

ORDER BELOW EXH.5

1) Plaintiffs moved this application under order XXXIX Rule 1 and 2 of The Code of Civil Procedure for temporary injunction to restrain the defendant from making further construction over suit property on the following facts-

Description of suit property-

2) Grampanchayat House No. 466 Ad-measuring 40x38 = 1520 Sq. Ft. situated at village Ajande , Tq- Shindkheda, Dist- Dhule (Suit Property)

Short facts

3) The facts leading to the application for injunction and plaint, in brief, are that the plaintiff' is the owner and in possession of suit property . The suit property was acquired by the plaintiff by way of sale deed in the year 2013 vide registered Sale Deed No. 4242/13. Defendant has no any concern with suit property. In the month of May, 2015, the defendant has started construction of a house over half portion of suit property without keeping the required permission. Plaintiff tried to perused defendant to stop construction, but he did not paid any heed and continued the construction. On 21.06.2015 again plaintiff asked defendant to stop the construction but defendant gave life threat to plaintiff, so he filed this suit. Plaintiff submitted that he is having prima facie case coupled with balance of convenience and if defendant is not restrained it will resulted in his irreparable loss.

4) Against the above application, the defendant contested the suit by filing the written statement stating inter-alia that he is the owner of the plot No. 50 which has been allotted to his father as Govt. grant and he is making construction on his plot and not on the suit property. He further contended that suit property allotted to one Jayawantabai as a Govt. grant, she had no any right to sale the same, even though plaintiff illegally purchased the same. His further contention is that plaintiff is not came with clean hand, Ramesh Suklal Chambhar and his brother made a encroachment over suit property but plaintiff suppressed this fact. According to the defendant, he has started construction of the house as per permission by investing huge amount and he will suffer irreparable loss if the proposed construction is stopped until disposal of the suit. Hence he prayed to reject the application.

5) On the basis of pleading, the following points arises for my determination for which I have given my findings thereon with the reasons mentioned below-

S.N.	POINT	FINDINGS
1.	Does the plaintiff has prima facie case against defendants ?	In the Negative
2.	Is the balance of convenience in favour of the plaintiff ?	In the Negative
3.	Will the plaintiff suffer irreparable loss if the application is rejected?	In the Negative
4.	What order?	As per final order

REASONS

6) Before proceeding further to decide the application on its merit, I would like to remind myself on the settled legal position while deciding an application for temporary injunction, in view of the ratio laid down by Hon'ble Supreme Court of India in the case of **Dalpat Kumar and Anr. v. Prahlad Singh and Ors [MANU/SC/0715/1991/(1992) 1 SCC 719]** Hon'ble Supreme Court of India held that

“Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting ad interim injunction is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction.

Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

7) Keeping in mind this settled principle I am analyzing the available facts and prima facie evidence.

AS TO POINT NO.1 :-

8) In a present suit both parties claiming the possession over the suit property. Undisputedly plaintiff is owner of suit property. Plaintiff placed his reliance on copy of property extract of suit property. Which discloses that plaintiff is owner of suit property. Further defendant denied the claim of plaintiff. According to defendant he is making construction on his own plot and not on the suit property. Both parties relied on affidavit and counter-affidavit . According to defendant some other persons are made encroachment over suit property and raised construction. In this situation it is difficult to identify exact where defendant is making the construction or defendant factually making construction over suit property and which can be determined after detail evidence including local inspection, measurement of suit property, evidence of other adjacent owner etc. So it is necessary to see that in this situation defendant can be restrained from making further construction, it is also necessary to see the common hardship. Balance of convenience and irreparable loss suffered to parties in the event of granting or refusing the injunction to which it is necessary to see pleading and relief claimed by parties .

9) The plaintiff has sought for mandatory injunction for demolition of construction and possession of suit property, defendant specifically denied this fact and submitted that he is making construction on his own plot, it is also claim of defendant that someone else made encroachment over suit property and made construction, defendant also mentioned name of such persons, at the same time plaintiff stated that he got the information from village panchayat that defendant is making

construction over suit property this fact discloses that plaintiff was not actual exact information at the time of starting of construction and he obtained such information from village Grampanchayat. Plaintiff not produced document to disclose exact site of construction so this fact consolidate the contention of defendant that someone else made encroachment over suit property, so without correct information about who is making construction over suit property, and whether construction is exactly over suit property it will be unjust to stop the haft-way construction of defendant, moreover in the event of success plaintiffs can sought demolition of construction which he already prayed and restraining defendant from making further construction when his claim is that he is making construction over his own plot will be no use to defendant and haft-way construction will be remain as it is. Hence plaintiff not made out prime facie case. Hence I have answered **point No.1 in the Negative.**

AS TO POINT NO.2 :-

10) To see the balance of convenience it is necessary to compare the case of parties. Comparative mischief or inconvenience which is likely to sue from withholding the injunction will be grater than which is likely to arrive from granting it. It is matter of record that suit property is open portion and plaintiff is not residing over suit property, and defendant is constructing house over suit property, so refusing the injunction no way inconvenience to plaintiff at this moment but it will be definitely inconvenience to defendant when he invested sufficient money to construct the house for residence. Hence balance of convenience is tilt in favour of defendant and not the plaintiff. Hence I have answered **point**

No.2 in the Negative.

AS TO POINT NO.3 :-

11) The concept of irreparable injury is define that irreparable injury is injury which cannot be compensated in terms of money. So even on the basis of rejection of prayer of injunction defendant completed further construction in that circumstances plaintiff is having a remedy to seek the relief of demolition and required compensation. It means in the event of success of the plaintiff defendants can be compensated. But in this situation if defendants is restrained it will be the no use to the defendant and suit property will be remain as it is which is definitely a loss to the defendant. Hence I answered point No. **3 in the Negative.**

12) Before conclusion it is necessary to mention here that the dispute between the parties is regarding the mutual claim of possession over the suit property which has to be decided after recording the detail evidence. So Unconditional order of refusal of prayer of temporary injunction not restraining the defendants from causing or preventing the further construction may be prejudice and loss to the plaintiff. So while granting temporary injunction the interest of the parties have to be properly safe guarded and the person in whose favour such an interim order is granted must be made to account for the loss that may result to other side in case he fails in the suit or his defence. So it is necessary to impose a proper condition on the defendant. In the result I proceed to pass following order-

ORDER

1. Application is hereby rejected.
2. Defendant is hereby directed to furnish an undertaking with effect that in case he failed to establish his possession over the suit property and plaintiff succeed in the suit in establishing that the suit property is in his possession, then defendant will demolish the construction without claiming any equity. However defendant has no liberty to continue further construction unless and until he furnish an undertaking as directed above.
3. Costs is in main cause.

Dt.26 /07/2016

Sd/-
(P.S.Bhandari)
Civil Judge, J.D.Shindkheda.