

CNR-MHBU11-000854-2024



Received on	: 10/09/2024
Registered on	: 10/09/2024
Decided on	: 14/08/2026
Duration	: Yr. Ms. Ds.
	01 11 04

IN THE COURT OF AD-HOC DISTRICT JUDGE - 1,
MALKAPUR, DIST. BULDANA.
(Presided over by Rajendrakumar B. Giri)

M.C.A. NO.12/2024

Exh. No.12

Vallabhdas Ramchandra Chandak,
Age about 78 years,
Occupation – Business & Agriculturist,
R/o. Mahesh Housing Society,
Chlisbigha, Tq. Malkapur, Dist. Buldana. **... Appellant.**

--Versus--

Gajanan Wasudeo Narkhede,
Age about 48 years,
Occupation – Service,
R/o. Talaswada, Tq. Malkapur,
Dist. Buldana. **... Respondent.**

CLAIM : Appeal under section 104 r/w 151 Order 43 Rule 1 of the Code of Civil Procedure, 1908.

Appearance : Ld. Adv. Shri. S. D. Rawat for the Appellant.
Respondent Exparte.

-: J U D G M E N T :-

(Delivered on this 14th day of August, 2026)

Being aggrieved by the order of rejection of temporary injunction application (Exh.05) by the learned Jt. Civil Judge Junior Division Malkapur in R.C.S. No.28/2024 dtd. 16/08/2024, the original plaintiff has filed the present appeal.

02. The parties are referred by their original status in the said suit, for the sake of brevity, in the present appeal.

03. The original suit is filed for removal of encroachment and perpetual injunction.

04. The suit property is consisting of an area of 1 H. 61 R. situated in Gut No.10 at Village Talaswada Tq. Malkapur, Dist. Buldana (Hereinafter referred as suit property for sake of convenience).

05. The plaintiff approached the court for the relief of removal of encroachment and perpetual injunction by contending that the defendant has encroached over the suit property to the extent of 1996 sq.ft. area in the year 2015 – 2016 and recently started construction of the house on the encroached portion of the suit property. The plaintiff was not in a position to measure the exact area of encroachment as the defendant is having quarrelsome nature. The defendant has

raised said encroachment by taking advantage of absence of plaintiff as the plaintiff is residing at Malkapur and Akola for the purpose of his business. The defendant had mutated his name in the record of the Gram panchayat and enjoying the possession of the encroached portion. The plaintiff requested the defendant for removal of said encroachment however the defendant did not pay any heed to the request of the plaintiff. The defendant started construction of a permanent structure of house over the said encroached portion of the suit property by erecting columns. The plaintiff had shown the said encroachment in a rough sketch map produced along with the plaint. Accordingly, he prayed for grant of temporary injunction to restrain the defendant from raising any construction over the said property during pendency of the suit.

06. The defendant vide his written statement / say to the application at Exh.14 traversed the contentions of the plaintiff. He contended that the area of the suit property allegedly under the encroachment is his ancestral property. His name is mutated in the Gram panchayat record of the village. He had regularly paid the taxes of the said property so also he had obtained electricity connection over the same. His house was sanctioned in the Gharkul Scheme and in pursuance of the same he had undertaken the construction of the house which is partially completed. The plaintiff has deliberately filed the

application for grant of injunction to prohibit the defendant from undertaking the said construction. With these contentions, he prayed for dismissal of the application.

07. The learned Trial Court rejected the application of the plaintiff predominantly on the ground that the possession of the defendant over the encroached portion of the suit property is long standing and settled and therefore in the absence of any specific measurement of the suit property revealing the encroachment, the plaintiff is not entitled for grant of discretionary relief of injunction.

08. While assailing the said order, the plaintiff / appellant contended that the Learned Trial Court failed to exercise its discretion in lawful manner. The Learned Trial Court refused the grant of interim relief of injunction in favour of plaintiff by disregarding the clear title of the plaintiff over the suit property. It disregarded the undertaking given by the defendant in the suit vide pursis Exhs. 15 and 18 by way of which the defendant refrained from undertaking any construction during pendency of the suit. Therefore he has prayed for interference in the said order by allowing the appeal.

09. The original defendant remained absent in the appeal in spite of service of notice Exh.07 hence the appeal proceeded ex parte against him.

