



This is an application filed by plaintiffs for temporary injunction under Order XXXIX, Rule 1 & 2 R/w Section 151 of Code of Civil Procedure. The suit is for declaration and permanent injunction. The subject matter of the suit is 30 X 15 ft wide road/open land, situated between plot No. 598 & 599 of mauza Dharni, specifically described in suit plaint map in the letters 'CDC1D1'. The four boundaries of the same specifically mentioned in it. (hereinafter the said property is referred as 'the suit property').

**Case of plaintiffs in short is as under:**

2. Plaintiff No.1 & 2 are owner of the property No. 600 & 602 respectively, situated at Mauza Dharni. There is North-South 30 ft wide road towards northern side of their house, which is in use of them to egress and ingress. Defendant No.1 is registered Public Trust bearing it's registration No. A-541 and other defendants are its body members. In the year 1947 defendant No.1 received land admeasuring about 1600 Sq.Ft. (towards North-South 20 X 50 and towards East-West 30X10), as per the order of Sub-Divisional officer, Dharni. Accordingly, the entry of the same has been taken in the revenue record and it is numbered as plot No.598, Sheet no.7, admeasuring about 247.5 Sq.Mt. The Sanad has been also issued in the name of defendant No.1 in respect of said plot. In the said Sanand road has been shown towards all side of the plot. There was some open land just adjacent to the land of the defendant No.1. One Ganesh Beniem in the year 1963 applied to the government for the

said land for running hotel, and as such, government allotted him 800 sq.ft. land i.e. 20 X 40 sq.ft. The Ganesh Hotel is situated on the same land. There is still total 594 sq.ft., open land i.e. the suit property, remained in between the plot of Ganesh hotel and defendant No.1. The owner of the said Ganesh Hotel in the year 1966 had prayed for possession of the said open land but his prayer had been rejected by taking into consideration the welfare of the public at large, as the said land was the only land/road to approach the maid road. Since long plaintiffs are using the said land/road for egress and ingress, as the same is attaching to the 12 ft wide road which is just in front side of their house. Their customers also approaches to their shop/house from the said road/land.

3. Defendant No.1 increased the area of it's land from 1,600 Sq.Ft. to 3,768 Sq.Ft., in collusion with other. Plaintiffs filed the complaint dated 25.10.2021 with the Superintendent of Land Revenue office, Dharni. On the same date they also filed the complaint with the Nagar Panchyat Dharni. No action has been taken on their complaint. Meanwhile, defendants moved application with the police Station Dharni, in order to grant protection at the time of demarcation of the said open land. Recently defendant No.1 tried to initiate construction on the said open land without any right or authority. The said land is in the name of government. Time to time they talked with defendants, but all has been gone in vain. There is no alternative way to them to approach their houses from the main road. Hence, they filed suit for declaration and permanent injunction along with present injunction application for restraining the

defendant No.1 from making construction over the suit property.

4. Defendants filed common written statement cum reply vide Exh.34. They admitted that defendant No.1 is public trust and other defendants are it's body member. They denied entire claim of plaintiffs. They denied existence of 30 ft wide road towards eastern side of plot No. 598, as well as use of the same by defendants to approach to their houses. They contended that City Survey of the Nazul department held in the year 1974 at Dharni and the area and map of plot No.598 of defendant No.1 was corrected as 350.19 sq.mt in it. They denied existence of public roads on all four side of the plot of defendant No.1. They contended that there is some open space towards the eastern side of the Temple and same is in use of the trust for holding religious celebrations and various functions around the year. The building of trust has become dilapidated, therefore, Nagar panchayat issued letter dated 04.11.2019 for taking suitable action for its building. Defendant no.1 measured the area of its plot i.e. 598 from Deputy Superintendent of land Record, Dharni on 11.11.2021. Nazul department gave the date 01.12.2021 to fix the boundary of the said plot as per measurement but plaintiffs raised objection for the same. Defendants are very much within their legal rights to raise proposed construction as per rules, regulations and law. They claimed that the said open land is belonging to them and same is in their possession prior to city Survey held in the year 1974. Plaintiffs have separate paving block road to approach the main market and locality of Dharni. Hence, they prayed for rejection of the application with heavy costs.

**Admitted Facts:**

5. It is not disputed that there is 12 ft wide road/lane in front of the house of the plaintiffs. It is also not disputed that there is open land in between the plot of the defendant No.1 and one Ganesh Hotel. It is also not disputed that the said land between these two plots is the disputed property in the present suit. It is also not disputed that the defendant No.1 is owner of the plot No.598. It is also not disputed that defendant No.1 received the said plot by way of Sanad.

