

CNR NO. MHGA090012862023



**IN THE COURT OF JOINT CIVIL JUDGE (JUNIOR DIVISION), CHAMORSHI**  
(Presided Over by Diksha D. Vighne)

**Regular Civil Suit No. 50/2023**

Ganesh Surendranath Mandal  
Age :- 67 years, Occ.:- Cultivation,  
R/o. Ravindrapur, Po.-Yenapur,  
Tq.-Chamorshi, Dist.-Gadchiroli.

----- **Plaintiff**

**-Versus-**

1. Bimal Kanhayya Sen  
Age :- 45 years, Occ.:- Cultivation,
2. Kamal Praful Mandal  
Age :- 60 years, Occ.:- Cultivation,
3. Bibhuti Kushankush Miridha  
Age :- 40 years, Occ.:- Cultivation,  
All R/o. Ravindrapur, Po.- Yenapur,  
Tq.-Chamorshi, Dist.-Gadchiroli.

----- **Defendants**

-----  
**Appearance:-** Advocate for Plaintiff :- Smt. K. R. Mhashakhatri  
Advocate for Defendants :- Shri. D. V. Donadkar  
-----

**Order Below Exh. 05**

(Passed on 29/01/2024)

This is an application filed by plaintiff for grant of temporary injunction under Order XXXIX, Rule 1 and 2 r/w section 151 of the Code of Civil Procedure for restraining the defendants themselves or through their agents or their family members or any other person from distrubing the plaintiff's peaceful possession of suit property.

**The brief facts of the plaintiff's side are as under :-**

2] It is the contention of the plaintiff that plaintiff and defendants are resident of village Ravindrapur, Po.- Yenapur, Tq.-

Chamorshi, Dist.- Gadchiroli and are cultivator by profession. It is further pleaded that, the plaintiff is owner and possessor of house property no. 140 total construction area 744 square feet on the plot ad-measuring approximately 3000 square feet situated at mouza Ravindrapur, Po.-Yenapur, Tq.-Chamorshi, Dist.-Gadchiroli. The plaintiff is in peaceful possession of above house and plot since many years. On the remaining land, the plaintiff used to cultivate. The name of plaintiff appears on extract 8 of house property no. 140 issued by Grampancyayat Durgapur, Tq.-Chamorshi, Dist.-Gadchiroli.

3] It is further pleaded that the house property was having country tiles and hut type construction which was in dilapidated condition. Hence, plaintiff removed the construction of his house and desirous to have new construction but defendants are disturbing the peaceful possession of plaintiff on suit property. On 29-03-2021 and on 20-11-2022, the defendant came over the suit property. The plaintiff restricted the entry of defendants. There was quarrel. Hence, defendant left from them. Thereafter, on 19-12-2023 the defendants came over the suit property. The plaintiff and Dinesh Ganesh Mandal restricted the entry of the defendants, there was a quarrel. Defendants abused the plaintiff and told him that do what you want to do. On contrary, the defendants had gone to police station, Ashti to report the incident.

4] It is further stated by plaintiff that since 1971, his ancestors used to cultivate the suit property. After that, plaintiff is in peaceful possession of the said house and plot. Police could not assist the plaintiff hence, plaintiff had to approach this court. After resorting to all the remedies, plaintiff instituted the suit against defendants for permanent injunction. The intention of defendants is clear to grab the house

property and plot land from the possession of plaintiff as the plaintiff is poor, illiterate and old age. The defendants are trying to dispossessed the plaintiff from the possession of suit property. Plaintiff has a strong prima facie case having his name on the suit property. If defendants are not restricted from disturbing the peaceful possession of suit property then plaintiff will suffer irreparable loss. If the relief is granted to plaintiff, then defendants shall not suffer therefore the balance of convenience lies in favour of plaintiff. Hence, he has prayed for grant of temporary injunction in his favour.

