

MHGA090006132024



IN THE COURT OF JT. CIVIL JUDGE (JUNIOR DIVISION), CHAMORSHI
(Presided Over by S.A. Bhaisare)

R.C.S. No.54/2024**PRAKASH SOMAJI SONTAKKE****... Plaintiff****-VERSUS-****ISHWAR MAROTI NAWALE+ 1****... Defendants**

For Plaintiff	: - Learned Advocate Shri. R.S. Wasekar
For Defendant no.1	: - Learned Advocate Shri. K. T. Satpute
For Defendant no.2	: - Without reply

ORDER BELOW EXH. 05(Passed on 04th April, 2026)

The present application is moved by the plaintiff under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908 seeking temporary injunction restraining the defendant or any person on his behalf from constructing or encroaching upon the suit property and from disturbing the peaceful possession of the plaintiff over his property. The application is opposed by the defendant no.1 by filing his say at Exh. 19.

2. Perused the application and reply thereon. Heard the Ld. Counsel for both the sides.

3. Learned counsel for the plaintiff Shri. R. S. Wasekar has submitted that as per his pleadings. The plaintiff seeks temporary injunction to restrain the defendants from disturbing his possession and to restrain the defendants from making any construction on the

suit property. The plaintiff has prima facie case, balance of convenience and irreparable loss in his favour. Hence, the application may kindly be allowed.

4. Learned counsel for the defendant no.1 Shri. K.T. Satpute has submitted that the plaintiff himself prayed for removal of encroachment. Thus, as per the case of plaintiff, he is not in possession. Whereas, the plaintiff has prayed to restrain from disturbing his possession. The prayer in the suit and prayer in the application are in contradiction to each other. When the plaintiff is not in possession of the suit property, the question of its disturbance does not arise. Hence, the application is liable to be rejected.

5. Perused the record. Considered the submissions made by both the sides. Following points arise for determination, to which findings are recorded alongwith reasons given below :-

Sr.No.	POINTS	FINDINGS
1.	Whether plaintiff has made out prima facie case in his favour ?	No
2.	Whether he proves that balance of convenience lies in his favour ?	No
3.	Whether he proves that he will suffer irreparable loss, if no interim relief granted to him ?	No
4.	What order ?	As per final order

:: REASONS ::**AS TO POINT NOS. 1 TO 4 :-****The case of the plaintiff is as under :**

6. Sonba Raghunath Mogre alongwith other nine bought Survey no.1077/1 admeasuring 0.41 HR. They partitioned the land amongst themselves. After the death of Sonba, his daughter Vimalbai inherited the Survey no.1077/1 admeasuring 0.41 HR to the extent of 3000 Sq.ft. The plaintiff has purchased the agricultural land bearing Survey no.1077/1 admeasuring 0.41 HR to the extent of 3000 Sq.ft (in short suit property) vide registered sale deed dated 10/06/2022 from Vimalbai. The defendant has encroached and constructed a house upon the suit property. The plaintiff has sent a notice dated 10/08/2024 to the defendant stating to remove the encroachment but in vain. Hence, the suit.

The case and counter-claim of the defendant no.1:

7. He has denied all the averments of the plaint. Defendant no.1 and 2 has executed an unregistered sale deed dated 02/06/2003 of suit property in favour of plaintiff in counter-claim. The plaintiff was given the possession of suit property. Since 2003, he has constructed a house and residing in it. Defendant no.1 got executed false registered sale deed from defendant no.2.

8. The grant or refusal to grant interim relief is covered by three well established principles viz. 1) whether plaintiffs has made out prima facie case; 2) whether plaintiffs would suffer irreparable injury in the absence of interim relief; and 3) whether balance of

convenience lies in his favour. The burden to prove these three necessities lies on the person seeking interim relief. The court has to see whether the claim is bonafide and whether there is a fair and substantial question to be tried.

9. While determining whether a prima facie case had been made out all that the court has to see is that on the face of it the person applying for an interim relief has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. In arriving at the balance of convenience, the court has to weigh the mischief likely to be caused to the applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted. So also, the court has also to consider as to whether grant or refusal to grant interim relief will cause any irreparable injury to party to the proceeding. The injury means a legal injury. On the backdrop of this settled legal principles, facts of present matter must be scrutinized.

10. The present suit is filed removal of encroachment, mandatory injunction, perpetual injunction. The counter-claim is instituted for declaration, specific performance of contract and perpetual injunction. The plaintiff has claimed that the defendant has encroached upon the suit property. It implies that the plaintiff is not in its possession. Hence, the relief of temporary injunction to restrain the defendant from encroaching upon the suit property cannot be granted in view of pleadings and prayer of the plaintiff.

11. The plaintiff has claimed relief of temporary injunction to restrain the defendant from disturbing the plaintiff's possession over a piece of land other the suit property. However, the said land is not the suit property in the present case. Hence, no relief can be granted in respect of that land at this stage.

12. In view of pleadings, there is no prima facie case, balance of convenience or irreparable loss in favour of the plaintiff. Hence, I answer issue no.1 to 3 in negative.

13. Consequently, in answer to point no.4, the following order is passed:

ORDER

1. The application below **Exh. 05** is rejected.
2. No order as to costs.
3. Both the parties are directed to expedite the proceedings of the case and ensure its disposal at its earliest.

Sd/-

Place:- Chamorshi
Date:- 04/04/2026.

(S. A. Bhaisare)
Jt. Civil Judge, (Jr.Dn.),
Chamorshi