6. On the basis of rival contentions, following points arise for my consideration, I have recorded my findings thereon for the reasons given below :

SR. No.	POINTS	FINDINGS
1.	Whether plaintiffs prove that they have prima-facie case in their favor ?	<b>Affirmative</b>
2.	Whether plaintiffs prove that balance of convenience tilts in their favor ?	<b>Affirmative</b>
3.	Whether plaintiffs prove that they will suffer loss and injury if the injunction is not granted?	<b>Affirmative</b>
4.	What order?	<b>As per final order.</b>

**REASONS**

7. Heard **Shri. Kadam** learned advocate for plaintiffs and **Shri. Dhande** for defendants. Both the parties filed various documents on record. I took following documents filed by plaintiffs

which are material for deciding the application.

- i) Property Card of plot No. 598.
- ii) Copy of Inquiry register in respect of plot No.598
- iii) City Survey map of plot no. 598.
- iv] Copy of panchnama dated 15.03.2019.
- v] Copy of order dated 07.10.1947 passed by  
Tahsildar Dharni, in respect of allotment of 1600  
sq.ft., land in favor of defenant No.1.
- vi] Copy of Sanad in respect of land of defendant  
no.1 i.e. plot No.598
- vii] Copy of City Survey Map of the plot no. 598.
- viii] Copies of the application filed by plaintiffs with the  
Nagar Panchayat Dharni and Superintendent of  
land record dated 25.10.2021
- ix] Copy of Sanad of plot No.599.
- vii] Copy of demarcation sheet of plot No. 599.

8. On the other hand defendants filed following documents.

- i] copy of city survey map of the plot No. 597 to 601.
- ii) Letter of Nagar panchyat Dharni dated 4.11.2021.
- iii] Two photographs showing suit property.

9. Advocate of plaintiffs argued that the suit property is the government property and they have easementry right of way on the same. The documents filed by them are corroborated with their pleading. Defendants without any right or authority are going to start the construction over the suit property. Therefore, they prayed for temporary injunction restraining defendants from making any

construction over the suit property. In support of his contention he relied on following ruling.

- i) [2014 (1) BCJ 313], *Municipal Corporation of Greater Mumbai and another Vs Prakash Cooperative housing Society Ltd.*
- ii) [2015 (3) BCJ 498], *Tarachand Jamnadas Wagwani Vs Anusayabai Bapuji Chandramore.*
- iii) 2022 (5) ALL MR 580, *Sakhahari Dagdu Ghule & Ors Vs President Swarajya Skhishan Sanstha, Aurangabad.*
- iv) 2021 (5)ALL MR 623, *Jayant Vasant Kadam & Ors Vs Shantaram laxman Shinde & ors.*

10. Advocate of defendants argued that there is no such road towards eastern side of the plot No.598, as alleged by plaintiffs. The defendant No.1 has kept open space towards eastern side of the temple for holding religious celebration and various function around the year. Defendants are very much within their legal rights to raise proposed construction after having legal permission from the concerned departments as per rules, regulations, and law. The documents filed by them as well as plaintiffs shows that the defendant No.1 is in occupation and possession of area admeasuring about 350.19 sq.mt. Plaintiffs have no right or authority to raise any kind of objection if the defendants starts their construction over the said open land. Hence, he prayed to reject the application. In support of his contention he relied on following ruling.

- i) 2012 (5) Mh.L.J. 769, *Best Sellers Retail (India) Pvt. Ltd.*

*Vs Aditya Birala Nuvo Ltd.*

*ii) 2012 (2) Mh.L.J. 215, Gorakh Mahadev Survase and Ors  
Vs Narayan Balu Dhombe and Ors.*

*iii) 1980 Mh.L.J. 587, Sujanbai Haribhau Kakde and Ors Vs  
Motiram Gopal Saraf and another,*

*iv) 1991 (1) Mh.L.J. 181, Vidyadhar Govind Patwardhan Vs  
Arvind Shreedhar Ghatpande*

11. At the very outset I find it necessary to observe that relief of injunction and more particularly temporary injunction is essentially a equitable relief, based on principle of equity, justice and good conscience. Since relief of temporary injunction is discretionary relief, obviously to be exercised by the court judiciously, keeping in mind well known principles i.e. (i) whether the plaintiff has a prima facie case, (ii) whether the balance of convenience is in favor of the plaintiff and (iii) whether the plaintiff would suffer any irreparable injury if relief is not granted. Expression "prima facie case" simply means that court should be satisfied that there is a probability of the plaintiff for getting relief as prayed and the documents and the facts relied upon by the plaintiff, clearly indicate the existence of legal right in his favor, to be protected from any invasion.

