff
		<i>Potkharaba</i> 14 R					

(For the purpose of brevity hereinafter called as 'Suit Properties'.)

3. The plaintiff averted that, suit properties are his ancestral properties. He has possession over the suit properties. Suit properties are surrounded by property of defendant by three sides. The plaintiff is cultivating suit properties and

also, he resides in suit properties. However, defendants are trying to destroy the common *bandh* between the property, they used to destroy the crop of the plaintiff. On 16/06/2024 defendants came at suit property and obstructed the plaintiff from cultivating suit property and threatened that they will destroy the crop. Due to which the plaintiff filed N.C.R.No. 114/2024 in Newasa Police Station. But, police has not taken any action. Hence, filed this suit. By way of this application the plaintiff seeks to restrain defendants for not to obstruct his possession over the suit properties till the final disposal of suit.

4. Defendants have filed their written statement below Exh. No.12. They contended that, there is no cause of action to file this suit. The suit is barred by law of Estoppel u/s 115 of Indian Evidence Act. The plaintiff has suppressed material facts and given false description of four boundaries of suit properties. The suit property is not surrounded by property of defendants. The father of the plaintiff and defendant no. 1 are real brother. They have three sisters. Gopal Ganapt Pethe was their father. Gopal Pethe during his lifetime partitioned his all properties before Tahsildar vide Partition Case no. S.R.276/1986 dated 30/01/1987. As per said partition mutation entry no. 2040 was effected. In that partition the father of plaintiff received share of 40 R in Gat no. 262/1/3. Thereafter, he sold out said 40 R to Ambadas Umaji Pethe on 15/03/2001 and its mutation entry is 5472. On 19/05/2003 defendant no.2 and Kusumbai Rambhau Pethe purchased that 40 R from Umaji Ganapt Pethe and Ambadas Umaji Pethe. There is North- South common band between Gat no. 262/2/K owned by the plaintiff and Gat no. 262/1/B owned by defendants. The plaintiff is trying to encroach on the land of defendants. Defendants never obstructed the plaintiff. There is no prima facie case to the plaintiff. The balance of convenience does not lie in favour of the plaintiff. Hence, they prayed to reject the application.

5. I have gone through the arguments advanced by Ld. Advocate S.S.Shinde for the plaintiff and argument of Ld. Advocate M.I.Pathan for the

defendants. Following points emerges for my discussion. I have recorded my findings thereon for reasons as under :-

Sr. No.	POINTS	REASON
1.	Whether the plaintiff has made out prima-facie case ?	No.
2.	Whether the balance of convenience is in favour of the plaintiff ?	No.
3.	Whether the plaintiff will suffer irreparable loss in the event of refusal of temporary injunction ?	No.
4.	What order?	Application is rejected.

REASON

6. In support of the suit and interim application, the Plaintiff has placed the following documents on record:

1. 7/12 extract of Gat no. 262/1/K,
2. 7/12 extract of Gat no. 262/2/A
3. 7/12 extract of Gat no. 262/1/U
4. copy of his Aadhar Card.
5. Copy of FIR No. 114/2024
6. Leaving certificate of the plaintiff

7. On the other hand, defendants alongwith Exh. 15 filed following documents,

1. 7/12 extract of Gat no. 262/1/B
2. 8A extract of Gat no. 262/1/B
3. Xerox copy of sale deed dated 19/05/2003
4. Xerox copy of 7/12 extract of Gat no. 262/1/B of the year 1999-2005

5. Xerox copy of Mutation entry no. 5472
6. Xerox copy of Mutation entry no. 5787
7. Xerox copy of mutation entry no. 2040

As to Point No. 1 to 3:-

8. All these points are interlinked. Hence, in order to avoid repetition of they are discussed together.

9. In order to succeed, the plaintiff has to prove the three essential ingredients that is prima-facie case in his favour, balance of convenience lies in his favour and irreparable loss likely to be caused, if injunction is not granted in his favour.

