

MHAU130000222025



R.C.S. No. 13/2025
(Hasina Begum Vs. M.C.A.)

ORDER BELOW EXH. 5

This is an application for temporary injunction under Order 39 Rule 1 of the Code of Civil Procedure, 1908 (“C.P.C.” for short) made by the plaintiff. Read the application and reply of defendant corporation. Heard Ld. Advocates for the rival parties

02. Ld. Advocate for the plaintiff argued that the suit property is gifted to the plaintiff in the year 2019 by Mr. Arunkumar Raut, the Chairman of General Manek Shaw Co-op Housing Society, Harsul, Aurangabad. He has also executed a Gift Deed to that effect in her favour on 27.12.2020. She has got installed Electricity Connection on the suit property. She has also built house in brick and tin over it. In a proceeding bearing RCA No.223/2012 between Mr. Arunkumar Raut and the defendant Corporation and order was passed on 12.12.2013 stating that, the defendant corporation has granted sanctioned in favour of Mr. Arunkumar Raut for development of property bearing Gut No.216 situated at Harsul, Aurangabad and the appeal stands withdrawn. However, on 08.11.2023 the defendant corporation has served a notice on plaintiff and called upon her to produce documents of ownership in respect of suit property. At that time, she had shown Hibinama and they did not demolish her house. On 03.03.2025 the officers of

defendant corporation again threatened to demolish the suit property without following due procedure of law. Therefore, present suit for perpetual injunction is instituted by her. In such circumstances it is necessary to grant temporary injunction restraining defendant corporation from interfering with her possession over suit property.

03. Ld. Advocate for defendant corporation argued that, said Arunkumar Raut had no authority to alienate the suit property to the plaintiff. The properties bearing Field Block Nos. 216 and 217 are allotted to the defendant corporation by the Government for development under the *Pantpradhan Aawas Yojna* for rehabilitation of project affected persons. Thus, the suit property is owned by defendant corporation. Said Arunkumar Raut had instituted suits against defendant corporation in respect of the properties bearing Field Block Nos. 216 and 217. However, he has withdrawn those suits. Therefore, no title has passed to the plaintiff in respect of suit property. Thus, there is no *prima-facie* case in favour of plaintiff for grant of temporary injunction. The balance of convenience does not lie in her favour. Therefore, it is necessary to reject the application.

04. Hence, the following points arise for determination and I have recorded my findings to each of them for the reason as follows:-

Sr.No.	Points	Findings
01)	Whether the plaintiff has made out a <i>prima-facie</i> case ?	No.
02)	In whose favour balance of	Defendant.

	convenience lies?	
03)	Whether the plaintiff will suffer irreparable loss, if the temporary is not granted?	No...
04)	What order?	As per final order.

REASONS

AS TO POINT NO.1 :-

05. The claim of temporary injunction is governed by the provisions of Order 39 Rule 1 and 2 of C.P.C. Order 39 Rule 1 of C.P.C. opens with the words “where in any suit it is proved by affidavit or otherwise-”. It means that, for the purpose of deciding an application for temporary injunction the court is required to consider the affidavits filed by the parties for this purpose or other material like documents produced by the parties. In the present case neither plaintiff nor defendant have filed affidavits for this purpose. In such circumstance it is necessary to consider the documents produced by the parties.

06. The documents produced by the plaintiff show her possession over the suit property and it is not disputed by the defendant corporation. It is seen from the documents produced by defendant Corporation that, the vendor of plaintiff had instituted RCS No. 130/2010 seeking perpetual injunction against the defendant corporation in respect of the properties bearing Field Survey No.217 and it was dismissed on merit. These documents also make it clear that the judgment and the decree in RCS No. 130/2010 has attained finality. The 7/12 extracts of the suit property neither show the name of General Manek Shaw Housing

Society nor the plaintiff as its occupant. On the other hand the defendant corporation is shown to be its occupants in the 7/12 extracts of said property of which the suit property is part and parcel. The fact that the judgment and decree in RCS No. 130/2010 in respect of suit property went against the donor of plaintiff will be a determining factor in the suit. The legality of the Gift of suit property by Mr. Arunkumar Raut, the Chairman of said society to the plaintiff will depend upon the aforesaid judgment. If these circumstances are considered, it appears that the plaintiff has not raised a *bona fide* question requiring investigation. When a *bona fide* question requiring investigation is not raised, it is said that, no prima-facie case is made out. Hence, I hold that, the plaintiff has not made out a prima-facie case for grant of temporary injunction and answer point no.1 in the negative.

AS TO POINT NO.2 :-

07. The defence raised by defendant corporation is based upon the copies of public record. It is seen from the documents produced by defendant corporation that the possession of plaintiff over suit property is not referable to legal right. Therefore, no loss or injury will cause to the plaintiff in the event of refusing temporary injunction as prayed. However, grant of temporary injunction will amount to license to the plaintiff to encroach over public property or the property of defendant corporation. Thus, the comparative mischief, hardship or inconvenience which is likely to be caused to the defendant corporation by granting temporary injunction will be greater than that which is likely to be caused to the plaintiff by refusing it. Hence, I answer point no.2 accordingly.

AS TO POINT NO.3 :-

08. The suit is for perpetual injunction in respect of immovable property. It follows that, the grant or refusal to grant temporary injunction will cause irreparable loss to the either party. The plaintiff claims to be owner of the suit property on the basis of Gift Deed executed by the Chairman of said society. However, a copy of judgment in RCS No. 130/2010 produced by the defendant corporation raised a question of legality of the Gift Deed executed by the Chairman of said society in favour of plaintiff. Therefore, the refusal to grant temporary injunction will not result in irreparable loss to the plaintiff. Hence, I answer point no.3 in the negative.

AS TO POINT NO.4 :-

09. The plaintiff has not made out a *prima-facie* case for grant of temporary injunction. The balance of convenience does not lie in favour of plaintiff and she will not suffer irreparable loss if the temporary injunction is refused. Hence, it is necessary to reject the application. Therefore, in answer to point no.4, I pass the following order.

ORDER

Application stands rejected.

Date :-15.07.2024.

(Shri. N.H. Tikhe)
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 : Vilas K. Chavan

Court C.J.S.D.(Corporation Court), Aurangabad

Date

Order signed by the 15.07.2025.

presiding officer on 15.07.2025.

Order uploaded on 15.07.2025.