#### **AS TO POINT NO.1**

12. Keeping above mentioned legal proposition in mind, first of all it be noted that as per contention of plaintiffs that they have ancestral easementary right for egress and ingress from the land/road situated towards the eastern side of the plot of the defendant No.1 i.e. 598. On the other hand defendants contention is that there is no

road towards eastern side of the plot of defendant no.1. Plaintiffs have filed the document i.e. Sanad of the plot no.598. The said document i.e. Sanad prima facie shows that there is not only road shown towards the northern, southern and western side of the said plot but also shown towards the eastern side of the said plot. Apart from that the document i.e. Sanad of plot No.599 of one Ganesh Joshi also prima facie shows that there is open land between the plot no. 599 and 598. On perusal of these documents, contention of defendants that there is no road towards eastern side of the plot of defendant No.1 is not reliable at this stage of the suit. On the other hand by filing these documents plaintiffs prima facie established that there is road/open land towards the eastern side of plot of defendant No.1.

**13.** Plaintiffs contended that the said land is owned by the government. On the other hand defendants contended that the trust has kept the open space towards the eastern side of the temple for holding religious celebrations and various functions around the year. Defendants have not contended or pleaded that the said open space is owned by defendant No.1. In written statement also they have not specifically denied that the said land is not belonging to the government. Both the persons whose affidavit filed on record by defendants also not contended that the said land is belonging to defendant No.1. Under such circumstances at this stage reliance can be put on the case of the plaintiffs that there is road/land towards eastern side of the plot of the defendant No.1 and same is not belonging to defendant No.1 and said facts are duly corroborated by

the documentary evidence.

14. Defendants further contended that they have legal rights to raise proposed construction after having legal permission from the concerned department as per rules. The defendants have not filed any kind of legal permission or letter issued by the concerned department to start the construction over the any of the property. Therefore, if the defendant No.1 wants to construct over the said land then it ought to have sought permission from the competent authority to do the construction. Whether plaintiffs have easementary right over the suit property or not, it will be decide by full fledge trial. At this stage, the documents filed on record by both the parties prima facie shows that the City survey officer or Nazul department neither gave any plot number to the disputed land which is in between the plot of defendant No.1 and one Ganesh hotel nor alloted the same to any person. Whether it is road or open land it will also be decided after leading evidence. It is not defence of defendants that defendant No.1 is owner of the said land and competent authority gave them permission to construct on it. Therefore, without permission from the competent authority the defendant No.1 cannot start construction over the said disputed land/suit property.

15. Advocate of defendants argued that plaintiffs are already having road/lane in front of their house to ingress and egress. So far as this contention of defendants is concerned they cannot compel or direct the plaintiffs to use the particular road/way to ingress or egress. It is the choice of plaintiffs which road/lane will be used and which not to be used to reach their houses. Therefore, I do not find

any substance in argument of defendants in that respect.

16. I have gone through the rulings relied by the plaintiffs as well as defendants. In the ruling of 'Municipal Corporation' cited *Supra* relied by plaintiffs, the Hon'ble Bombay High Court, held that, 'the person in settled possession of the premises cannot be dispossess from it without following due process of law'. There is no dispute in respect of this settled principle law.

17. In the case of 'Tarachand' cited *Supra* relied by plaintiffs is concerned, with due respect the facts of said case are totally different from the facts in the case in hand. Therefore, ratio of the said ruling is not applicable in the case in the hand.

18. In the case of 'Sakhahari' cited *Supra* relied by plaintiffs is concerned with due respect the facts of said case are totally different from the facts in the case in hand. In the said ruling the suit was filed on the basis of the sale deed and later on correction deed in respect of the same as the area was changed had been executed. In respect of the some portion of the same property one another document of Vatanipatra was executed by defendants and later on sale deed also had been executed. On the basis of said sale deed defendants tried to encroach. The Hon'ble Court held that the contents of the sale deed is to be believed and not theory which is orally put forth. Therefore, with due respect this ruling is also not helpful in deciding the injunction application. Ratio of the said ruling is not disputed.

19. In the case of 'Jayant' cited *Supra* relied by the plaintiffs

is concerned the facts of this ruling is quite similar to the facts of case in hand. In the ruling the plaintiff filed suit for removal of encroachment on the road and not to restrain him from using the said road. The injunction application was allowed. The Hon'ble Bombay High Court held that recitals in sale deed prima facie fortify plaintiffs case that there is exists a way, which is to be used by him for entering his plot. In the case is hand also the plaintiff filed the document of Sanad of the plot of defendant No.1 and towards eastern side of it road is shown. The said road is alleged to be used by plaintiffs for entering in their plot. Therefore, ratio of the said ruling is applicable in the case in the hand.

