

Order Below Exh.5 in R.C.S.No. 490/2015

The present application is filed by the plaintiff for temporary injunction against the defendants vide Order 39 Rule 1 and 2 of the Code of Civil Procedure. The plaintiff prays for granting temporary injunction to restrain the defendants from encroaching and obstructing his peaceful possession in the agricultural land bearing block no.269/4/2 admeasuring 1H 2R situated at village Shilegaon, Tal. Rahuri, Dist. Ahmednagar. (Henceforth “the suit property”). The suit property is more particularly described in para 1 of the plaint. The defendants filed their Written Statement and Say vide Exh.16. They resisted the application.

2. Perused the application and Say. Heard Ld. Advocates for the plaintiff. The defendants and their Ld. Advocate are absent for argument.

3. The points for my determination and my findings thereon are as follows :-

Sr.No.	Points	Findings
1)	Does the plaintiff prove that he is having prima facie case ?	No
2)	Does the plaintiff prove that he will suffer irreparable loss if the application is rejected ?	No
3)	Does the plaintiff prove that balance of convenience is in his favour ?	No
4)	What order ?	The application is rejected.

As to points no.1 to 3 -

4. I have gone through the pleadings of the parties and documents filed on record. It is contention of the plaintiff that he is owner and possessor of the suit property. The plaintiff, in order to establish his contention for injunction order

as sought, has to establish prima facie that he is in possession of the suit property as described in para 1 of the plaint. The plaintiff has come before the court for appointment of Court Commissioner for the measurement of the suit property by contending that the defendants are trying to encroach in the suit property and they have broken common bandh. The application of the plaintiff for appointment of Court Commissioner is on Exh.7. This itself prima facie shows that the plaintiff is not in possession of the entire suit property. The plaintiff while filing application (Exh.7) contends that in order to settle the dispute finally and find out fact of encroachment, the appointment of Court Commissioner is necessary. These contentions of the plaintiff are sufficient to infer that he is himself not sure that he is in possession of the suit property as described in para 1 of the plaint.

5. The plaintiff has not filed any document on record to show the boundary marks of the suit property. As such, apart from bare words of the plaintiff there is nothing on record to show that the defendants have encroached in the suit property or destroyed common bandh. In view of the above reasons, I hold that the plaintiff failed to made out prima facie case for granting temporary injunction as sought. As the plaintiff failed to establish prima facie case, it cannot be said that he would suffer irreparable loss if the application is rejected. On the other hand, if the application is allowed without any prima facie evidence in respect of alleged encroachment, it will cause unnecessary hurdle to the defendants to cultivate their lands. As such, the balance of convenience is also not in favour of the plaintiff. Hence, I answer Points No.1 to 3 in the negative.

As to point no.4 -

6. The plaintiff failed to establish necessary ingredients for passing temporary injunction order in his favour. Therefore, the application will have to be rejected. Hence, the order.

Order

1. The application is rejected.
2. Costs in cause.

Date : **25-7-2016.**

(G.G. Itkalkar)
Jt. Civil Judge J.D., Rahuri.