

MHAU120003992020



**R.C.S. No. - 38/2020.**  
**Seema Vs. Raghunath**

**ORDER BELOW EXH. - 5**

This is an application filed by applicant Under Order 39 Rule of I and II of Civil Procedure Code for seeking order of temporary injunction.

2. Plaintiff has filed suit for injunction inter alia filed this application for temporary injunction against the defendant.

3. In short it is contentions of the plaintiff that, she is the owner and possessor of the agricultural property situated in Gut No. 4 total area 2 H 91 R out of which 1 H land bounded by Towards East - Pushpa Ramesh Pawar, Towards West - Government Road, Towards South - Nala and Towards North - Land of Rangnath Mahajan situated at Mukhed, Tq. Soygaon, Dist. Aurangabad (In short above mentioned property will be called as “suit property” for the sake of brevity).

4. It is further contentions of the plaintiff that, as a adjacent land holder defendants are taking misuse of their muscles and money

power and try to encroachment over the suit property, on the basis of illegal measurement of their land. Defendants having no concerned with the suit property. However, they are trying to obstruct the peaceful possession of plaintiff over the suit property. Therefore, plaintiff constrained to filed suit for perpetual injunction and interalia, filed application for temporary injunction with the contentions that, she is having prima facie case, balance of convenience in her favour and if application is not allowed then irreparable loss will be caused to the plaintiff only. Hence, prayed for allow the application in the interest of justice.

**5.** Defendants filed on record their written statement cum written reply below Exh. 20. They have denied all the adverse contentions of the plaintiff. They have specifically denial the cause of action of this application and contended that, since 09/07/2020 to 11/07/2020, they were in Siddhivinayak Hospital at Chalisgaon for the treatment of defendant No. 2. Therefore, incident mentioned by plaintiff in the plaint is imaginary one and against the facts and therefore prayed for reject the application with cost.

**6.** After considering the submission and perusal of record following points arise for my determination and I have recorded my findings on those points with reasons as follows:-

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether applicant establish that prima facie case is in her favour ?	<u>Affirmative.</u>
2	Whether applicant establish that balance of convenience is in her favour ?	<u>Affirmative.</u>
3	Whether applicant establish that if injunction is not granted, she will suffer heavy irreparable loss ?	<u>Affirmative.</u>
4	What order ?	<u>As per final order.</u>

### FINDINGS AND REASONS

7. In support of the case of plaintiff, plaintiff filed on record 7/12 extract of suit property below list Exh. 4. Defendant filed on record Medical Certificate below list Exh. 26, in support of their contentions.

#### As to Point No. 1 :-

8. It is the case of plaintiff that, she is the owner and possessor of the suit property. It is pertinent to note that, defendants are not denied the above mentioned contentions of the plaintiff specifically.

Moreover, plaintiff filed on record 7/12 extract of suit property which shows that, she is the owner and possessor of the suit property. It is pertinent to note that, to rebut the presumption of 7/12 extract, which is mentioned in Section 157 of Land of Revenue Code, no any documentary evidence filed on record. Therefore, considering the 7/12 extract, I am of the view that, plaintiff succeed to prove her possession over the suit property prima facie.

**9.** It is the contentions of the defendant that, the cause of action mentioned by the plaintiff in plaint and in application is imaginary one and against the facts. It is the specific contention of the defendant that, since 09/07/2020 to 11/07/2020. They were at Chalisgaon for treatment of defendant No. 2, in support of their contentions, they have filed on record medical certificate issued by the Siddhivinayak Hospital dated 16/08/2020. Which shows that, Pramilabai Raghunath Raundale was visited to the hospital on 09/07/2020 to 11/07/2020. However, such medical certificate not sufficient to hold that, defendant No. 1 & 2 were hospitalized. Therefore, at the stage the medical certificate filed by the defendant not sufficient to prove the contentions of the defendant.

**10.** Therefore, considering the evidence on record i.e. particularly 7/12 extract of the suit property. I am of the opinion that, plaintiff succeed to prove prima facie case. Hence, I answer Point No.

1 in affirmative.

**As to Point No. 2 :-**

**11.** Plaintiff has filed on record 7/12 extract and prove prima facie case in her favour. Defendant not filed on record any kind of documentary evidence to rebut the presumption attach to the 7/12 extract, which is mentioned in the Section 157 of Land Revenue Code. Therefore, I have no option to held that, balance of convenience in favour of the plaintiff. Hence, I answer Point No. 2 in affirmative.

**As to Point No. 3 :-**

**12.** It is the contentions of the plaintiff that, defendant entered into the suit property on 10/07/2020 and stated that, when he will not remain present in the suit property. Then they will encroach over the suit property. However, defendant denied the above mentioned incident dated 11/07/2020 and come with the case that, they were Siddhivinayak Hospital on 11/07/2020. However, medical certificate filed by the defendant, in support of their contentions not sufficient to prove the contentions of the defendant. Therefore, contentions of the plaintiff seems to be probable one. Therefore, I come to conclusion that, plaintiff succeed to prove Point No. 3. Hence, Point No. 3 in affirmative.

**As to Point No. 4 :-**

**13.** As plaintiff proved Point Nos. 1 to 3 in her favour. Therefore, in view of the provision Under Order 39 Rule of I and II. I am of the opinion that, applicant is entitled for order of temporary injunction in her favour and against the defendants. Hence, I pass following order in the answer of Point No. 4 :-

**ORDER**

1. Application is allowed with costs.
2. Defendant No. 1 & 2, their servant, agent and family members are hereby restrained by order of temporary injunction from creating obstruction to the peaceful possession of plaintiff over the suit property, otherwise than due process of law till disposal of suit.

**Dt. - 01/12/2020.**

**( S.S. Salwe )  
Civil Judge, (Jr.Dn.),  
Soygaon.**

**CERTIFICATE**

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

Name of the Stenographer	:- K. P. Dusane.
Court	:- C.J.J.D. & J.M.F.C., Soygaon.
Date	:- 01/12/2020.
Order Signed by the presiding officer on	:- 01/12/2020.
Order uploaded on	:- 02/12/2020.