20. In the case of '**Best Sellers**' *Supra* relied by defendants, the Hon'ble Supreme Court, held that, "Court can refuse temporary injunction, if the injury suffered by the plaintiff on account of refusal of temporary injunction is not irreparable". There is no dispute in respect of this settled principle of law.

21. In the case of '**Gorakh**' *cited Supra* relied by defendants, the Hon'ble Bombay High Court, held that 'for grant of injunction to protect possession of immovable property, parties must substantiate their case of possession by corroborative material'. In the case in hand, it is not case of any of the party to the suit that they are in possession of the suit property. The case of plaintiff is very simple that they have easementry right from the suit property. Therefore, ratio of the said ruling with due respect is also not applicable while deciding the present injunction application.

22. In the case of 'Sujanbai' cited *Supra* relied by defendants, the Hon'ble Bombay High Court, held that, temporary injunction cannot be used to deprive defendant of his possession. In the present case it is not case/defence of defendants that they are in possession of the suit property. Therefore, with due respect as the facts of said ruling are different than the fact of the case in hand this ruling is also not helpful to defendants in any respect while deciding the application.

23. In the case of 'Vidyadhar' cited *Supra* relied by defendants, the Hon'ble Bombay High Court, held that, "Court must be careful while granting interim reliefs, no cock and bull story entitles the author of that story to interim reliefs'. In the said ruling the dispute was between the landlord and tenant, whereas, in the case in hand the dispute is about the open land which is in use of them as per respective contention of the parties. Therefore, with due respect facts of ruling are different from the facts of the case in hand. Hence, said ruling is also not helpful to defendants in any respect while deciding the application.

24. In view of above mentioned facts and circumstances, I found that plaintiffs established their prima facie case about existence of road/open land towards eastern side of the plot of the plaintiff and they use the said land to egress and ingress. Obviously the defendant No.1 has taken the initiative to commence construction over the suit property without permission, then definitely aggrieved party will approach to the Court for seeking relief. Therefore, in my view plaintiffs have made out prima facie case in their favor. Hence, I

answer point No.1 in affirmative.

**AS TO POINT NO. 2:**

25. **Order 39 rule 1 of the Code of Civil Procedure, 1908,** says that, *“Where in any suit it is proved by affidavit or otherwise,- (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, alienation, 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”*

26. As plaintiffs have established prima facie case in their favor hence their interest be safeguarded by means of granting temporary injunction. If temporary injunction is not granted, then there is every possibility of losing their right. In that event, much inconvenience will be caused to the plaintiffs rather defendants. Therefore, balance of convenience also tilts in their favour rather defendants. Thus, I answer point No. 02 also in affirmative and record my finding accordingly.

**AS TO POINT NO.03 :-**

27. As plaintiffs have made out prima facie case in their favor, if the temporary injunction is not granted in their favor then definitely irreparable loss will be caused to them which cannot be

compensated in terms of money. On the other hand if the application is allowed then no prejudice will be caused to defendants in any manner whatsoever under law. Therefore, I answer point No. 03 in the affirmative and record my finding accordingly.

**AS TO POINT NO.04 :-**

28. In conclusion, three important aspects mentioned above i.e. prima-facie case, balance of convenience and irreparable loss are established by plaintiffs. The existence of all three aspects will ultimately result into entitlement of injunction in favor of plaintiffs. Therefore, the application of plaintiffs is deserves to be allowed. Hence, following order;

**ORDER**

- 1) Application is allowed with costs in cause.
- 2) Defendants are hereby temporarily restrained from making any kind of construction over the suit property without due permission from the competent authority till the decision of the suit.

Date : 24/06/2022.  
Dharni.

**[Satish Gopalrao Gore]**  
Jt. Civil Judge, Jr. Dn.  
Dharni.

**Order Below Exh. 5**

**15**

**R.C.S. No. 35/2021  
Nishant Vs. Hanuman  
Temple & ors**

**Certificate**

I affirmed that, the contents of this PDF file Judgment/  
Order are same word to word as per original.

Name of Stenographer	:	A. S. Pathak,
Court Name	:	Jt. Civil Judge Jr. Dn. & J.M.F.C., Dharni.
Order signed by P.O.	:	24.06.2022.
Order uploaded on	:	29.06.2022.