

**ORDER BELOW Exh.05**

This is an application for grant of temporary injunction against defendant with the suit for permanent injunction restraining defendant, his agents, servants or any other person claiming through him from disturbing the peaceful possession of the plaintiffs over suit property till decision of the suit.

2. According to the plaintiffs the house property bearing no.1324 admeasuring 1600 sq.ft. as shown in para 1-A of the plaint is purchased by plaintiff no.1 by registered sale deed from Gajanan Kashinath Andhare for consideration of Rs.56,000/- on 16.08.2007. It's boundaries are as under :

To the East – Land of Ganesh Bochare.

To the West – Land of Gopal Jagannath Andhare,  
now of plaintiff no.2.

To the North – House of defendant.

To the South – Government Road.

This is open plot constructed by plaintiff no.1 towards it's southern side portion and northern side open space is kept open for domestic use of plaintiff no.1. This northern side open space is called as suit property (A).

3. According to the plaintiffs the house property bearing no.1325 admeasuring 1269 sq.ft. as shown in para 1-B of the plaint is purchased by plaintiff no.2 by registered sale deed from Gopal Jagannath Andhare on 01.02.2008 for consideration of Rs.53,500/-. It's boundaries are as under :

To the East – Land of Plaintiff no.1.

To the West – Government Road.

To the North – House of defendant.

To the South – Government Road.

The northern side open portion to the extent of 3.5 ft. of this plot is called as suit property (B).

4. The defendant has no right, title or interest in the suit property. The windows kept by the defendant on the southern side of his house are with the permission of the plaintiffs with a condition that defendant will close the windows as and when plaintiff will say. The defendant constructed his house in the last year i.e. 2013.

5. One Gondan tree was situated in the open plot of plaintiff no.2 at a distance of 7 ft. from the house of defendant. It was a old tree and due to the construction of the defendant's house it's roots were damaged. It was about to fall down. Hence, the defendant had lodged a complaint before grampanchayat Shirla on 14.08.2013 regarding danger to his property and thereby requested to cut the said tree. On the complaint of defendant a letter was issued by grampanchayat Shirla to plaintiff no.2 on 19.08.2013. Accordingly the said tree was removed by plaintiff no.2. The plot of plaintiff no.2 is open. The marriage of daughter of plaintiff no.1 was held there on 25.11.2013. The plaintiffs use the open plot of plaintiff no.2 to solemnize the marriage and other ceremonies by putting tent. The defendant is at liberty to use and enjoy his own property. The suit property is in use and enjoyment of the plaintiffs. There is no open land and approach of defendant from southern side of his house.

6. As per record and assessment defendant is owner of 429 sq.ft. land. It is clear from Village Form no.8. Since last two years defendant is trying to increase his area in grampanchayat record. Plaintiff no.2 filed the complaint before secretary and sarpanch of grampanchayat Shirla on 16.11.2013. Defendant has given false affidavit to increase his area with intention to grab the valuable land of plaintiffs. The title of the plaintiffs is based on registered sale deed and possession of the suit property.

7. Defendant filed one civil suit bearing no.RCS 71/2013 on imaginary story with incorrect description of the suit property. In this suit defendant sought temporary injunction against the present plaintiffs. The same was rejected by the Court.

8. On 19.02.2014 defendant and his daughter came over the suit property and picked up quarrel with plaintiff no.2. The incident was reported to police station Patur. Again on 28.02.2014 defendant and his family members came over the suit property and started to throw the bricks which were kept by plaintiffs over the suit property. The incident was reported to police station Patur. On 20.03.2014 defendant again tried to put his agricultural implements over the suit property, but plaintiffs restrained him. The plaintiffs are having apprehension in their mind that defendant may try to disturb the possession of plaintiffs over the suit property.

9. Plaintiffs have good prima facie case and balance of convenience in their favour. Hence it is necessary to restrain the defendant from disturbing the possession of plaintiffs over suit property till decision of the suit. No prejudice will be caused to defendant if application for temporary injunction is allowed.

10. Defendant filed his written statement and reply as per Exh.12. Stand of defendant is that he is the owner of property no.126/1 admeasuring 992 sq.ft. He has constructed 3 rooms over the same. From southern side of his house he left 62 x 3.5 ft. open space land for entrance to his house. There are windows and door towards from the southern side of his house. He is enjoying his property since his forefather. The water of his house also falls from southern side of his house. He is using the southern side open space as owner since his forefather.

11. Due to obstruction on the part of plaintiffs he compelled to file a civil suit with application for temporary injunction against plaintiffs. However, the same was rejected by the Court and now appeal is pending before Hon'ble District Court, Akola. Plaintiffs are taking the disadvantage of the order of trial Court. Plaintiffs kept the bricks on the disputed site by closing the windows. Defendant opposed to keep the bricks on the disputed site and requested plaintiffs to carry on the said bricks from the suit property. But plaintiffs have not given response. They assaulted defendant and his family members. Hence police filed a criminal case against plaintiffs.

