



RCS No. 115/2023
Shivdas Adbol Vs.
Ramesh Mehenge
MHAK060018992023

ORDER

(Below Exh. 5)

(Passed on 21th of June, 2025)

This is an application under Order XXXIX Rule 1 and 2 of The Code of Civil Procedure 1908 (hereinafter mentioned as The Code 1908) to restrain defendants from causing obstruction to the possession of the plaintiff over the suit property and alienating or creating third party interest in it till final disposal of the suit. However, on 07/05/2025 the plaintiff filed a *Pursis* (Exh. 19) whereby he informed to the Court that defendants pending suit and application (Exh. 5) have illegally taken possession of suit property. Therefore, it is prayed to treat the Ist Prayer Clause of Exh. 5 as deleted. Hence, I proceed to decide the application only with regard to IInd Prayer clause of the application Exh. 5.

2. A vacant Plot bearing No. 48 (Gram-panchayat Property No. 642) ad-measuring 100 Square Meter/1076 Square Feet having four boundaries as under ;

Towards East : Layout way
Towards West : Plot No. 47
Towards North : Plot No. 46
Towards South : Plot No.49

out of non-agriculture Field Block No. 61 situated within the limits of village Chohatta Bajar, Tq. Akot, Dist. Akola is the subject matter

of the suit so also of present application (*hereafter mentioned as suit plot or suit property*).

3. It is submitted by the plaintiff that plaintiff is resident of village Lohitkheda, Tq. Daryapur, Dist. Amaravati. Considering cordial terms of plaintiff and his relatives with defendant No.2, the plaintiff purchased suit property from defendant No. 2 by way of registered sale deed dated 18/05/2017 in consideration of Rs. 2,00,000/-. The plaintiff has taken possession of the suit property on the date of sale itself and by virtue of the sale deed, his name is recorded as owner and possessor in record of rights as well.

4. In such circumstances, on 20/05/2022, the plaintiff had been to inspect suit plot, however, surprisingly he found defendants making construction over the suit plot. When resisted, the defendant No. 1 abused and threatened to plaintiff. Consequently, the plaintiff raised dispute before the Police as well but in vain. The defendants are in collusion with each other and likely to create third party interest by alienating it. Thus, being constrained, the plaintiff has instituted present suit. However, it will take its own time to reach logical end. In the meantime, it is necessary to restrain the defendants from alienating the suit property and creating third party interest in it by way of alienation. Hence, it is prayed to allow the application.

5. Per contra, defendant No. 1 filed his say at Exh. 16. He has contended that he has no concern with the sale deed dated

18/05/2017 executed by defendant No. 2 in favour of the plaintiff so also with ownership, possession of the plaintiff over the suit property and allotment of Number to the *Gram-panchayat* is as 642 to the suit property. According to the defendant notice issued by the plaintiff on 04/01/2023 has been answered by him. However, notice dated 04/01/2023 and notice again issued by the plaintiff on 29/03/2023 are completely different revealing as to how he has instituted false, baseless and illegal suit against the defendant. It is further contended that no cause of action occurred at all to plaintiff to implead defendant No. 1 in the suit. That defendant No. 1 has no concern at all with suit plot and construction thereon. Rest of the adverse allegations are denied by the defendant. Hence, it is prayed to reject the application.

6. Defendant No. 2 has filed his Say at Exh. 15 contending that he too has no concern with the suit. He too has been unnecessarily arraigned in the suit. That there is no dispute with regard to sale deed dated 18/05/2017, ownership of and possession over the suit property of the plaintiff. That on the date of sale deed itself, the possession of the suit property was handed over to plaintiff and plaintiff has become owner of the suit property.

7. It is further contended by defendant No. 2 that on 08/10/2013, he purchased suit property vide registered sale deed No.3108 from one Ravsaheb, Shankarrao Sabale and Jakir Shah and Rashid Shah and it has been transferred to the plaintiff with

possession by way of sale as it is 18/05/2017. On the date of sale itself, the plaintiff took possession after verifying area of the suit property. Therefore, defendant No. 2 has no concern at all with the alleged construction on the suit property. All further adverse contentions of the plaintiff are denied by the defendant.

