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R.C.S. No. 04 of 2025.
Satyanarayan & 1 -vs- Narendra
Ors. (Order below Exhs.05)

MHGA070003812025



**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, AHERI, DISTRICT-
GADCHIROLI**

(Presided over by Shahid Sajiduzzaman M.H.)

Regular Civil Suit No.04/2025

PLAINTIFFS : - 1] **Satyanarayan Vistari Gargam,**

Age: 40 yrs, Occupation : Cultivation,

2] **Suman Vistari Gargam,**

Age: 75 yrs, Occupation : Cultivation,

Both R/o. Abanpalli, Tah.Aheri

Dist.Gadchiroll

-VERSUS-

DEFENDANTS: - **Narendra Penta Madavi,**

Age: 36 yrs, Occupation : Mason,

R/o. Abanpalli, Tah.Aheri

Dist.Gadchiroll

Advocate for Plaintiffs: Shri Y.B. Meshram

Advocate for Defendants: Shri P.N. Dahagaonkar

ORDER BELOW EXH.05

(Passed on 09/05/2025)

1] By way of present application, the plaintiffs are praying for grant of temporary injunction against the defendant till the decision of the main suit.

2] The facts of the case is as under :

According to the plaintiffs, they are owner of old Survey No.69 new Survey No.19 area 0.51 H.R by way of registered sale deed dated 01.12.1976. It is contended that ancestral of the plaintiff's Pochubai Gargam had been in possession of the same from year 1954-55 through Jamabandi. Same is bounded as under :

Towards the East Survey No.17

Towards the West – Road and Survey No.74

Towards the North – Survey No. 18.

Towards the South – Survey No. 20.

Above mentioned property is hereinafter be mentioned as “suit property”.

3] According to the plaintiffs, they are the owner of the suit properties. Their ancestral Pochubai Gargam died on 19.08.2018. After the death of Pochubai, her husband Vistari Gargam performed marriage with sister of deceased Pochubai. Suit property is mutated upon the name of the plaintiff in the year 2020 and the plaintiffs have also taken loan of Rs.33,000/- from Bank as the suit property is agricultural one. According to the plaintiffs, the defendant has no concerned with the suit property. However, with an intention to make encroachment over the suit property have started construction over the suit property without the permission of Grampanchayat, Vyankatraopetha. According to the plaintiffs, act of the defendant for making construction started in September 2024 where they initially, the defendant put iron rod, bricks and sand over the suit property. The plaintiffs have requested the defendant to stop construction. However, the defendant has given threat to kill the plaintiffs and quarrel with them. Therefore, on 13.09.2024 the plaintiffs gave complaint to Grampanchayat Vyankatraopetha for illegal

construction of the defendant. On 25.09.2024 Grampanchayat Vyankatraopetha issued letter and directed the defendant to stop construction. Thereafter, the defendant stopped the construction. Thereafter, the defendant and the plaintiffs agreed that unless the plaintiffs measured land, the defendant would not make any construction. However, the defendant has started the construction. It is contended by the plaintiffs that the plaintiffs have made out a prima facie case that they are owner of suit property and the defendant is trying to disturb possession over the suit property by making illegal construction. It is contended that balance of convenience lies in favour of the plaintiffs and if the defendant is not stopped from making construction, then irreparable loss would cause to the plaintiffs. Therefore, application be allowed and the defendant be restrain from making any construction.

4] The defendants appeared and filed his written statement and opposed the suit as well as the application for grant of temporary injunction. It is submitted by the defendant that suit is false, bogus and liable to be dismissed only the count that the plaintiffs have not come before this Court with clean hand. By way of **special pleading**, it is pleaded that neither the defendant is making construction over the survey no.19 nor trying to make an encroachment over survey no.19. It is submitted that survey no.20 area 0.15 H.R belongs to Gajribai Made, Kamlabai Atram, Raghu Naitam, Shashikala Alam, Nilabai Naitam and Gangubai Naitam. It is submitted that survey no.20 is class I and since 2010 the defendant is in possession and upon which the defendant has placed his hut and now making construction with the consent of owner of survey no.20. Hence, application is bad in law and be dismissed with costs.

5] Heard Learned advocate Shri. Meshram for the plaintiffs and Shri. Dahagaonkar for the defendant.

6] Following points arose for my determination and I have recorded my findings against each of them for the reasons mentioned below.