12. Plaintiffs in collusion with their vendors prepared false Gao Namuna-8 in grampanchayat. They created false documents of sale deeds from their vendor and filed false documents on record of this case. There is a variance in the description of the properties mentioned in the sale deeds. So the plaintiffs are not entitled to any relief with the help of these documents. Defendant got a right of user from southern side of his house. Plaintiffs are trying to take possession of the disputed portion of the land forcibly. Hence application for temporary injunction be rejected.

13. Heard learned Adv.Shri. Quazi for plaintiffs and learned Adv.Shri.R.R. Khandel for defendant at length. I have perused the record of the case.

14. It is well settled that the grant or refusal of a temporary injunction is covered by three well established principles viz. 1) Whether applicant has made out prima facie case; 2) Whether balance of convenience is in his favour; 3) Whether the applicant will suffer irreparable injury, if his prayer for interlocutory injunction is disallowed.

15. Taking into consideration these three fundamental conditions, I framed the following points with findings thereon for reasons as under:

<b>Sr.No</b>	<b>Points</b>	<b>Findings</b>
1	Whether the applicants have made out prima-facie case ?	<b>Yes</b>
2	Are applicants having balance of convenience in their favour ?	<b>Yes</b>
3	To whom irreparable loss will be caused, if injunction as sought by applicants is not granted ?	<b>Applicants.</b>
4	Are applicants entitled to interim relief as prayed for ?	<b>Yes</b>
5	What Order ?	<b>As per final order</b>

### **REASONS**

#### **As to point no. 1 :-**

16. In support of the claim of plaintiffs they have produced on record the sale deeds. From perusal of the these sale deeds, it appears that plaintiff no.1 has purchased property no.1324, admeasuring 1600 sq.ft.

from one Gajanan Andhare for consideration of Rs.56,000/- on 16.08.2007. However, it is specifically mentioned in that sale deed that at the time of execution of said sale deed the vendor of said property was in actual possession of 1316 sq.ft. and hence he delivered the possession of 1316 sq.ft land to plaintiff no.1. In Gao Namumna-8 also the area of 1316 sq.ft land is shown.

It also appears that on 01.02.2008 the plaintiff no. 2 has purchased the property no.1325 admeasuring 1600 sq.ft with actual possession of 1269 sq.ft. from one Gopal Andhare for consideration of Rs. 53500/-. However, in Gao Namuna-8 of grampanchayat Shirla the area of property no.1325 is shown 1600 sq.ft.

17. Thus, plaintiff nos. 1 and 2 came with a case that they are in possession of the property nos. 1324 and 1325 respectively with area whatever was in actual possession of their vendors at the time of execution and registration of the alleged sale deeds.

18. On the contrary, defendant came with a case that said sale deeds are false and fabricated made in collusion with the vendors. But, it is not the case of defendant that he has challenged the said sale deeds in competent court. It is admitted position on record that defendant has preferred a regular civil suit no.71/13 for permanent injunction with a application for interim relief in respect of same subject matter i.e. suit property restraining plaintiffs (defendant in RCS 71/2013) from disturbing the possession of defendant (plaintiffs in RCS 71/2013) and the said application for interim relief is rejected by the Court.

19. The stand of defendant is that he is the owner of property no. 126/1 admeasuring 992 sq.ft. He has constructed 3 rooms thereon living 62 x 3.5 ft. open land towards southern side of his house. But, nothing is produced on record by defendant prima facie to show that he is the owner of 992 sq.ft. land of property no.126/1. However, Gao Namuna-8 of grampanchayat Shirla regarding property of defendant produced on record by plaintiffs shows that the area of property belonging to defendant is 429 sq.ft. However, property number mentioned therein is 102. In this context, the Adv. for plaintiffs argued that the property number may change, but it is the same property belonging to defendant. However, it is not the case of defendant that he is in possession of more than one house.

20. The photographs placed on record by defendant shows that the bricks are kept on the disputed site. It is not disputed that the bricks kept on the disputed site are belonging to the plaintiffs. Thus, prima facie the plaintiffs are in possession of suit property. So also from perusal of the letter alleged to have been issued by the grampanchayat Shirla to plaintiff no.2 Ganesh Bochare shows that the said letter was issued to plaintiff no.2 on the basis of application of defendant in respect of Gondan tree. From perusal of the said letter it appears that defendant stated in his application that the Gondan tree was situated upon the land of plaintiff no.2.

21. It is well settled that in a suit for injunction the primary question to be considered is one of possession on the date of filing of the suit. It is also well settled that a person in possession though without title can resist interference from another who has no better title than himself and got injunction.

22. Thus, it appears on record that there is a bonafide contest and a serious question is required to be tried. Hence, I am of the opinion that plaintiff is having a prima facie case in his favour.

**As to point nos.2 to 4 :**

23. I have already stated above that prima facie case is in favour of plaintiffs. The terms prima facie case, balance of convenience and irreparable loss are cumulative to each others. Hence, I record my findings as to point nos. 2 to 4 accordingly.

24. With these observations, I pass the following order.

**ORDER**

1. Application is allowed.
2. The defendant, his agent, servant or any other person claiming through him is hereby temporarily restrained from disturbing the possession of the plaintiffs over the suit property till decision of the suit.

Dt:- 06.11.2014

(P.H. Nerkar)  
Civil Judge (J.D.), Patur.