**Brief Facts of Defendants Side are as follows :-**

5] After service of summons defendants have appeared and filed their written statement at Exh. 17 and also filed a purshis at Exh. 18 to treat their written statement as reply to application at Exh. No. 5. In their reply they have specifically denied all the allegations levelled by plaintiff against them. They have further stated that defendant no.1 to 3 are well known citizen of their village and doing agriculture. Defendants always contribute in developmental work of village. Plaintiff is having his property no. 140 at mouza Ravindrapur and on the same plot his wife Gita is also having her house in her name. On the east side of plaintiff's house property no. 140 there is a Subhashgram to Yenapur road, to the west- house property no. 161 of Anil Anant Mandal, to the north- house property no. 141 and 203 of Samir Subol Mandal and Subal Suren Mandal and to the south- property no. 142 of Kalu Haran Dhali. The four boundaries of property no. 140 shown in the plaint are false.

6] Defendants have filed photographs to clearly show house property no. 140. Plaintiff has obstructed the construction of Satsang

Mandir by taking undo advantage of ad-interim temporary injunction. First photo is of east side of plaintiff's house, second photo is of west side of plaintiff's house and third photo is about construction of Satsang Mandir. It is further stated by defendants that they have never obstructed plaintiff's possession over house property no. 140 or they have never gone to the property of plaintiff on stated dates. Plaintiff does not file any photographs of spot. Defendants are well known person of their village and having active involvement in public work. Therefore, in the feeling of grudge the plaintiff has filed this false suit.

7] Mouza Ravindrapur is a Bengali Migrated village and for the benefit of their society they have reserved a place by obtaining Grampanchayat resolution for constructing Satsang Mandir and Bengali peoples have collected monetary contribution for that work and now, when the construction and digging of holes for construction was going on that time plaintiff had filed this suit and obtained ad-interim temporary injunction on 21-12-2023 and closed the work of Satsang. Actually, the property no. 140 of plaintiff and place for Satsang is having a distance of 450 square feet. Plaintiff does not file any photographs of his house to avail true circumstances. On contrary, defendant has filed an application to Grampanchayat and obtained Namuna 8 of adjacent property holder as well as spot panchnama was also conducted. The working body of Grampanchayat as well as Tantamukti Samitee and villagers have collectively conducted spot panchnama. In that spot panchnama also the four boundaries of plaintiff's house are clearly shown. Plaintiff is still in possession of property no. 140 and his house is neither fallen or nor in a dilapidated condition. Plaintiff has falsely stated that on 29-03-2021, 20-11-2022 and 19-12-2023 defendants had entered on the suit property. Plaintiff is having oppose to the

construction of Satsang Mandir in village and just to stop the construction of Satsang Mandir he has filed this suit. No cause of action has arisen to the plaintiff against defendants. Defendants had never entered in property no. 140 and never obstructed the possession of plaintiff. Therefore, plaintiff has no right to claim injunction against defendants. Hence, has prayed for rejection of this application.

8] From the pleadings of the both parties, document placed on record and submission advanced by learned advocates for both parties, following points are arise for my consideration and I have recorded my findings thereon with reasons to follow.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether the plaintiff has a prima facie case ?	No.
2.	Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is not granted ?	No.
3.	Whether the balance of convenience is in favour of plaintiff ?	No.
4.	What order ?	.... Application is rejected.

### REASONS

#### Submission of Plaintiff's Side :-

9] It is submitted by learned advocate Shri. K.R. Mhashakhtri for plaintiff that the dispute is in respect of house property no. 140 situated at mouza- Ravindrapur. The construction area of property no. 140 is 744 square feet and the plot ad-measuring approximately 3000 square feet. The plaintiff is in possession of suit property since many years. The house property no. 140 is a hut type construction which was in a dilapidated condition. With intention of building a new house

plaintiff had removed his house from suit property. Thereafter, defendants have obstructed the possession of plaintiff on suit property by starting construction of Satsang Mandir. In support of his claimed he has filed extract 8 of house property no. 140, house tax receipt, statement of villagers, notice of police station, Ashti under section 144 of Cr.P.C. and Map issued by office of land records. The map of land records shows that the ancestral property of plaintiff which was given by government to the father of plaintiff is in the name of plaintiff and his two brothers. On that land house of plaintiff's wife Gita was constructed and its property number is 231. The house property in dispute is not situated on the ancestral property of plaintiff. The house property no. 140 is situated on the land where defendants are constructing Satsang Mandir. The house of plaintiff and his wife are situated on different land.

