

**ORDER BELOW EXH.5**

**( Delivered on this 29<sup>th</sup> day of November 2021 )**

The plaintiff has filed present application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunction against the defendants and their agents restraining them from not to disturb peaceful possession of the plaintiff over the suit property.

2. In short facts of the plaintiff are that, plaintiff is the possessor of the suit property bearing Gat No. 384 situated at Post Dawwa Tal. Sadak- Arjuni, Dist. Gondia area ad-measuring 0.58 H. R. Suit property is belongs to the Government but from last 20 years suit property is in the possession of the Plaintiff. Plaintiff further contended that, defendants want to construct Grampanchayat Office therefore on 02.09.2021 defendants obstructed the plaintiff from cultivating the suit property and disturb his peaceful possession over the suit property.

3. Plaintiff further contended that in the year 2013 one Tarbej Shaikh r/o Dawwa tried to disturb the peaceful possession of plaintiff over the suit property. The said matter went to Sub Divisional Magistrate, Deori for hearing, at that time S.D.M. Deori passed an order not to disturb the peaceful possession of the plaintiff over the suit property. Now defendants by using their post and power illegally try to

disturb the peaceful possession of the plaintiff over the suit property.

4. The plaintiff has made out prima facie case, balance of convenience and irreparable loss in his favour. Hence, prayed that present application for temporary injunction may kindly be allowed.

5. The defendants appeared through their learned Advocate and file their say and written statement vide Exh. 13. Defendants objected the present application and submitted that the suit filed by the plaintiff is false, bogus, and without any cause of action hence liable to dismissed with costs. Defendants never disturb the peaceful possession of the plaintiff over the suit property. suit property is not in the possession of the plaintiff. Plaintiff has suppressed some material facts from the court. Plaintiff has not come before the court with clean hands. Therefore plaintiff is not entitled to get equitable relief against the defendant. It is denied by the defendant that the plaintiff has made out prima-facie case, balance of convenience and irreparable loss in his favour, hence application may kindly be rejected.

6. Heard the learned advocate for plaintiff and defendants at considerable length. After hearing both parties, following points arise for my determination, to which I have recorded my findings along with reasons there under as follows:-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiff has made out prima-facie case is in his favour ?	In the Affirmative

- |    |  |                         |
|----|--|-------------------------|
| 2) | Whether balance of convenience lies in favour of plaintiff ?                         | In the Affirmative      |
| 3) | Whether irreparable loss will be caused to the plaintiffs if injunction is refused ? | In the Affirmative      |
| 4) | What order ?   | Application is allowed. |

### **REASONS**

7. To substantiate claim plaintiff has filed following documents on record:-

1. Certified copy of 7/12 Extract of Gat No. 384,
2. Certified copy of Map of Gat No. 384,
3. Verified copy of order passed by Sub Divisional Magistrate, Deori on 30.04.2013,
4. Verified copy certificate issued by Bit Rakshak, Dawwa,
5. Verified copy encroachment extract of village Dawwa,
6. Verified copy of encroachment fine receipt No. 4092404 dt. 08.11.2012,
7. Four Boundary certificate issued by Talathi,
8. Photographs,
9. Certified copy of Certificate issue by Grampanchayt Dawwa on dt. 07.03.13,

8. The defendants have also filed following documents on record:-

1. Photocopy of Extract 9,
2. Photocopy of Extract 8,
3. Photo Copy of Proceeding Book,
4. Photocopy of letter issued to Sub Divisional Magistrate, Deori,
5. Photo copy of resolution,
6. Copy of Notice issued to the plaintiff,
7. Reply given by the defendant in respect of application of the plaintiff,
8. Photocopy of Challan,
9. Report given to the Police Station Duggipar on dt. 05.09.2021,
10. Application given to Police Station Duggipar on dt. 09.09.2021
11. Application given to the Tahasildar, Sadak Arjuni on dt. 14.09.2021,
12. Photo copy of letter issued by Zilha Parishad Gondia.

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

**9.** All these points are interlinked with each other hence, taken together for discussion to avoid repetition of facts. It would be apposite on my part to reduce some admitted facts of the case which would considerably help as to reduce length of further discussion. ***It is not disputed that the suit property is belongs to the Government.***

**10.** In order to prove his possession over the suit property

plaintiff has filed verified copy of order passed by Sub-Divisional Magistrate, Deori on dt. 30.04.2013. Apart from that plaintiff also filed verified copy of certificate issued by Bit Rakshak, Dawwa and verified copy of encroachment fine receipt No. 4092404 dt. 08.11.2012. It clearly shows that though the suit property belongs to the Government but plaintiff is in possession of the suit property. Plaintiff has its peaceful possession on suit property. It means till today the suit property is in the possession of the plaintiff. Hence, plaintiff has prima facie shown his possession over the suit property.

