

MHAU130000542023



**ORDER BELOW EXH.No.5 IN R.C.S. No.30/2023**

( Sayed Roman Vs. Nilraj Darpallu+2)

1. Plaintiff has filed this application for temporary injunction to restrain defendants from making construction over suit property.
  
2. Case of plaintiff in short is that, he is resident of Shahabazar, CTS No. 10516. Plaintiff has submitted that there is east west Government road over which defendant No.1 is trying to make unauthorized construction after making encroachment. Plaintiff has submitted that suit property is owned by Babu Rashanna, Papalal Rashanna, Makanna, Ramanna, Nandlal Laxman, Chandrabai Bali, Wamanrao Bansilal, Tarabai Laxman, Krishnabai Laxman.
  
3. Plaintiff has submitted that, defendant No.1 has started construction of his house over suit property without obtaining construction permission from Municipal Corporation. Therefore, on 17.4.2023 plaintiff and other residents of that locality had given written complaint to defendant No.2 and 3. Accordingly on 24.4.2023, Building Inspector of defendant No.2 and 3 had come to suit property and prepared panchanama. As per said panchanama defendant No.1 is doing unauthorized construction over suit property.

4. Plaintiff has submitted that on 26.4.2023 designated officer has again visited suit property and thereafter directed defendant No.1 to produce documents regarding his ownership over suit property. But till date defendant No.1 has not produced any document before defendant No.2 and 3. Defendant No.1 has shown Government lane as his property and he is doing construction over suit property without obtaining construction permission from Municipal Corporation.

5. Plaintiff has submitted that even though they have made complaint to defendant No.1 and 2, they have failed to take any action against unauthorized construction of defendant No.1. Hence plaintiff had prayed that defendant No.1 be restrained from making unauthorized construction over suit property.

6. Defendant No.1 has filed reply to this application at Exh.27. Defendant No.1 has denied all adverse allegations. Defendant No.1 has submitted that suit property is his ancestral property. He has obtained no objection certificate from the persons whose name is mentioned in PR card of CTS No.10516 on dated 29.4.2023. On PR card of CTS No. 10516, his name is mentioned as owner and lawful possessor of that land as legal heir of Babu Darpallu.

7. Defendant No.1 has submitted that, he has demolished old house existing over suit property and making construction of house. Defendant No.1 has submitted that on panchanama made by officers of Municipal Corporation on dated 24.4.2023 it is not

mentioned that defendant No.1 is making construction over government road after making encroachment.

8. Defendant No.1 has submitted that he is making construction over plot having area 20x24 square feet which is in his possession. Defendant No.1 has submitted that notice given by Municipal Corporation is illegal. Defendant No.1 has submitted that he is doing repairing of old construction after demolishing it. Plaintiff is not residing adjacent to suit property. In spite of it plaintiff has filed this suit just to harass him. Plaintiff has made false complaint him to defendant No.2 and 3, just to grab suit property from him.

9. Defendant No.1 has submitted that residents of that locality have no inconvenience due to his construction. Defendant No.1 has submitted that he has replied to notice given by defendant No.2 and 3 on 26.4.2023. Hence this application is liable to be rejected.

10. Advocate for defendant No. 2 and 3 have filed reply to this application at Exh.33. He submitted that after receipt of complaint, officers of Municipal Corporation had went to spot and prepared panchanama of illegal construction. Defendant No.1 is doing illegal construction over suit property without obtaining construction permission from Municipal Corporation. Hence this application should be allowed.

11. **The following points arise for my consideration and I record my findings with reasons :**

<b>Sr.No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Do plaintiffs prove that prima-facie case is in their favour ?	..In the affirmative.
2.	Do plaintiffs prove that balance of convenience is in their favour ?	..In the affirmative.
3.	Do plaintiffs prove that they will suffer irreparable injury in case injunction is not granted in their favour ?	..In the affirmative.
4.	What order ?	As per final order.

### **REASONS**

#### **AS TO POINT No.1 TO 3 :-**

12. I have heard learned counsel for parties.

I perused this application and say submitted. I perused record of this case. Pleading of defendant No.1 is silent on the point that he is doing construction over suit property after obtaining construction permission from Municipal Corporation. Defendant No.1 has pleaded that he is repairing his house after demolition of existing construction. This shows that defendant No.1 is doing new construction. Thus it is clear that defendant No.1 is doing construction over suit property without obtaining construction permission from Municipal Corporation.

13. No person within Municipal Corporation area has any right to do any construction without obtaining construction permission from Municipal Corporation. I perused panchanama prepared by Officers of Municipal Corporation dated 24.4.2023. As per panchanama of Municipal Corporation, defendant No.1 has done construction over suit property without obtaining construction permission from Municipal Corporation. Municipal Corporation had also issued notice to defendant No.1 on dated 26.4.2023 asking him documents regarding his ownership over suit property.

14. Defendant No.1 has no legal right to continue to make construction without obtaining construction permission from Municipal Corporation. Therefore, I hold that prima facie case is in favour of plaintiff. Plaintiff will suffer irreparable injury in case injunction is not granted in his favour. Balance of convenience is also in favour of plaintiff. Therefore I decide point No.1 to 3 in favour of plaintiff.

**AS TO POINT No. 4 :-**

15. In view of findings given above, it is clear that plaintiff has proved that he is entitled to get temporary injunction to restrain defendant No.1 from doing unauthorized construction over suit property. Therefore I pass this order.

**ORDER**

1. This application is partly allowed.

2. Defendant No.1 is hereby restrained from making any construction over suit property without obtaining construction permission from Municipal Corporation till disposal of this suit.
3. Rest of the prayer of plaintiff is rejected as he has not proved it.

Date :- 15.07.2023

**(Smt. S.N. Morwale)**  
Civil Judge Senior Division  
(Corporation Court), Aurangabad.

**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 : Sau. S. G. Pimple, Stenographer (Grade-1)  
Court : C.J.S.D. (Corporation Court), Aurangabad.  
Date : 15.07.2023  
Order signed by the  
presiding officer on : 15.07.2023  
Digital Signature on : 15.07.2023  
Order uploaded on : 15.07.2023