8. Heard both the sides at length. Perused the application, Say (Exh. 15 and 16) and documents on record. Considered the submissions.

9. In order to determine the application (Exh.5) following points arise to which I record my findings thereon for the reasons discussed herein below ;

Sr. No.	Points	Findings
1)	Whether the plaintiff has <i>prima-facie</i> case?	...Yes.
2)	Whether balance of convenience tilts in favour of the plaintiff?	...Yes.
3)	Whether plaintiff will suffer irreparable loss if injunction is refused ?	...Yes.
4)	What order ?	As per final order...

REASONS

As to Point No. 1 to 3 :

10. It appears from Say (Exh. 15 and 16) that ownership of the plaintiff over the suit plot is not disputed by the defendants. Residence of the plaintiff outside the jurisdiction of this Court at Lohitkheda, Tq. Daryapur, Dist. Amravati is also not in dispute.

Four boundaries of the suit property are also not disputed by any of the defendants. In such circumstances the plaintiff has come with the case that on 20/05/2022, when he had been to the suit plot, found that defendant No. 1 was allegedly making construction over the suit plot and obstruction to enter it. On being resisted, defendant No. 1 abused and threatened to plaintiff.

11. It is significant to note that none of the defendants have stated their any sort of nexus with the suit property. Copy of sale deed dated 18/05/2017 reveals that the plaintiff has purchased suit plot from defendant No. 2 in consideration of Rs. 2,00,000/-. Copy of *Namuna* No. 8, *Namuna* No. 10 and 7/12 Extract dated 20/06/2022 reveals that the plaintiff is owner of the suit property.

12. At this stage, it is significant to note that, as per the *Pursis* (Exh. 19), the defendants are alleged to have illegally taken possession of the suit plot pending the suit and application Exh. 5. In such circumstances, it is worth to note that in general a person in possession, legal or illegal, of a property can create third party interest even while a suit concerning the property is pending. Of course, the validity of such interest will be subject to the final outcome of the suit. However, merely because creation of such interest, will be subject to final outcome of the suit, it does not mean such interest should be allowed to be created. Because creation of such interest pending adjudication of suit, will certainly increase the complications and multiplicity of proceedings between the parties. The plaintiff being resident of outside jurisdiction has

strong apprehension of creation third party interest in suit property. The incomplete construction of safety tank appearing on suit property corroborates and compels me to state that plaintiff's such apprehension is probable one. It is significant to note that, one of the vital object of granting ad-interim injunction is to save the parties from the multiplicity of proceedings.

13. Plaintiff has alleged that defendants in collusion are allegedly making construction over the suit plot and trying to create third party interest in it. Perusal of photographs on record as stated above reveals that construction of safety tanks is being made in the suit property. However, defendant No.1 has denied having made such construction. At this stage I revisited the documents on record.

14. Record shows that on 23/05/2022 the plaintiff has applied to PSO, Dahihanda PS to initiate criminal action against defendant No. 1, his wife and one Takveersha as they abused and threatened him on 20/05/2022 on the count he resisted them from making construction over the suit plot. Notice reply given by defendant No. 1 through his advocate V. V. Dixit dated 25/01/2023 reveals that on 17/07/2022, defendant No. 1 was called by the Police in regard such complaint of plaintiff.

15. Even though defendant No.1 has denied any nexus with construction appearing on suit plot, still a question remains as to why the plaintiff filed complaint against defendant No. 1 and his family and issued notice to defendant No. 1 on 04/01/2023.

Notice dated 29/03/2023 issued by the plaintiff is not filed on record by either party. Therefore, contention of defendant No. 1 made in his Say Exh. 16 at Para. No. 7 has no significance at all.