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiffs made out a prima facie case in their favour ?	No.
2)	In whose favour the balance of convenience lies ?	The defendant.
3)	Whether the plaintiffs prove that irreparable loss would be caused to them ?	No.
4)	What order?	As per final order.

REASONS

7] The parties have relied upon revenue documents as well as registered sale deed. I have perused all documents filed by the respective parties in support of their contention.

As to point nos. 1 to 3

8] As point no.1 and 2 are inter related with each other, I took them together in order to avoid repetition of similar facts.

9] It is pertinent to note that the present suit is filed by the plaintiffs stating that they are the owners of survey no.19. It is imperative to note here that in order to support contention and to made out prima facie case, the plaintiff has relying upon the sale-deed of Pochubai Gargam dated 01.12.1976. It is contended that after death of said Pochubai, the plaintiffs became owner of the suit property survey no.19 and the defendant is making construction survey no.19.

10] It is imperative to note here that according to the defendant he is making construction over survey no.20 and he has no concerned with survey no.19. The plaintiffs have not come with the clean hand.

11] At this juncture, it is relevant to quote **Maria Margarida Sequeria Fernandes and Others Vs Erasmo Jack de Sequeria(Dead) through L.R.'s. reported in (2012) 5 SCC 370,** principles of law which emerge in this case are crystallized as under:

1. *No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.*
2. *Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*
3. *The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
4. *The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.*
5. *The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.*

12] It is imperative to note here the above case ***Maria Margarida*** (Supra) in paragraph No. 70, the requirement of pleadings and particulars to be given by a plaintiff seeking injunction have been narrated as under:-

"70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

- (a) who is or are the owner or owners of the property;*
- (b) title of the property;*
- (c) who is in possession of the title documents*
- (d) identity of the claimant or claimants to possession;*
- (e) the date of entry into possession;*
- (f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;*
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;*
- (h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;*
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;*
- (j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and*
- (k) basis of his claim that not to deliver possession but continue in possession."*

13] It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of

convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

14] Prima-facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima-facie case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily. To see balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting it.

15] I have perused the document placed by the respective parties in support of their contention. It is settled law that injunctions are equitable relief. A person who seeks equitable relief of injunction must have come with clean hand and has to stand on his own case and should not depend upon the weakness of the others. It is imperative to note here that according to the defendant, he is making construction over survey no.20. In order to demonstrate that , the defendant is making construction over survey no.20 has filed the document. I have perused the document filed by the plaintiffs and the defendant. The document No.9 shows that the plaintiffs have given complaint to the Grampanchayat Vyankatraopetha and Grampanchayat Vyankatraopetha has directed to stop construction over survey no.19. However, it would not be outplacred to mention here that the defendant has filed 7/12 extract of survey no.20 which shows the names of Gajribai Made, Kamlabai Atram, Raghu Naitam, Shashikala Alam, Lilabai Naitam and Gangubai Naitam whose name is shown at the Southern side of the suit property by the plaintiffs. From the document no.2 and 3 filed by the defendant shows that the Grampanchayat Vyankatraopetha had granted Gharkul to the defendant that itself shows that the defendant is making

construction over the survey no.20 and it no way to concern with the survey no.19. From the document relied by respective parties what it reveals that the plaintiffs under the grab of survey no.19 wants to take advantage and want to stop the construction over survey no.20. It appears that the plaintiffs have not come this Court with clean hands. It is also necessary for the plaintiffs while claiming relief of equity to come with clean hands. So far as the pleading in respect of construction is concerned is silent. Entire pleading is silent in respect of area over which the defendant is making construction. Moreover, while claiming the relief plaintiffs must have given the details as per Order 7 Rule 3 which is lacking in the present case. It is pertinent to note that if the plaintiff brings a suit to restrain the defendant by an injunction from constructing a building on defendant's plot on the ground that the said construction is in violation of the Municipal Rules as to buildings. The suit is not maintainable because no right of the plaintiff as such is violated. Hence, I have no hesitation to hold that the plaintiffs failed to made out a prima facie case as they have not come before this Court with clean hands. In view of the above discussion, I answer point no.1 to 3 in the negative and in answer to point no.4, I proceed to pass following order.

ORDER

- 1] The application at Exh 5 is hereby rejected.
- 2] Order status quo dated 17.04.2025 is vacated.
- 3] Costs in cause.

Date : 09/05/2025
Place : Aheri.

(Shahid Sajiduzzaman M.H.)
Civil Judge Junior Division,
Aheri, Distt. Gadchiroli.