

ORDER BELOW EXH. 5
(Passed on 4th January 2018)

This is an application under order 39 Rule 1 and 2 r/w section 151 of the Code Of Civil Procedure for grant of temporary injunction preferred by plaintiff to restrain the defendants from disturbing his peaceful possession over suit land until disposal of suit.

2. The factual matrix of plaintiff's case runs as under:-

The plaintiff is permanent resident of Deori. Plaintiff had encroached on Government land bearing Gat no.405, area 0.07 HR, out of 1.32 HR of Mauza Shilapur, T.S. no.7, Tah. Deori, District Gondia (*hereinafter referred as suit land*). The possession of the plaintiff on 0.07 HR over the suit land was observed by Government Revenue Officer in the year 2004-2005 and his name was recorded as an encroacher in Gaon Namuan-1-E Atikraman Nondwahi. Plaintiff averred that the defendant nos. 1 and 2 are real brothers having their agricultural land and residential house situated towards North side of suit land.

3. The plaintiff averred that he is in uninterrupted possession over the suit land since last 13 years. The plaintiff in the year 2015, demolished his hut over the suit land and constructed a permanent room of 80 sq.feet over the same for the purpose of

keeping agricultural equipments and produce. The defendants did not raise any objection in the year 2015. However, in the month of July 2017, the defendants falsely applied before the Tanta Mukti Samiti, alleging that the plaintiff encroached over land of defendants. The plaintiff appeared before the Tanta Mukti Samiti, Shilapur on 06.07.2017 and denied in toto the entire allegations made by the defendants.

4. The plaintiff further averred that on 06.07.2017 at night, the defendants and their family embers entered upon the suit land and demolished the plaintiff's construction causing him damage. Being aggrieved by the act of the defendants, the plaintiff approached Police Station, Deori and filed N.C. report against the defendants. The plaintiff averred that the defendants are trying to disturb his peaceful possession over the suit land and he is in grave apprehension that he will be dispossessed from the same. Hence, by way of instant application, the plaintiff prays for grant of temporary injunction restraining the defendants from disturbing peaceful possession of plaintiff over the suit land till disposal of suit.

5. Defendants resisted and vehemently opposed the instant application by filing reply at Exh.16 and denied in toto the entire averment of plaintiff. The defendants contended that the plaintiff is serving in Police Department and retired in the year 2014. The plaintiff purchased land of Gat no.402/2 from the wife of defendant no.1 on 14.08.2013. The plaintiff was never a resident of village

Shilapur and hence, in collusion with the revenue authority, the plaintiff encroached upon suit land. The defendants further contended that land of the defendants is adjacent to the suit land and the defendants asked the plaintiff to remove his encroachment over the same. The plaintiff consented to the same, however, failed to do the same. The defendants lastly contended that the suit filed by the plaintiff along with the instant application against the defendants is false and bogus, hence, the defendants prayed to outrightly reject the instant application.

6. Following points arise for my determination and I have recorded my findings with reasons to be followed thereon.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiff proves prima facie case lies in his favour?	No.
2)	In whose favour the balance of convenience lies?	Defendants.
3)	Whether the plaintiff would be put to irreparable loss, if injunction is not granted?	No.
4)	What order?	As per final order.

REASONS

7. I have heard Mr. P. B. Ganboir learned counsel for the plaintiff and Mr. B. T. Maskare learned counsel for defendants.

8. As to point nos. 1 to 4 :- As point nos. 1 to 4 are

inter linked with each other I prefer to discuss it under one common caption. Mr. P. B. Ganboir submitted in consonance to his plaint and application. In order to substantiate his submissions Mr. Ganboir invited my attention towards documents filed on record. He submitted through his application that, prima-facie case and balance of convenience lies in favour of plaintiff and irreparable loss would be caused to the plaintiff which could not be compensated in terms of money and accordingly prayed to allow the instant application.

9. Per Contra Mr. B. T. Maskare submitted that plaintiff has filed instant application with ulterior motive just to harass them. Mr. Maskare submitted in consonance to his reply at Exh.16. In order to substantiate his submissions, he invited my attention towards documents to show their bonafides and also submitted that documents filed by plaintiff are not reliable. Mr. Maskare also submitted that plaintiff is suppressing material facts before this Court and plaintiff has not approached this Court with clean hands. He submitted that the suit of plaintiff is false and bogus and prayed to out rightly reject the instant application with costs.

