

**COMMON ORDER BELOW EXH.05 AND 24**

( Passed on 05<sup>th</sup> day of February, 2025 )

The applications below Exh.5 and 24 are filed by the plaintiff seeking temporary injunction against the defendant as per Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908.

2. The application at Exh.5 is with the prayer to restrain the defendant from creating any obstruction to the possession of the plaintiff of the suit property. The application at Exh.24 is filed with the prayer to restrain the defendant from creating any erecting any structure and construction in the suit property.

3. It is the case of the plaintiff that the suit property is a total of 1 H 13 R situated in Gat No.195/1, Village Durgaon, Tal. Karjat, Dist. Ahmednagar as described in the paragraph No.1B of the plaint and application at Exh.5. Plaintiff and defendant are siblings. Defendant and Sarubai Sahadu Thombare, who is the mother of the plaintiff and defendant, jointly purchased the suit property by a registered sale deed on 25/08/1999. The property is in common and remained undivided. On 18/05/2023, Sarubai the mother of the plaintiff and defendant sold her share of suit property measuring 56 R to the plaintiff by a registered sale deed. There is Mutation Entry No.5115 to that effect and on the 7/12 extract as well the name of the plaintiff was entered. Thereafter, on the eastern part of the suit property, the plaintiff started her occupancy. In the meantime, the defendant started obstructing the possession of the plaintiff. Even though, no partition has taken

place, defendant started constructing houses, cattle shed and leveling the suit property. On 01/03/2024, the plaintiff demanded partition from defendant and it was denied. Therefore, the plaintiff has filed the application at Exh.5 praying to restrain the defendant from creating any obstruction in common possession and occupancy of the suit property. Subsequently, the plaintiff filed an application at Exh.24 that, even though the partition is yet to be effected and the matter is pending in the Court, from 01/12/2024, the defendant has started creating construction in the suit property. Hence, the defendant restrain from erecting any structure and construction in the suit property.

4. The defendant has filed his say below Exh.5 along with written statement and counter claim at Exh.14. The relationship between the plaintiff and defendant is being admitted. Further, the sale deed dated 25/08/1999 is also admitted. However, the defendant has mentioned that the consideration for the suit property was solely paid by the defendant and the name of the mother was only entered out of love. Since the year 2000, the defendant has constructed tin shed houses, borewell, cattle shed and leveled his share of suit property measuring 56 R by spending a lot. The plaintiff resides in Village Girim, Tal. Daund, Dist. Pune and she falsely promised Sarubai of constructing a house and got sale deed executed without possession. Hence, the plaintiff has prayed to reject the Exh.5. Further, the defendant has filed his say at Exh.26 on application at Exh.24 and denied all the contentions made in the suit as well as Exh.24. Further, he stated that the construction is taking place in the 56 R area of the suit property belonging to the defendant. The construction till the foundation

level is already complete. The plaintiff has no relation to it. Hence, the application be rejected.

5. Heard Ld. Adv. Mr. A. S. Punde for the plaintiff and Ld. Adv. Mr. S. J. Wakade for the defendant. Perused the documents filed on record. On hearing both sides and perusal of documents on record, the following points arose for my determination along with my findings thereon:

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether there is prima facie case in favour of the plaintiff with regards to Exh.5 and 24?	Partly Yes
2.	Whether balance of convenience lies in favour of the plaintiff with regards to Exh.5 and 24 ?	Partly Yes
3.	Whether irreparable loss will be caused to the plaintiff if no injunction is granted with regards to Exh.5 and 24 ?	Partly Yes
4.	What order?	The application is partly allowed.

6. Before moving ahead, it is necessary to state the admitted facts. There is no dispute with regards to relationship between the plaintiff and defendant. It is also undisputed that by a registered sale deed dated 25/08/1999, the defendant and Sarubai (who happens to be mother of the plaintiff and defendant) purchased the suit property. There is no dispute with regards to registered sale deed by which the plaintiff purchased 56 R area of the suit property from Sarubai.

**As to Point No. 1 :**

7. Now coming towards legal position, the present application of temporary injunction filed under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, which is as follows :-

**Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908 :-**

**Rule -1 :- Cases in which temporary injunction may be granted :-**

*Where in any suit it is proved by affidavit or otherwise -*

*(a) that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*

*(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,*

*(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,*

*the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienating, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.*

**Rule -2 :- Injunction to restrain repetition or continuance of breach :-**

*(1) in any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing a breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.*

*(2) the court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.*

8. For temporary injunction applications filed under Order XXXIX Rule 1 and 2, said applications are also related to legal provisions of section 36 and 37 of the Specific Relief Act,1963, which are as follows :-

**The Specific Relief Act,1963 :-**

**Section 36 :- Preventive Relief How Granted :-**

*“Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual”.*

**Section 37 :- Temporary and Perpetual Injunctions :-**

*“(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of the suit, and are regulated by the Code of Civil Procedure,1908.*

*(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit, the defendant is thereby perpetually enjoined from the*

*assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.”*

9. The court may grant temporary injunction to any party if he proved that property in dispute in a suit is in danger of being wasted, damage, alienation, sale, removal, dispossession and dispose or any other way. Before issuing a temporary injunction pending disposal of a suit, the applicant has to make out, firstly that he has got a *prima-facie* title to properties. Secondly, the applicant must establish that he will suffer irreparable injury which is a matter which cannot be adequately compensated for by damages. Thirdly, the applicant must prove that the balance of convenience is in his favour, who is likely to suffer substantial mischief if the injunction is refused when compared to the mischief which might be caused to the non-applicant if the injunction is granted. Fourthly, the status quo must be maintained. The court has take into consideration all these points while granting a temporary injunction.