10] He has further submitted that, the map produced by Grampanchayat is not reliable because it was prepared in collusion with defendants. In any map the directions are given from north to south. However, the spot panchanama filed by defendants have shown directions from south to north. Moreover, to clearly indicate the actual place of suit property plaintiff has filed plaint map. It is on affidavit and was created after going on actual spot. The defendants are constructing Satsang Mandir on the plot of plaintiff without any authority and sanction. The plaintiff is still in possession of house property no. 140 and land. The house tax receipt, Namuna 8 of house property is in the name of plaintiff. These documents have clearly shown the possession of plaintiff on house property no. 140. Thus, he has submitted that plaintiff has made out his prima facie case and also if injunction is not granted then irreparable injury will cause to the plaintiff and balance of

convenience is also in favour of plaintiff. Therefore, he has prayed for grant of temporary injunction in favour of plaintiff.

**Submission of Defendant's Side :-**

11] It is submitted by learned advocate Shri. D. V. Donadkar that the present suit is bogus, malicious and filed without showing exact spot of house suit property. The plaintiff does not come with clean hand. The plaint map has filed by plaintiff after filing reply by defendant. The boundary shown in plaint and plaint map are different. The plaint map was prepared after thinking. If the defendant had obstructed the possession on suit property on 29-03-2021, 20-11-2022 and 29-12-2023 then why plaintiff did not approached police or any authority against defendants. The Namuna 8 and house tax receipt of house no. 140 is admitted by defendants. There is no dispute that plaintiff is having house property no. 140. But, the house property no. 140 is not situated on the spot as submitted and shown in plaint map by learned advocate for plaintiff. The suit house property is situated on the ancestral property of plaintiff and house of plaintiff and his wife are situated on the same plot. The map of land record shows that on city survey no. 7 the house of plaintiff i.e. property no. 140 is situated. This report was prepared prior to 03 years. That time, only house of plaintiff was in existence and house of Gita was not constructed. Therefore, the other house of Gita is not shown in that map.

12] It is further submitted by learned advocate for defendants that if the house of plaintiff was fallen then why didn't they approached Grampanchayat for conducting panchanama. If the house was fallen then Namuna 8 or house tax receipt was not issued by Grampanchayat. The house property no. 140 is in existence therefore the Namuna 8 and

house tax receipt has issued. On perusal of photos, it is seen that the land in dispute is a barren land and there are no traces of house. As well as, Court has called report from Grampanchayat, Durgapur regarding on which plot the house property was situated. The report filed by Gram Sevak, Durgapur shows that the house property no. 140 is situated on the same plot on which the house property no. 231 is situated. The report of Gram Sevak and spot panchanama filed by defendants are showing the same house and boundary as the house property of plaintiff. That report and map was filed on the basis of Grampanchayat record by Gram Sevak therefore it is reliable. He further submitted that they have filed Namuna 8 of adjacent house holders. The Namuna 8 of house property no. 140 shows that there is a house and a Gotha in house property no. 140. The photos filed by defendants shows two houses and one Gotha. The one house and Gotha are of house property no. 140 and another house is of Gita i.e. house property no. 231. Thus, it is clear that house of plaintiff is situated on the same plot as of his wife Gita.

13] It is further submitted by him, that the construction of Satsang Mandir was initiated by following proper procedure. On 26-09-2023 Gram panchayat Ravindrapur had passed resolution for reserving Gaonthan plot for construction of Satsang Mandir. As well as, no objection certificate was also taken from Grampanchayat for construction of Satsang Mandir. Those documents have also filed by defendants on record. The report of Gramsevak and photos filed by him has clearly shows that defendant had never obstructed possession of plaintiff. Thus, he has prayed for rejection of this application.

**As to Point No.1 to 3 :-**

14] Perused application and say thereon. Heard both sides. It is

seen that the disputed property is house property no. 140, construction area 744 square feet, total ad-measuring 3000 square feet. The existence of house property no. 140 in village Ravindrapur is not disputed. However, on which plot this house property is situated is a question of dispute. According to submission of plaintiff, the house property no.140 is situated on Gavthan plot where defendants are constructing Satsang Mandir. However, defendants have contrary pleading that the house property no. 140 is situated on the ancestral property of plaintiff, where the house of plaintiff's wife Gita was also constructed. It is not disputed that the land in dispute is a government land. The plaintiff is claiming his possessory right over suit property on the basis of long-standing possession. Therefore, to prove his prima facie case plaintiff is required to prove his possession over house property no.140 and that house is situated on Gavthan plot where defendants are constructing Satsang Mandir.