10. It is canon of settled legal principle that power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as the matter of right or course. The grant of injunction is at the discretion and must be exercised in favour of the party only if

the Court is satisfied that, unless the other party is restrained by an order of injunction, irreparable loss or damage would be caused to that party. The court grants such relief on the principle of **ex debito justitiae** i.e. to meet the ends of justice.

11. In case of **Gujrath Bottling Co. Ltd Vs. The Coca-Cola Co., And others (1995) 5 SCC 545 = AIR 1995 SC 2372** wherein Hon'ble Supreme Court has held that-

Under order 39 of the Code of Civil Procedure, jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court on being approached, will, apart from other considerations, also look to the Conduct of the party involving the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature the party involving the jurisdiction of the court has to show that he himself was not at fault and that he was not unfair or inequitable in his dealings with the party against who he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under order 39 Rule 1 or Rule 2 of the Code of Civil Procedure but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.

12. Reverting back to the hub of the matter, the real bone of

contention between the parties is that whether the plaintiff's possession was disturbed by the defendants and whether the plaintiff was in peaceful possession of the suit land. Before getting into the merits of the matter, it is pertinent to mention here that, it is admitted by both the parties that the suit land is a Government land and it is the contention of the plaintiff himself that he is encroacher over the same. The plaintiff has largely relied upon document no.5. Perusal of the document shows that the same is copy of Gaon Namuan-1-E Atikraman Nondwahi. Over the said document, an entry has been made of the name of the plaintiff showing that he has encroached over 0.07 HR out of 1.32 HR over Gat no.405. It is pertinent to note here that, no fine has been recovered from the plaintiff regarding the same. It is a settled position of law that injunction cannot be granted to a person who has already been termed as an encroacher. The plaintiff has himself admitted that, to the North side of the suit land, the land of defendants is situated. The plaintiff has merely come up with the case that the defendants demolished his construction. However, there is no material on the record which would prima facie demonstrate the same.

13. The defendants have filed copy of registered sale deed on record which shows that in the year 2013, the plaintiff purchased land bearing Gat no.402/2 from the wife of defendant no.1. Thus, it appears to me that, when the plaintiff had already purchased land bearing Gat no.402/2 what was the necessity for him to encroach over the suit land. This casts a serious doubt on the conduct of the

plaintiff. Moreover, the plaintiff has not filed any other document on record which would show that the plaintiff has actually encroached upon the suit land.

14. Another important aspect which needs to be considered here that the plaintiff himself has filed a document showing that the defendants have applied before the Tanta Mukti Samiti, Shilapur contending that the plaintiff was trying to encroach over their agricultural land. Perusal of a compromise letter filed by the plaintiff, shows that the dispute was amicably settled by them. It is pertinent to note here that, the plaintiff had filed N.C. Report before Police Station pursuant to the compromise letter. Thus, it appears to me that the act of the plaintiff is nothing but a counter blast to the action taken by the defendants. Thus, in my view the plaintiff has failed to bring out a prima facie case in his favour. Even otherwise, the plaintiff is not entitled to grant of permanent injunction, as, his title over the suit land is itself not clear.

15. The facts alleged by both sides in dispute can be adjudicated by adducing evidence by both sides. It seems from record that plaintiff has suppressed material facts from this court which he is knowing. It is pertinent to mention here that the pleadings of rival sides are counter blast to each other and needs to be adjudicated by framing issues and by leading evidence by parties inter se in dispute. As of now, granting injunction would result into greater hardship to defendants as compared to plaintiff. I

accordingly concur with submissions of Mr. B. T. Maskare and accordingly answer point Nos. 1 to 3. In the result I am inclined to pass the following order.

ORDER

- 1) The application at Exh.5 hereby stands rejected.
- 2) Parties to bear their own costs.

Sd/-

Deori.
Date: 04.01.2018

(S. A. Ingley)
Civil Judge Jr. Dn., Deori.