

Order Below Exh.No. 05.

( Passed on 26<sup>th</sup> May, 2017 )

1. This is an application under Order 39, Rule 1 and 2 r/w Sec.151 of the Code of Civil Procedure for grant of temporary injunction.

2. Case of the plaintiff/ applicant in short is as under-

The plaintiff is owner and is in possession of the plot bearing Nazul Plot no.541 area Sq.mtrs including ancestral house standing thereon (in short 'suit property') situated at Degaon, Ta-Balapur, Dist-Akola. On the southern side of the suit property there is a plot of defendants. Defendants have started illegal construction over their plot without permission of Grampanchayat. Defendants while making the construction have damaged southern side wall of plaintiff's house and they are raising the construction over the suit property. Defendants are also trying to raise illegal construction on the approach road of plaintiff's house which is a government road situated at western side of the suit property. Therefore, plaintiff is claiming the relief of

temporary injunction for restraining defendants to raise a construction over the suit property. The plaintiff is also claiming the relief in order to restrain defendants from obstructing the peaceful utilization of the government road (in short 'approach road') by the plaintiff.

3. Case of the defendants/non applicants in short is as under-

Defendants denied all allegations of the plaintiff which are adverse to his interest . According to defendants, the construction is not illegal and defendant no.1 applied in grampanchayat for necessary permission. The Sarpanch of Grampanchayat visted on the spot and found no illegality in the construction. Defendants no.2 and 3 are sons of the defendant no.1 and they reside separately from him. Defendants submitted that property constructed by defendants is only property for residence of defendant no.1 and for storing the agriculture goods. The defendant no.1 demolished the house property and now he owns no house for his residence. If application is allowed then there is a great likelihood that defendant no.1 will have no shelter. Therefore, the defendant called for the rejection of the

application.

4. Points for determination and findings are as follows-

| <b>Sr. No.</b> | <b>Points</b>                                                                                                 | <b>Findings</b>    |
|----------------|---------------------------------------------------------------------------------------------------------------|--------------------|
| 1.             | Whether the plaintiff has a prima facie case ?                                                                | Yes                |
| 2.             | Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is not granted ? | Yes                |
| 3.             | Whether the balance of convenience is in favour of the plaintiff ?                                            | Yes                |
| 4.             | What order ?                                                                                                  | As per final order |

### **Reasons**

5. Points no.1,2 &3 – These three points are interlinked to each other and therefore they are discussed together.

The plaintiff must make out prima facie case in support

of the right claimed by him. In support of his averments the plaintiff has filed various documentary evidence on record. The plaintiff has filed Namuna 8 (Exh.4/1), tax receipt (Exh.4/2), Namuna D (Exh.4/3), Copy of City survey enquiry register (Exh.4/4). The documentary evidence filed by the plaintiff prima facie shows that plaintiff is the owner and is in the possession of suit property which is ancestral in nature.

6. Defendants have also filed various documentary evidence in order to show that construction which going on is not illegal. The defendant has filed original copy of sanad (Exh.14/1), Namuna D (Exh.14/2), Namuna 8 (Exh.14/3). The documentary evidence filed by both parties shows that the plaintiff is the owner and is in possession of plot no.541 and constructed house thereon. It also appears that the defendant no.1 is owner and is in possession of plot no.536 and constructed house thereon. The plaint map (rough sketch map) filed by the plaintiff is not appearing approximately correct but if Nazul map (Exh.4/5) and Sanad (Exh.14/1) are considered it is substantially correct. Moreover, O.7 R.3 of the Code of Civil Procedure provides no need for absolute

correctness of sketch in case of encroachment. The plaintiff map, Nazul map (Exh.4/5) and copy of Sanand (Exh.14/1) show that defendant's plot is situated towards southern side of plaintiff's plot. It also appears that there is a approach road on the western side of defendant's plot.

7. The plaintiff has prima facie satisfied the court about exact position of the plots. The plaintiff has also filed copy of Police report (Exh. 4/6), Original Copy of N.C (Exh.4/7), Request letter (Exh.4/8) made by him to grampanchayat. These documents at this juncture depict that plaintiff has apprehension of illegal construction over suit property. The plaintiff has filed photographs (Exh.4/9 and 9/1). Those photographs show that defendants have started construction and they have damaged southern wall of plaintiff's house. The affidavits of the adjoining owners (Exh.4/11 and 4/12) support the contentions of plaintiff. The photographs filed by defendants below (Exh.19/3) in fact supports the story of plaintiff.

8. Contrary to this, defendants have filed various documentary evidence to disprove the case of plaintiff.

Defendants have filed affidavit (Exh.19/1) of one Santosh who is husband of Sarpanch Degaon and affidavit of Prahlad (Exh.19/2) who is resident of the village. But defendants have not filed any document by which court can presume that defendants have taken permission from the Grampanchayat. After careful examination of photographs filed by the plaintiff and defendants it appears that defendants are constructing there house adjacent to the southern side of suit property.

9. The nature of suit property is ancestral while defendants are reconstructing their house. Therefore under such circumstances at this juncture it can be inferred that defendants must require new permission and sanctioned plan. It appears from the photographs filed by both parties that defendants have not left any space between suit property and his house. Thus, such situation strongly supports the case of plaintiff. Even if it is assumed that defendants are making construction exactly on the old structure of their house though without necessary permission for construction it is difficult for court to disbelieve the averments of plaintiff. Therefore, it can be inferred that

defendants have started illegal construction by committing encroachment on suit property and on approach way.

10. The plaintiff has shown that there is a prima facie case in his favour. It appears that defendants have committed encroachment on the suit property and as such plaintiff is likely to suffer irreparable loss if defendants are not restrained, as prayed for. The balance of convenience thus also lie in his favour. Therefore, I have answered point no.1,2 and 3 in affirmative and hereby passed the following order.

**Order**

1. The application (Exh.5) is allowed.
2. Defendants, their agents, servants or anybody claiming through them are temporarily restrained from obstructing the peaceful possession of the plaintiff over the suit plot and not to create any type of obstruction over the approach way of plaintiff's house in any manner till the decision of this suit.
3. Costs in the cause.

Place: Balapur  
Date: 26/05/2017

Sd/-  
( N. P. Talnikar )  
Jt. Civil Judge (J.D.),  
Balapur.

### Certificate

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

|                     |   |                               |
|---------------------|---|-------------------------------|
| Name of Steno       | : | S.V. Indane.                  |
| Court Name          | : | C.J.J.D. & J.M.F.C., Balapur. |
| Date                | : | 26/05/2017.                   |
| Signed by Presiding |   |                               |
| Officer on          | : | 26/05/2017.                   |
| Uploaded on         | : | 29/05/2017.                   |

---