

**ORDER BELOW EXH. 05 in RCS No. 46/2023**

Pawan Mansing Jonwal Vs. Nihalsing Dattu Jonwal  
(CNR No. MHAU10-000539-2023)

**01.** Present application is filed by the plaintiff for temporary injunction under Order 39 Rule 1 of the Civil Procedure Code.

**02.** It has contended by the plaintiff that he has purchased the agricultural filed situated at Gut No. 130 from Mandabai Daulatrao Jonwal by sale deed having No.284/2022 (herein after referred as suit property). Since the date of sale deed he is in possession over the suit property. The defendants who are having their land at Gut No. 129, without having any right and interest trying to take possession of the suit property. On 03.06.2023 defendants tried to cultivate the suit property by tractor. On the objection of plaintiff, defendant take away the tractor. Thereafter on next date plaintiff again come to the suit property and assaulted plaintiff and his wife, threatened to kill them. Thereafter plaintiff approached to Khulabad Police Station but police registered non cognizable offence and directd plaintiff to approach Civil Court. As the plaintiff is having apprehension of dispossession, constrained to file present suit. The plaintiff has made out prima facie case, balance of convinience lies in his favour. If defendant not restrained from causing obstruction he will suffer irreperable loss. Hence prayed to issue temporary injunction against the defendant.

**03.** Defendant appeared and filed say below Exh.18. They have denied all contentions and allegations made by the plaintiff.

According to him the plaintiff has described false boundaries of the suit property. The suit property Gut No.130 is the ancestral property of defendant. The 7/12 extract shows that defendant No.1 and 2 are the owner and possessor of the gut No. 130. Dattu Jonwal had sold 50 R land to Mandabai Jonwal. The plaintiff has purchased said suit property but boundaries are incorrect. The suit is affected by the provision under Order 7 Rule 3 of the Civil Procedure Code. Defendant have never obstructed and interfere in the possession of the plaintiff. The plaintiff and defendants are adjacent land holder. The plaintiff is intending to grab the property of defendant. The defendants were having preferential right to purchase the suit property but plaintiff took disadvantage of the economical condition of the plaintiff. The plaintiff has filed present suit without any cause and reason hence prayed to reject the application.

**04.** Considering the facts of the application following points arise for my determination. Findings thereon, are recorded with reasons given under :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiff has made out prima- facie case ?	Affirmative
2. Whether the balance of convenience lies in favour of plaintiff ?	Affirmative
3. Whether plaintiff will suffer irreparable loss if prayer is rejected ?	Affirmative
4. What order?	As per final order.

**REASONS****AS TO POINT Nos.1 to 3**

05. Heard Ld. Advocate for plaintiff and defendant at length. Perused the documents filed by plaintiff and defendant.

06. As three points are interlinked, to avoid repetition discussed together.

07. In a matter arising under Order XXXIX, Rules 1 and 2, Code of Civil Procedure, three conditions are to be satisfied, that the applicant has a *prima facie case*; the balance of convenience is in his favour, in the event of not granting injunction he would be put to an irreparable loss and injury. All these three conditions must co-exist so that the applicant can be entitled to injunction under Order XXXIX, Rule 1 of Civil Procedure Code.

08. The plaintiff has filed present suit for perpetual injunction. It has contended by the plaintiff that he has purchased suit property from Mandabai Jonwal. The plaintiff is cultivating the suit property. According to him the defendant trying to cultivate his land. The defendant assaulted him and his wife. It is not disputed that the plaintiff has purchased suit property from Mandabai Jonwal. The plaintiff has purchased property in the year of 2022. The defendant has contended that the suit property is their ancestral property. But the 7/12 extract, filed on record shows that defendant have no possession and cultivation over the suit property having gut No. 130. The plaintiff has described suit property and its boundaries as per the sale deed. The defendants are having their own land Gut

No. 129. The 7/12 extract prima facie shows that the plaintiff has purchased property in gut No. 130 and he is having possession over it. The predecessor of defendant have long ago, sold their share. Now defendant has no share and possession in Gut No. 130. Defendant have no were challenged validity of sale deed by way of counter claim or any suit. At this juncture prima facie possession of the plaintiff is made out. If temporary injunction till adjudication of suit not granted, the plaintiff will suffer irreparable loss. Hence the plaintiff is entitled for temporary injunction as prayed. Hence I have recorded point No.1 to 3 in the affirmative.

**As to Point No.4-**

09. In the result of discussion made to the point No.1 to 3 plaintiff is entitled for relief of temporary injunction. Hence order,

**-:: ORDER ::-**

1.	Application is Allowed.
2.	Defendants and his representatives are restrained temporarily from causing obstruction to the possession of plaintiff over suit property having area 50 R situated at Gut No. 130, village Mauje Khandipimpalgaon, Tq. Khultabad.
3.	Costs in main cause.

Date: 07/11/2024

**(N. R. Indalkar)**  
Civil Judge Junior Division  
Khultabad.

**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 the Stenographer : J. A. Jamdade  
Court Name : C.J.J.D. & J.M.F.C. Khultabad.  
Date : 07.11.2024  
Order signed by the  
Presiding Officer On : 07.11.2024  
Order uploaded on : 08.11.2024