

MHAU070030272025



**ORDER BELOW EXH.5.**

The present application is filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking a temporary injunction restraining the defendants from allegedly obstructing the plaintiffs in drawing water from the well situated in commonly in the land of Survey No.237/D and 237/C admeasuring 1 H 1 R and 61 R respectively (Hereinafter referred as “**the suit properties**”) and from using the access pathway thereto.

**The plaintiffs’ case in nut shell as under :**

02. The plaintiffs contend that they are co-sharers along with the defendants in respect of the suit properties and that the well situated in the suit lands is a common well from which they are entitled to draw water for irrigating their lands. It is alleged that the defendants have recently started causing obstruction by interfering with the motor, attempting to disconnect electricity supply, and preventing the plaintiffs from taking water, thereby endangering the standing crops.

03. Summons duly served to defendant Nos.1 to 4. The suit is proceeded without W.S. against defendant No.2. Defendant Nos.1, 3 and 4 in consequence of suit summons appeared and filed their Written Statement cum Say at Exh.12. The defendants have opposed the application by filing their written statement cum say, contending that the well is a joint well not only of

the plaintiffs and defendants but also of other co-sharers, namely Archana Gunjal and Amit Gunjal, who have not been impleaded as parties to the suit. It is further contended that no obstruction has been caused and that the plaintiffs have suppressed material facts. According to the defendants, the present proceedings are initiated with an ulterior motive to restrain them from exercising their lawful co-ownership rights.

04. Perused the record. Heard Ld. Advocates plaintiff and defendants at length.

05. Considered pleadings of both the parties of which the points arise for my determination along with findings and reasons are as follows;

<b>Sr. No.</b>	<b><u>Points</u></b>	<b><u>Findings.</u></b>
1	Whether the plaintiff has made out a prima facie case in her favour ?	In negative.
2	Whether balance of convenience tilts in favour of the plaintiff ?	In negative.
3	Who will suffered irreparable loss if temporary injunction is not granted?	In negative.
4	What order ?	As per final order.

### **REASONS**

06. To support the contentions of the plaintiffs, they have relied upon copy of 7/12 extract of Survey Nos.237/D and 237/C. Whereas defendants have not adduced any evidence in support of their defence.

### **AS TO THE POINT NOS.1 TO 3:-**

07. At the outset, it is an admitted position emerging from the record, including the 7/12 extracts and pleadings of both sides, that the well situated in Survey No. 237/C is a joint and undivided property having multiple co-

owners. It is also not in dispute that apart from the present parties, other co-sharers have a subsisting interest in the said well. However, such co-sharers have not been impleaded as parties to the present suit.

08. In this backdrop, the first requirement of establishing a prima facie case is required to be examined. Though the plaintiffs assert a right to draw water from the well, the said right is admittedly not exclusive but is a joint right along with other co-owners. In absence of all necessary parties, particularly other co-sharers whose rights are likely to be affected, no effective or binding interim order can be passed. Any injunction granted in the present proceedings would necessarily operate upon a joint property and would have the effect of regulating the rights of non-parties, which is impermissible in law. Further, the precise nature, extent, and manner of user of the well by each co-sharer is a matter requiring adjudication on evidence at trial. At this interlocutory stage, the plaintiffs have failed to demonstrate a clear, definite, and enforceable right warranting protection by way of injunction.

09. The plaintiffs have also alleged obstruction by the defendants; however, the said allegations are specifically denied. No cogent and independent material is placed on record at this stage to substantiate the alleged acts of obstruction such as disconnection of electricity or prevention from drawing water. The issue, therefore, remains a seriously disputed question of fact, which cannot be conclusively determined without evidence. In absence of satisfactory prima facie proof of interference, the discretionary relief of injunction cannot be granted.

10. As regards the balance of convenience, it is well settled that in case of joint property, each co-owner is entitled to reasonable use and

enjoyment of the property. Granting an injunction in favour of one set of co-owners, particularly in the absence of other co-owners, would disturb the co-equal rights of others and may result in inequitable consequences. Such an order may indirectly curtail the lawful rights of the defendants as well as other non-impleaded co-sharers. On the contrary, refusal of injunction would not take away the plaintiffs' legal remedies, as they can establish their rights at trial. Hence, the balance of convenience does not tilt in favour of the plaintiffs.

11. Insofar as irreparable loss is concerned, the plaintiffs have contended that their crops would suffer damage for want of water. However, such loss, if proved, is essentially compensable in monetary terms. The plaintiffs have not demonstrated any exceptional circumstance to show that the injury would be irreparable in nature or incapable of being adequately compensated. On the other hand, grant of injunction in the present facts may lead to multiplicity of disputes and complications in the enjoyment of a joint resource.

12. It is also pertinent to note that grant of temporary injunction is a discretionary and equitable relief, and a party seeking such relief must come with clean hands and disclose all material facts. In the present case, the non-impleadment of admittedly existing co-sharers and absence of clear material regarding alleged obstruction creates serious doubt about the entitlement of the plaintiffs to such discretionary relief.

13. In view of the aforesaid discussion, this Court is of the considered opinion that the plaintiffs have failed to establish (i) a clear prima facie case, (ii) balance of convenience in their favour, and (iii) likelihood of irreparable injury. Consequently, the application is devoid of merit. Hence,

In view of above reasoning, I answer points Nos.1 to 3 in the negative and in answer to point No.4, the following order is passed.

**ORDER**

- 1 The application Exh.5 is rejected.
- 2 Cost will abide the main cause.
- 3 Pronounced in open Court.

Date: 09.04.2026

( Sushama S. Agrawal )  
Jt. Civil Judge, Jr. Dn., Gangapur  
Tq. Gangapur, Dist.Aurangabad.