**11.** It is the contention of defendant that, defendant never disturb the peaceful possession of the plaintiff over the suit property. Plaintiff has suppressed some material facts from the court. Plaintiff has not come before the court with clean hands. Therefore plaintiff is not entitled to get equitable relief against the defendant. Defendant did not file single document on record which shows that they are in the possession of the suit property. Defendants filed documents on record which shows that they want to construct the new building for their Grampanchayat Office and for that purpose they made necessary correspondence with the concern Government department. The suit property is belongs to the Government that's why they want the suit property for the purpose of construction. Even it is not the case of defendant that suit property is property of Grampanchayat Dawwa.

**12.** I have minutely gone through the documents filed on record it reveals that, plaintiff is in the peaceful possession of the suit property.

Defendants are not in the possession of the suit property. It is the contention of the defendant that the suit property is reserved by them for construction of their Grampanchayat Office but they failed to file the document on record which shows that suit property is reserved by them. Defendants filed application to the Duddipar Police Station to lodge F.I.R. against defendant. Defendants demanded the No objection Certificate from the Tahasildar Sadak Arjuni for construction of new Grampanchayat building on suit property but till today said N.O.C. has not been issued by the Tahasildar. In such circumstance possibility apprehension to the plaintiff cannot be ruled out.

**13.** It is admitted facts that the Government is the owner of the suit property. It appears from the record that the plaintiff is claiming injunction within the four boundaries of suit property. It appears that all documents have supported to the case of plaintiff that he is the possessor of suit property. Intention of plaintiff is only to protect his peaceful possession over the suit property to the extent of 0 hector 58 R land. It appears that though the Government is the owner of the suit property but right now the plaintiff is the sole possessor of suit property, therefore his possession should be protected by granting temporary injunction in his favour. In this regard I have place reliance on the judgment given by the Hon'ble Supreme Court of India in the case of *Dalpat Kumar V/s. Prahlad Singh* reported in (1992) 1 SCC 719 : AIR 1993 SC 276, in this case Hon'ble Supreme Court held that;

*“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 which is likely to be caused to the other side if the injunction is granted. If on weighting 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.”*

*(Emphasis supplied)*

**14.** It is well settled principle that the grant or refusal of the temporary injunction is covered by three principles i.e. prima-facie case, balance of convenience, and irreparable loss. With the first condition *as sine quo non* the plaintiff has to prove two conditions conjunctively. Mere proof of one of the three conditions does not entitle the plaintiff to an order of temporary injunction in his favour. Besides all these three factors, one step ahead the Hon'ble Supreme Court in the case of ***Mandali Ranganna and others V/s. T. Ramchandra and others***, reported in ***AIR, 2008 Supreme Court, 2291***, has held that that, *while considering an application for grant of injunction there will not only take into consideration the basic elements in relation thereto, viz existence of prima facie-case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.*

*Grant or refusal of injunction has serious consequences depending upon the nature thereto. The court dealing with such matters must make all endeavors to protect the interest of the parties.*

*(Emphasis supplied)*

**15.** The primary purpose of granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. The Power to grant a temporary injunction is at the discretion of the court. This discretion however should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

**16.** In view of the above cited judgment, in the case at hands, it appears that the plaintiff being the possessors of suit property has made out prima-facie case in his favour. If the temporary injunction is not granted, then plaintiff will suffer irreparable loss which cannot be compensated in terms of money. It appears that the balance of convenience also lies in favour of plaintiff. On the contrary, if temporary injunction is granted no prejudice to the defendants nor any loss cause to them. In such circumstances in my view the plaintiff has made out prima-facie case, balance of convenience and irreparable loss in his favour. Hence, I answer **points No. 1 to 3** in the **affirmative**.

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

**17.** In view of above findings, the plaintiff has made out all three

essential ingredients in his favour. Therefore he is entitled for grant of temporary injunction in his favour. In the result in answer to **point No. 4** I pass the following order.

**ORDER**

- 1) Application (Exhibit No. 5 ) is allowed.
- 2) The defendants, their servants and agents are hereby temporary restrained from obstructing and interfering into the peaceful possession of plaintiff over the suit property till the decision of suit.
- 3) Costs in main cause.

(Dictated and pronounced in open court.)

Date: 29.11.2021

Sd/-  
(Vikram A. Avhad)  
Civil Judge Jr. Dn.,  
Sadak Arjuni.