16. At this juncture, it is worth to note that in general sense, one does not impute or implead another and drag him before the government instrumentality like Police and Courts of Justice unless he has suffered something from such person. It is significant to note that according to plaintiff, he himself had been to suit plot on 20/05/2022 and was abused and threatened by defendant No.1, his wife and one Takveersha. Moreover, if defendant has no concerned with alleged construction in the suit property as appearing from Photographs on record, then he had no reason to reply plaintiff's notice dated 04/01/2023. Mere denial of defendants that he has no nexus with the dispute raised by the plaintiff, does not wash out the whole case of the plaintiff or mitigate the gravity of apprehended injury to the plaintiff. Rather considering the fact that defendant No. 1 is fighting in suit with teeth and nails, compels me to hold that he is likely to cause injury to interest of the plaintiff in suit property. In such circumstances, *prima-facie* nexus of defendant No. 1 with alleged construction and his alleged illegal possession over the suit property allegedly obtained pending suit cannot be denied at all.

17. At the cost of repetition, it is incumbent to note that in view of *Pursis* Exh. 19 the defendant No. 1 *prima-facie* appears to have completed the alleged construction over the suit property and

has thereby taken *prima-facie* possession of the suit property. As stated above, even a person in possession of a property can create third party interest in it by way of rent agreement etc. If such interest is allowed to be created it will certainly result in multiplicity of proceedings. Therefore, in my opinion, interference of the Court by way of preventive relief is warranted in this case. So far plaintiff's contention with regard to collusion of defendant No. 1 with defendant No. 2 is concerned, there is nothing on record to show defendant No. 2 has acted at any point of time in collusion with defendant No. 1. In the result, the application appears to be tenable against defendant No. 1 only.

18. In view of above discussion, the plaintiff appears to have arguable case which needs to be testified on the anvil of substantive evidence by both the parties. Admittedly, the plaintiff resides far away from the location of the suit property at village Lohitkheda in Amravati district. Therefore, for the preservation of the suit property, in my humble opinion, interference by the court by way of ad-interim injunction till final disposal of the suit appears necessary as refusal of injunction is likely to cause multiplicity of proceeding and to deprive plaintiff off suit property allegedly purchased by him through his hard earned money.

19. On the contrary, considering say Exh. 16, such injunction is not going to cause any prejudice to defendant No.1. Resultantly, balance of convenience also tilts in favour of the plaintiff and it is plaintiff who will suffer irreparable loss if

injunction is not granted in present set of facts. Hence, I come to the conclusion that that the plaintiff has *prima-facie* case, balance convenience also tilts in his favour and he would suffer irreparable loss if temporary preventive relief is refused. Hence, I answer Point No. 1 to 3 in the affirmative and in cumulative effect of aforesaid discussion, pass following order ;

ORDER

- 1) The application (Exh. 5) is partly allowed.
- 2) Defendant No. 1 Ramesh Dnyandev Mehenge or anybody else on his behalf is hereby temporarily restrained under Order XXXIX Rule 1 and 2 of The Code of Civil Procedure 1908 from creating any type of third party interest in or over the suit plot/property (more particularly mentioned in Complaint Para. No. 2) till final disposal of the suit.
- 3) It is made clear that observations made by Court in order to determine the application (Exh. 5) is purely *prima-facie* in nature and will serve no prejudice to decide the suit on merit.

(Dictated and Pronounced in open Court.)

Date : 21.06.2025

Place : Akot.

Sd/-

(A. A. Mali)

2nd Jt Civil Judge (Jr.Dn),
Akot, Tq. Akot, Dist. Akola.

**RCS No. 115/2023
Order/Exh. 05**

CERTIFICATE

I affirm that the contents of this P.D.F file Order are same word to word as per the original order.

Name of Stenographer	:	P. N. DURATKAR
Court Name	:	2 nd Joint Civil Judge (Jr.Dn.) & JMFC, Akot, Tq. Akot, Dist. Akola
Date of decision	:	21/06/2025.
Order Signed by P.O on	:	21/06/2025.
Order Uploaded on	:	23/06/2025.