15] To prove prima facie case, it is contended by plaintiff that since many years he is in peaceful possession of above house and plot. His house was in dilapidated condition hence he had removed the construction of his house and desirous to have new construction. However, defendants are disturbing his possession over suit property. On 29-03-2021, 20-11-2022 and 19-12-2023 defendants had entered on suit property and plaintiff had restricted their entry on suit property. To prima facie prove his claim plaintiff has filed Namuna 8, house tax receipt, water tax receipt, statement sign by villagers, map issued by office of land records, photos of suit property and plaint map.

16] On perusal of Namuna 8 of house property no. 140 it is seen that there is a house and cattle yard. Total construction area of house

property no. 140 including cattle yard is 744 square feet. However, in the application or plaint of plaintiff, he has not mentioned about existence of cattle yard in the house property no. 140. Nowhere written in the namuna -8 that the total admeasuring area of plot is 3000 square feet. On perusal of house tax receipt and water tax receipt it is seen that it was paid on 29-03-2023. It has pleaded and submitted by plaintiff that after he had removed his house construction, defendants started disturbing his possession over house property no.140. As per pleading the alleged obstruction was firstly committed on 29.03.2021. That means the plaintiff had removed his construction prior to 29.03.2021. Means considering pleading of plaintiff and the documents filed by him it is prima facie seen that, even though there was no house construction on Gaothan land as shown in plaint map, still the house tax and water tax was imposed on plaintiff without consumption and he had paid it on 29.03.2023.

17] The plaintiff has also filed plaint map on affidavit. According to plaintiff, the land shown in plaint map from Godown to tree is belong to him. However, on perusal of four boundaries specified by plaintiff there must be house of Sujit Mandal on the south side of suit property. However, on perusal of plaint map it is seen that on the south side of suit property there is a Godown. The boundaries shown in plaint map and plaint of plaintiff are not corresponding to each other. There is no exact property number which is in dispute. Thus, the burden has lies on plaintiff to show exact boundaries to identify the property. However, in the case in hand the boundaries shown in plaint and in plaint map are not corresponding to each other.

18] Plaintiff has also filed map issued by office of Land Record. It

is seen that City survey no. 7, ad-measuring 1516.09 square meter is in possession of Khokan Surendra Mandal, Ganesh Surendra Mandal and Pramod Surendra Mandal. According to, learned advocate for plaintiff that the one block shown in middle of the map of city survey no.7 is the house of Gita i.e. property no. 231. It is the ancestral property of plaintiff and three blocks shown in that map are of three brothers including plaintiff. If there was a house property no. 140 then this could be shown in this map. But, there is only one house and it is in the name of Gita. However, it is submitted by learned advocate for defendants that this map was prepared prior to three years and that time house of Gita was not constructed. I have perused this document, two blocks are shown in that map. However, there are no notes to show that these blocks are referring houses. As well as, it is nowhere written in that document that the block shown in the middle block of map is referring to House property no.231. Moreover, the photos filed by learned advocate for defendants and by Gram Sevak alongwith his report have shown three houses on the plot city survey no.07 of plaintiff which is contrary as shown in the map issued by office of Land Records. This contrary numbers shown in map and seen in photos prima facie suggest that the map of land record was prepared earlier before construction of third house on city survey no.07.

19] I have also perused the Namuna 8 of adjacent property holders. The house property number of plaintiff's house is 140 and house property number of Gita Mandal is 231. It is noticeable that the house property numbers are provided serial number wise. It has prima facie shows that the house of plaintiff was constructed prior to Gita Mandal. As well as, it is also seen that house number of Subal Suren Mandal is 141 and Kalu Haran Dhali is 142. As per the map provided

with spot panchanama and report filed by Gram Sevak the houses of Kalu Haran Dhali and Subal Suren Mandal are adjacent to the ancestral property of plaintiff i.e. city survey no. 7. If the house no.140 of plaintiff was not situated on city survey no.07 then his house property could not receive serial number 140 which is adjacent to house number 141 of Subal Suren Mandal and house property no. 142 of Kalu Haran Dhali. The house of Gita Mandal was construed later, thus the property number allotted to her house is house property no.231. When the house of Gita was constructed after plaintiff's house then it can safely prima facie hold that the house block shown in Map issued by office of Land Record is of house property no.140 and not of house property no. 231.

