

MHAU130001222023



**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 plaintiffs. Read the application and reply of defendant corporation at Exh.18. Heard Ld. Advocates for the rival parties.

02. Ld. Advocate for plaintiffs submitted that, the suit property specifically described in the plaint was originally owned and possessed by deceased Ramlal Wani who died on 25/11/2005. After his demise the names of plaintiffs are recorded in the record of suit property as his legal heirs. Previously the suit property was within the local limits of village Panchayat Harsul and later on it merged in the local limits of defendant corporation. The plaintiffs have erected a structure of tin over suit property in the year 2010 and they are residing therein. They are regularly paying property tax to the defendant corporation in respect of suit property. They are in possession of suit property since the year 1970. However, on 03/12/2023 the employees of defendant corporation visited the suit property and alleged that, said structure is constructed on the property of defendant corporation. At the same time they threatened to pull down said structure for the purpose of constructing gymnasium on it. Therefore, present suit for perpetual injunction is instituted by the plaintiffs. He argued that, there is a prima facie case in favour of

plaintiffs for grant of temporary injunction and they will suffer irreparable loss if the defendant corporation is not restrained from causing obstruction to their possession over suit property. Lastly, he argued that the balance of convenience lies in favour of plaintiffs.

03. Ld. Advocate for defendant corporation argued that, the identification of suit property is not clear from the plaint and the documents produced by the plaintiffs. They have encroached on some portion of the property bearing CTS No. 773 belonging to defendant corporation and claiming ownership over it. The defendant corporation has proposed to measure said land for taking further action against said encroachment. The plaintiffs failed to produce documents locating the suit property. The plaintiffs have not shown any threat of dispossession at the hands of defendant corporation. The plaintiffs may misuse the protection granted by this court by temporary injunction. Thus, there is no prima facie case in favour of plaintiffs for grant of temporary injunction. 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:-

<b>Sr.No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether the plaintiffs have made out a prima-facie case ?	Yes...
2.	In whose favour balance of convenience lies?	The Plaintiffs
3.	Whether the plaintiffs will suffer irreparable loss, if the temporary is not granted?	Yes...

4.	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 the other material like documents produced. In the present case neither plaintiffs nor defendant corporation have filed affidavits for this purpose. In such circumstance it is necessary to consider the documents produced by the parties.

06. The copies of tax assessment register, tax receipts and the copies of electricity demand bill produced by plaintiffs show that they are occupants of suit property. It is also seen that late Ramlal Wani was occupying suit property during his lifetime. Moreover, it is not the case defendant corporation that, the plaintiffs are not owners of suit property. What it contends is an encroachment by the plaintiffs over some other portion of property bearing CTS No.773. In such circumstances, the course available to the defendant corporation is to prepare panchnama of encroachment, take photographs, issue notice alleging such encroachment or calling upon plaintiffs to produce necessary documents for its satisfaction and to demolish said construction on failure of the plaintiffs to comply with the notice. However, it is not the case of defendant corporation that it has done such exercise in respect of suit property. On the other hand the plaintiffs alleges threat of demolition of suit property at the hands of employees of defendant corporation on 03/12/2023 and instituted present suit for perpetual

injunction. If these circumstances are considered, it appears that, the plaintiffs have raised a substantial question for determination. When a substantial question for determination is raised, it is said that a prima facie case is made out. Hence, I hold that the plaintiffs have made out a prima facie case for grant of temporary injunction and answer point no.1 in the affirmative.

**AS TO POINT NO.2 :-**

07. It is seen that the plaintiffs have acquired suit property by succession from deceased Ramlal and they are occupying and enjoying it. On the other hand the defendant corporation has not claimed ownership over suit property. Therefore, no loss or injury will be caused to defendant corporation in the event of granting temporary injunction as prayed. Thus, the comparative mischief, hardship or inconvenience which is likely to be caused to the plaintiffs by refusing temporary injunction will be greater than that which is likely to be caused to the defendant corporation by granting 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. It is seen that, the plaintiffs are occupying the suit property. Alleged obstruction at the hands of defendant corporation to their possession may affect their right to enjoy suit property. It will also have an effect of the pecuniary loss to the plaintiffs. On the other hand the defendant corporation has a right to take action against the plaintiffs for any encroachment by following due process of law. Therefore, I hold that the refusal to grant temporary injunction will result in irreparable loss to the plaintiffs and answer point no.3 in the affirmative.

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

09. The plaintiffs have made out a prima facie case for grant of temporary injunction. The balance of convenience lies in favour of plaintiffs and they will suffer irreparable loss if the temporary injunction is refused. Their conduct appears to be free from blame and they promptly approached to the court. Hence, it is necessary to allow the application. Therefore, in answer to point no.4, I pass the following order.

**ORDER**

1. Application stands allowed.
2. The defendant corporation or anybody claiming under it is temporarily restrained from causing obstruction to the possession of plaintiffs over the suit property without following due process of law till the disposal of suit.

Date :-29.08.2024.

**(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 : S.D.Chavan  
Court : C.J.S.D.(Corporation Court), Aurangabad  
Date : 29.08.2024  
Order signed by the  
presiding officer on : 29.08.2024  
Order uploaded on : 29.08.2024