

ORDER BELOW EXH. 5 IN R.C.S. NO. 14/2021

01. This is an application made by the plaintiff seeking temporary relief of injunction restraining the defendant from disturbing her peaceful possession over the suit house No.162, admeasuring 414 square feet, situated at village Awaritola, Taluka Deori, District Gondia more particularly described in para 2 of the application (for brief 'the suit house').

02. It is contended that plaintiff's father namely, Ramchandra Bhoyar was owner of the suit house. The marriage of plaintiff is performed prior to 17 years. Ramchandra has four daughters and having no male issue. Therefore, he brought the plaintiff at Awaritola. The plaintiff and her husband started residing with Ramchandra in the suit house. After few years, the suit house become dilapidated. Hence, Ramchandra constructed another house. Thereafter, the plaintiff along with her parents started to reside in another house. The plaintiff's father Ramchandra died before 10 years. After his death, name of plaintiff's mother mutated to the suit house. The mother of plaintiff also died prior to 5 years. The suit house is still standing in the name of plaintiff's mother and the plaintiff is in continues and peaceful possession of the suit house.

03. The defendant has no right in respect of the suit house. The defendant has constructed his *Gharkul* with the aid of government funds beside the suit house near about 15 years ago. This year again new *Gharkul* is sanctioned to the defendant. He is bound to construct new *Gharkul* on his own land, over which old

house was constructed. However, by encroaching upon the suit house of the plaintiff, the defendant is trying to construct his new house. As such, the defendant is trying to dispossess the plaintiff from the suit house. Therefore, the plaintiff made complaint to the village head. The village head asked the defendant that not to disturb possession of the plaintiff over the suit house. Even, the plaintiff requested the defendant to construct his new house over his own land. However, he did not pay heed.

04. In fact, the defendant has no right and concerned with the suit house. In such situation, he started construction of his house by digging pits within the premises of suit house. As such, the plaintiff has apprehension of disturbance to her peaceful possession over the suit house at the hands of defendant. The plaintiff has prima facie case and balance of convenience in her favour. She has no alternative remedy but to obtain injunction against the defendant. If the defendant is not restrained from making further construction by encroaching upon the suit house, the plaintiff would put to irreparable loss. Thus, it will take time to decide main suit on merits. Hence, meantime, temporary injunction be issued against the defendant restraining him from disturbing peaceful possession of the plaintiff over the suit house and from making further construction.

05. The defendant has resisted contentions of the plaintiff by filing say at Exh.22. He specifically averred that his father Yashwant Lataye constructed house bearing No.161 under scheme of *Indira Awas Yojana* in the village Awaritola. The defendant was having no house to reside. Therefore, he applied to Gram Panchayat, Gotabodi for house under *Gharkul* scheme. After

verifying necessary documents, the Gram Panchayat approved house to the defendant under *Gharkul* scheme. As per said sanction, the defendant started construction of house over the land owned by his father and beside the house of his father namely, Yashwant Lataye.

06. The plaintiff's father Ramchandra constructed the house under *Gharkul* scheme where he was residing along with his family. There is 10 feet gap or lane existed between newly constructed house of the defendant and house of Ramchandra. The house of Ramchandra was old. Hence, he constructed another house in the village Awaritola where he shifted and residing with his family. The four walls of old house of Ramchandra are still in standing condition. As such, the plaintiff has not approached the Court with clean hands. Rather, the defendant is not encroaching upon the house of plaintiff but constructing his house on the land of his father and already 10 feet gap is available between the construction of the defendant and plaintiff's house. The relief sought by the plaintiff vide present application is in the nature of final which is not permissible as per law. On these grounds, the defendant urged to reject the present application with costs.

07. Heard both learned advocates for the parties. From the pleadings and documents on record, following points arise for consideration. I have given finding to each point for the reasons to follow:

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether prima facie case exist in favour of the plaintiff ?	No.