10. According to the plaintiff, the suit property is ancestral property belonging to him and his family. They are in possession and cultivation of the same. The suit property is surrounded on all three sides by the property of the defendants. Upon perusal of the 7/12 extract of suit property filed by the plaintiff, it is observed that the plaintiff's name is recorded in respect of Gat No. 262/1/U. The adjoining lands, namely Gat No. 262/1/K and Gat No. 262/2/A, are respectively recorded in the names of Bhimraj Ganpat Pethe and Meena Kisan Pethe. The defendants admitted that, the suit property is owned by the plaintiff. However, they disputed the plaintiff's claim regarding the boundaries of the suit property, stating that the plaintiff has given incorrect four boundaries of suit property. Nevertheless, it is an undisputed fact that there is a common band between the properties of the plaintiff and defendants. It is also admitted fact that the dispute relates specifically to this common band. The above documents prima facie shows the possession of the plaintiff over the suit property. But it is necessary to see whether defendants caused obstructed to the possession of the plaintiff and is there is any cause of action for filing this suit.

11. The plaintiff has stated that, defendants let their cattle into the suit property, causing damage to the crops and obstructing the plaintiff from cultivating the land. On 16/06/2025, defendants allegedly entered the suit property and threatened to release their cattle into it to destroy the crops. Therefore, plaintiff lodged a non-cognizable offence report bearing No. 114/2024 at Newasa Police Station. However, due to inaction by the police, the present suit has been filed. Thus, the cause of action for this suit is claimed to have arisen on 16/06/2024.

12. The plaintiff has filed a copy of FIR No. 114/2024 alongwith Exh. No.20. Upon perusal of the said FIR, it appears that the complaint was actually filed on 04/02/2024 against defendant Nos. 2 and 3 about the incident dated 04/02/2024. It is further noted that the allegations in the FIR pertain to an incident where the said defendants came near the plaintiff's house and assaulted the plaintiff as his goats allegedly entered the land of defendants.

13. However, as per plaintiff the incident dated 16/06/2024 is the cause of action, wherein the defendants allegedly threatened to release cattle into the suit property. On the other hand, the FIR concerns an earlier and different incident dated 04/02/2024 and mentions a different reason for the altercation. Therefore, prima facie, there is no evidence to show that on 16/06/2024 defendants entered the suit property and caused obstruction or interference to the plaintiff.

14. Moreover, a temporary injunction can only be granted if there is a prima facie case that the plaintiff's possession of the suit property is under imminent threat from the defendants, or if without such an injunction, the plaintiff will be unable to enjoy or use the suit property. In the present case, other than the alleged threat by the defendants to cause damage, there is no assertion by the plaintiff that the defendants have continuously or in any other manner created any interference or obstruction to his possession.

15. Further, the present suit has been filed seeking a perpetual injunction, along with a request for a temporary injunction through this application. However, for the grant of such final relief at interim stage, the plaintiff must establish prima facie that the defendants are causing continuous obstruction to his possession and that an exceptional situation exists where, if the temporary injunction is not granted, the plaintiff would be unable to enjoy the property. As discussed above in present application the Plaintiff has failed to establish such circumstances.

16. Therefore, the plaintiff has failed to establish that he has a prima facie case. Therefore, the balance of convenience does not lie with the plaintiff, and so also, it cannot be said that he would suffer irreparable loss if the temporary injunction is not granted. Hence, I answer points No. 1 to 3 in the negative.

As to Point No.4

17. Considering the findings as to Point No. 1 to 3, I am of opinion that the application is liable to be rejected. The suit is at preliminary stage and therefore, I am not inclined to impose costs on either party. Hence, I pass the following order.

Order

The application is hereby rejected.

Place: Newasa.

(Sandhya Y. Sul)

Date: 19/09/2025.

2nd Jt. Civil Judge, Junior Division,
Newasa, Dist. Ahmednagar.