10. Considering the pleadings of both the parties following points arise for my determination to which I record my findings thereon for reasons to follow.-

Sr. No.	Points for determination	Findings
01.	Whether the plaintiff is having prima facie case in his favour ?	Yes.
02.	Whether the balance of convenience lie in favour of plaintiff ?	Yes.
03.	Whether the plaintiff would suffer irreparable loss in case of refusal of injunction ?	Yes.
04.	Whether the order passed by the learned Trial Court is just and proper, in the facts and circumstances of the case ?	No.
05.	What order and decree ?	As per final order.

REASONS

11. Heard learned counsel for plaintiff and learned

counsel for defendant.

12. Perused the documents (in the paper book) placed on record of the Learned Trial Court by the plaintiff as well as defendant.

13. At the outset, it must be stated that grant or refusal of temporary injunction is an equitable relief based on the principles of justice, equity and good conscience. It is also settled position of law that a person seeking equitable relief must approach the court with truthful facts so as to establish his entitlement to the discretionary relief of temporary injunction. A person seeking equity must do equity. In this background, the point which deserves consideration is as to whether the learned Trial Court had exercised its such jurisdiction in proper manner or not.

AS TO POINT NOS.01 TO 04 -

14. I proceed to discuss all these points simultaneously due to sake of convenience.

15. The facts of the case lie in very narrow compass. The plaintiff, who is the owner of the suit property had approached the Court with the contention that the defendant had encroached on the portion of the suit property to the extent of

1996 sq.ft. in 2015 – 2016 and since then he is in its possession. He had started construction of house over the said portion without any legal right. He had mutated his name in the Gram panchayat record of the said encroached area of the suit property without any basis. The plaintiff requested the defendant for removal of encroachment which was not paid any heed by the defendant. The defendant contended that the said portion is his ancestral property and he had raised construction over the said to in pursuance sanction of house in Gharkul Scheme.

16. The plaintiff had produced the documentary evidence in the form mutation entry of partition of the suit property amongst his father, brother and himself along with 7/12 extract showing his title over the suit property. He had contended that the defendant is a rank trespasser. Apparently, there is no documentary evidence showing the entitlement of the defendant to the portion of the suit property. The plaintiff had inherited the suit property from his father. As far as the construction over the portion of suit property is concerned, the pursis Exhs.15 and 18 clearly denote that the defendant had started some sort of construction over the suit property. There is absolutely no prima facie material to show the legal right of the defendant to carryout said construction. The Learned Trial Court while acknowledging the said construction noted that the

defendant is in long standing possession of the encroached portion which amounts to acquiescence and therefore the discretion was not used in favour of plaintiff. Suffice to note that prima facie the plaintiff is having lawful title over the suit property. The defendant is not having any right to raise the construction over the suit property. The wrongful possession for how so long period cannot authorize a trespasser to undertake the construction. The map produced on record by the plaintiff goes to show the nature of permanent construction undertaken by the defendant in the portion of the suit property. In such circumstances, the Learned Trial Court ought to have leaned in favour of protection of legal right of the lawful title holder of the suit property rather than assisting a wrong door in perpetuating the illegality. Therefore, not only the prima facie case exist in favour of plaintiff but also he would suffer irreparable loss in case of refusal of injunction and the balance of convenience also favours the plaintiff. Therefore the order of the Learned Trial Court for refusal of temporary injunction cannot be sustained. Accordingly, I answer point Nos. 01 to 03 in affirmative and point No.04 in negative and proceed to pass following order -

ORDER

- (1) M.C.A. No. 12/2024 is allowed.

- (2) The order of the Learned Trial Court below Exh.05 dtd. 16/08/2024 in R.C.S. No.28/2024 is quashed and set aside.
- (3) The parties are directed to maintain Status quo over the suit property as on today with specific directions to not to undertake any further construction over the suit property till decision of the suit.
- (4) Costs in cause.
- (5) Since the defendant is exparte in the appeal, the plaintiff is directed to serve the copy of order on the defendant and place the proof of its service on the record of Learned Trial Court.
- (6) Inform the Learned Trial Court accordingly.

(Dictated and pronounced in open Court)

Malkapur.
Date : 14th August 2026.

(R. B. Giri)
Adhoc District Judge – 1,
Malkapur.

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CERTIFICATE

I certify that this order in P.D.F. upload is a true and correct copy of original signed order.

Name of Court : Adhoc District Judge – 1 & Additional
Sessions Judge, Malkapur.
Name of Stenographer : Mr. V. S. Jadhav. (Jr. Clerk)
Date of order : 14.08.2026
Date of signed on order : 14.08.2026
by Judicial Officer
Date of uploading : 17.08.2026