2.	In whose favour balance of convenience lies?	In favour of the defendant.
3.	To whom irreparable loss would be caused if temporary injunction is issued ?	To the defendant
4.	What order?	Application is rejected.

REASONS

As to points No. 1 to 3 :

08. All the above points are interlinked with each other. Hence, to avoid repetition, those are taken together for discussion.

09. To ascertain as to whether the plaintiff has made out prima facie case in her favour, it is necessary to have regard to assertion and relevant documents on record and to see as to whether there is prima facie evidence on record which could sufficient to grant relief in favour of the plaintiff. Simultaneously, it is also necessary to see rebuttal evidence of the defendant, if any to adjudicate the present application on merit. In support of their respective contentions, both the parties filed certain documents on record. Those will be referred during next discussion.

10. It is the contention and argument of the plaintiff that she is in possession of the suit house and the defendant while constructing his house, trying to encroach upon the suit house. On the other hand, it is counter contention and argument of the defendant that the Gram Panchayat approved him a house under *Gharkul* scheme and accordingly he started construction of house over the land owned by his father and beside the house of his

father. Also, there is 10 feet gap or lane existed between newly constructed house of the defendant and the suit house. Even, four walls of the suit house are still in standing condition.

11. Considering allegations and counter allegations as above, to resolve the controversy, it is necessary to have regard to the documents on record. The plaintiff along with list Exh.4 filed tax receipt for the year 2020-2021 and assessment extract for the year 2019-20 to 2022-23 of suit house No.162. On perusal of assessment extract of suit house, it appears that name of plaintiff's mother entered in occupancy column to the extent of 414 square feet area. In description column, nature of house of is mentioned as *Gharkul* of bricks and mud. It is important to note here that other than constructed portion, no area of open space is mentioned in said assessment extract. Thus, from said document, it is gathered that suit house is constructed over entire area i.e. 414 square feet and no open space is left at any side of the suit house. In such circumstances, if according to the plaintiff, the defendant is trying to make construction of his house by encroaching upon the suit house, then it must be by demolishing certain portion of suit house. However, the plaintiff has not prima facie established that the defendant is trying demolish certain part of suit house while constructing his own house.

12. Rather, from photographs filed by the defendant along with list at Exh.19, it is seen that there is certain gap or lane between the house of defendant and suit house. Moreover, wall of the suit house beside of the defendant's new house appears to be intact and there is sufficient open space between defendant's house and wall of the suit house. The said photographs not

disputed by the plaintiff nor she produced any prima facie rebuttal evidence to said photographs. The plaintiff has even not filed any measurement report along with map issued by any competent authority to establish that the defendant is trying to encroach upon certain area of the suit house.

13. There is no prima facie evidence brought on record by the plaintiff to show that the defendant is constructing his house over certain area of the suit house. Moreover, if the plaintiff is having constructed house over entire area as mentioned in assessment extract and no open space is left at any side of the suit house, then question of encroachment over the suit house by the defendant, does not arise. It is also not case of the plaintiff that the defendant is constructing his new house by causing damage to certain portion of the suit house.

14. Thus, on the basis of above discussion it is hold that the plaintiff has failed to prima facie establish that the defendant has disturbed her peaceful possession over the suit house by encroaching upon it. Cumulative effect of above discussion is that the plaintiff failed to make out prima facie case in her favour. At this juncture, balance of convenience is not lies in her favour but lies in favour of the defendant. If injunction as sought is not granted in favour of the plaintiff, she would not put to any loss. On the contrary, the defendant would put to irreparable loss if temporary injunction is issued against him. For the reason, the plaintiff is not entitled to get the relief of temporary injunction in her favour. Accordingly, points No. 1 to 3 are answered in the negative and to answer point No. 4, following order is passed.

ORDER

1. Application is rejected.
2. Costs in cause.

Deori.
Dt. 23/08/2022.

(V.V.Khulape)
Civil Judge Junior Division,
Deori.