

MHKO090002002022



**ORDER BELOW EXH. 5 IN REG. CIVIL SUIT NO. 141/2022**

1. The present application is filed for claiming temporary injunction against the defendants under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure. Say to this application is below Exh. 57 and 81.

**In short, the plaintiffs plead, as under -**

2. That, the suit property, more particularly described in the plaint map is owned and possessed by them. Defendant Nos. 19 to 24 have nothing to do with it. Still they are making unauthorized construction in it, by falsely claiming that the property was originally owned by defendant No. 19. Thus, it is case of the plaintiffs that the alleged construction is totally unauthorized and causing serious prejudice to their title and possession. Hence, they pray that till decision of the suit, defendant Nos. 21 to 24 shall not carry any construction in the suit property.

3. All these allegations are categorically denied by defendant Nos. 20 to 24 in say Exh. 57. They submit that the property, where the construction is being done is not owned by the plaintiffs but of defendant No. 19. Defendant No. 19 has duly handed over this property to the State for constructing new office building of Gav kamgar, Talathi. The work order is duly issued in this regard and the construction has reached to a considerable stage.

Therefore, at this stage the temporary injunction shall not be granted. If this order is passed, it will cause irreparable loss to the defendants. Hence, they pray for rejection of the application.

4. Following points arise for my determination and my finding there on, with reasons, are as under -

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Do the plaintiffs prove that they have prima facie case in their favour ?	.. No
2	Do the plaintiffs prove that they have balance of convenience in their favour ?	.. No
3	Whether irreparable loss would cause to the plaintiffs, if injunction is refused ?	.. No
4	What order ?	.. As per final order

### **REASONS**

#### **As to point Nos. 1 to 4 -**

5. I heard Ld. Adv. Shri. S. N. Fagare and A.G.P. Shri. S.A.Teli. Perused the documents filed by the plaintiffs below list Exh. 3, 56, 61, 68, 76, 78, 80 and 84. The pleadings in the plaint itself reveal that the plaintiffs and defendant No. 19 were co-owners in the suit property. It is averred that the plaintiffs and defendant Nos. 1 to 19 are co-holders of Gat No. 80. Their names are also entered in the 7/12 record. Thus, there cannot be any dispute that defendant No. 19 is also having certain area in the suit property. It is also an admitted fact and the plaint pleading also show that Gat No. 80 is not yet sub-divided between the plaintiffs and defendant Nos. 1 to 19. In fact, main prayer in the suit is to make sub-division of Gat No. 80. Thus, it reveals that defendant No. 21 is a

co-owner of the plaintiff and their shares in the suit property Gat No. 80 is still not sub-divided. Meaning thereby, the parties are technically still co-owner of each other. As such, the plaintiffs cannot claim any injunction against the defendants unless they show that act of the defendants is causing prejudice to them or affect their possession in Gat No. 80.

6. In this regard, it is their contention that the alleged construction is being done by defendant Nos. 21 to 24 causing encroachment on their share. For this purpose, except photographs on record, there is no reliable evidence on record. Merely on the basis of photographs or affidavits of certain persons, the fact of encroachment cannot be proved. For proving encroachment, there must be measurement report on record. Before filing the suit, measurement could have been done by the plaintiffs, either by the Government surveyor or by any private engineer, showing that encroachment is caused on their property in specific area. Such type of measurement map is not on record. Without it, the encroachment cannot be proved only on the photographs. Therefore, I find that the documents filed by the plaintiffs are insufficient to prima facie show the fact of encroachment.

7. Unnecessarily various photographs are placed on record to show, how the construction is going on speedily. Merely on various photographs, the court cannot presume that alleged construction is causing encroachment on the plaintiffs. Therefore, I find that the crucial aspect of encroachment in the matter is not proved by the plaintiffs. Admittedly, defendant No. 19 is having some area in Gat No. 80. It is located towards southern side of the area held by the plaintiffs. This means they are adjoining

holders of each other. Considering this fact also the measurement would be the most important evidence and without it, no reasonable inference can be drawn regarding encroachment.

8. Thus, I find that the documents filed by the plaintiffs are insufficient to show encroachment. Consequently, it must be held that they have no prima facie case. Hence, I answer point No. 1 in the negative.

9. The point of balance of convenience and irreparable loss is also not in their favour. As can be seen from the photographs, the disputed construction is not causing any direct damage to the school building. Therefore, even if encroachment is proved in the trial, the relief of mandatory injunction can be grant to the plaintiffs. The illegal construction can be demolished. Thus, I find that if the construction is continued, no serious prejudice will be caused to the plaintiffs. On the contrary, if it is stopped, the public fund will be wasted. Hence, point Nos. 2 and 3 are liable to be answered in the negative.

10. The discussion made hereinabove shows that the application is liable to be rejected. Hence, I pass the following order in answer to point No. 4 -

**ORDER**

1. Application Exh. 5 is rejected.
2. No order as to costs.

Date – 14.03.2023

( G. V. Deshpande )  
Civil Judge Senior Division,  
Gadhinglaj