20] When the property is a vacant space then plaintiff is required to prove his possession by showing his actual possession. No doubt the Namuna 8, house tax receipt and water tax receipt of house property no. 140 have prima facie shows possession of plaintiff over house property no. 140. However, as alleged by plaintiff, he had removed his construction from disputed land. Perusal of photographs filed by plaintiff it is seen that there are no traces of existence of house, cattle yard or cultivation on disputed land. In such circumstances reliance has to place on documentary record. But there are no documents which prima facie shows that the house property no. 140 is situated on the Gaothan plot where defendants are constructing Satsang Mandir. If in the year 1971, the plaintiffs father had encroached upon disputed land and since then this land has been in continuous possession of plaintiffs father and after his death in the possession of plaintiff then entry of plaintiffs fathers name as encroacher could be there in Encroachment record. But no such document has filed to prove his encroachment over disputed land. Plaintiff has filed statement signed by villagers to show his possession

over disputed plot. However, this statement is not on affidavit. Neither he has filed affidavit of any of the signatory to that statement. In such circumstances it is just a bare piece of paper which has no authenticity. Thus, considering above reasons I find that there are no materials on record to prima facie prove case of plaintiff.

21] On contrary defendants have filed resolution passed by Grampanchayat Durgapur on 26.09.2023. By this resolution Grampanchayat Durgapur had mutated Gaothan plot having four boundaries as to the east-28 meter road, to the west-28 meter long road, to the north-6 meter public Godown and to the south-space of 30 meter in the name of Satsang Mandir. This resolution was pass in monthly Gram Sabha on 26.09.2023. If plaintiff could ever had his possession over that Gaothan plot then he must had objected to this resolution. However, no such pleading or documents have come on record to show his objection to that resolution. As well as No Objection Certificate was also issued by Grampanchayat Durgapur to the construction of Satsang Mandir on 27.12.2023. If in record of Gram Panchayat, the house of plaintiff was situated on the disputed land then Grampanchayat could not given no objection certificate for construction of Satsang Mandir. As well as report filed by Gram Sevak, Durgapur which was called by Court, is shows that the house property number 140 is situated on the same plot where house property no. 231 of Gita is situated.

22] The Ld. Advocate for plaintiff submitted that the report filed by Gram Sevak and Spot Panchnama filed by defendant are not admitted to him because the map are drawn from south to north. Therefore, these maps are not tenable and reliable. However, on perusal of his pleading and submission I have not find that he is objecting to the houses and

construction which are already situated in that place. Even if I have not considered these maps filed by Gram Sevak, Durgapur and defendant, then also it will not prima facie prove that house property no. 140 is situated on Gaothan plot. The prima facie case is required to prove by plaintiff. Plaintiff cannot take advantage of loopholes in defendant's case. Therefore, this submission of plaintiff has not seen as reliable.

23] Considering the aforesaid discussion, it is prima facie seen that the house property no. 140 is situated on city survey no.07 and not of Gaothan Plot. Thus, it is prima facie seen that the defendant has strong prima facie case as compare to plaintiff. Considering aforesaid reasons, I hold that plaintiff is failed to prove his prima facie case. When the plaintiff has failed to prima facie prove that the suit property no. 140 is situated on disputed Gaothan plot then even if the injunction is not granted then plaintiff will not suffer irreparable injury and so also he has failed to prove balance of convenience in his favour. Thus, considering aforesaid reasons, I answer point no. 1 to 3 in negative and record my findings accordingly.

**As to Point No. 4 :-**

As I have answer point no. 1 to 3 in negative, thus in answer to point no. 4, I pass following order.

**ORDER**

Application is rejected.

Sd/-

(Diksha D. Vighne)  
Jt. Civil Judge (Jr. Dn.),  
Chamorshi.

Date: 29.01.2024