10. On perusal of the plaint, it is observed that specifically in paragraph No.3 of the plaint, the plaintiff has mentioned that she started her occupancy in the eastern part of the suit property which is in common. Similarly, the defendant has mentioned in his written statement along with counter claim at Exh.14 in paragraph No.1A that he has constructed tin shed houses, cattle shed, erected borewell and leveled 56 R area out of the suit property of his share. Prima facie from recitals of the plaintiff in the plaint it appears that she is in possession of the eastern part of the suit property which admeasures 56 R. Similarly, the defendant is in possession of only 56 R of the suit property and has constructed and

erected structures in that area. The defendant has also filed a memo (pursis) at Exh.29 stating that his construction is in the western part of the suit property. It is clear from the combined reading of plaint, written statement and counterclaim at Exh.14 and memo at Exh.29 that the plaintiff is in possession of the eastern part and defendant is in possession of the western part. It is also undisputed that there is no partition till date. The suit is filed for partition as per Section 4 of the Partition Act. The plaintiff has filed photocopy of registered sale deed dated 18/05/2023 along with list of documents at Exh.3 at document No.2. The registered sale deed is undisputed and unchallenged by the defendant. The defendant has filed counter claim as per Section 22 of the Hindu Succession Act for preferential right to acquire property from the plaintiff. However, Section 22 comes in to picture only upon intestate succession.

11. There is an authority of the Hon'ble Supreme Court of India in *Rattan Singh Vs. Nirmal Gill, Civil Appeal Nos. 3681-3682 of 2020* wherein, the Hon'ble Supreme Court of India has relied upon its previous authority in *Prem Singh and Ors. Vs. Birbal and Ors. (2006) 5 SCC 353* and clearly laid down that where registered document is presumed to be genuine and the onus of proof lies upon the plaintiff who challenges it. The relevant portion of the authority cited above reads as follows:

*“32. To appreciate the findings arrived at by the Courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in Prem Singh and Ors. v. Birbal and*

*Ors<sup>8</sup>. The relevant portion of the said decision reads as below:*

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

(emphasis supplied)

*In view thereof, in the present cases, the initial onus was on the plaintiff, who had challenged the stated registered document.”*

12. In the present case, the sale deed dated 18/05/2023 is a registered sale deed. In paragraph No.6 of the sale deed it is also stated that possession is handed over to the plaintiff. Hence, prima facie it appears that defendant is in possession of the eastern part of the suit property and not the whole property along with the defendant in common. Hence, I answer as to point No.1 partly in the affirmative.

**As to Point No.2 and 3:**

13. The right to enjoy property is a constitutional right enshrined under Article 300A of the Constitution of India. The plaintiff herself has mentioned being in possession eastern part of the suit property in the plaint and defendant himself filed a pursis at Exh.29 mentioning his construction in the western part. Therefore, the balance of convenience partly tilts in favour of the plaintiff. If no injunction is granted it may cause irreparable loss of time and cause hindrance in enjoyment of the property. Therefore, irreparable loss

may be caused to the plaintiff. Hence, I answer as to point No.2 and 3 partly in the affirmative.

**As to Point No. 4**

14. The plaintiff has partly satisfied all the 3 conditions for grant of temporary injunction with respect to area admeasuring 56 R on the eastern part of the suit property bearing Gat No.395/1. As per the description of the suit property, to the eastern side of the suit property is Gat No.356, southern side rest of the area of Gat No.395/1 belonging to one Nashir, western side canal and northern side rest of the area of Gat No.395/1 belonging to one Kareem. Out of this whole suit property described, it appears that the eastern part is in possession of the plaintiff and western part in the possession of the defendant. Therefore, the defendant shall be restrained from obstructing the possession of the plaintiff in the eastern part of the suit property admeasuring 56 R and shall not carry out any construction or erection of structure there. However, the defendant is free to construct in the western part 56 R area of the suit property as per law and enjoy possession. Hence, I pass the following order:

**ORDER**

1. The application at Exh. 05 and Exh.24 are partly allowed.
2. The defendant and his servant, agent or any person on his behalf are restrained from creating obstruction to the plaintiff in enjoyment of area admeasuring 56 R of Gat No.395/1 in the eastern part of the suit property as described in paragraph No.1B of the plaint and Exh.5 till the final disposal of the suit.

3. The defendant and his servant, agent or any person on his behalf are restrained from creating constructing and erecting structures in area admeasuring 56 R of Gat No.395/1 in the eastern part of the suit property as described in paragraph No.1B of the plaint till the final disposal of the suit.
4. Needless to say, the defendant is at liberty to enjoy his possession on 56 R area of Gat No.395/1 in the western part of the suit property as described in paragraph No.1B of the plaint till the final disposal of the suit and carry on construction, if any, as per law.
5. Costs in main cause.

Place: Karjat,  
Dist. Ahmednagar

( Rohan Vijaykumar Thayil )  
2<sup>nd</sup> Joint Civil Judge, Junior Division,  
Karjat, Dist. Ahmednagar

Date: 05/02/2025