

MHKO110011552024



ORDER BELOW Exh. 5 in
R.C.S. NO. 89/2024

Pramila Sambhaji Kumbhar

Vs.

Maruti Yashwant Kumbhar and Ors.

The plaintiff has filed the application under Order 39 Rule 1 and 2 of Code of Civil Procedure (in short C.P.C.) for temporary injunction in order to prevent the defendants and/or any other person claiming through them from constructing over the suit property and obstructing the plaintiff's joint ownership and peaceful possession over the suit property mentioned in para no.1 of the plaint.

The Plaintiff's case in brief is as follows :-

02. The plaintiff has filed the main suit for permanent injunction against the defendants. The suit property bearing C.S. No. 77 admeasuring 66.60 Sq.Meter in area is commonly owned and possessed by the plaintiff and other property card holders. Accordingly, the names of the plaintiff and other property card holders are mutated upon the property card extract of the suit property. Also, the property card extract of the suit property is in the joint name of late predecessor of defendant no. 1 to 3 along with late Sambhaji Ishwara Kumbhar. The suit property is not partitioned.

03. The plaintiff has contended that, the defendants are

illegally trying to construct upon the suit property and obstruct the peaceful possession of the plaintiff. On 15/04/2024 defendants threatened the plaintiff. Hence, the plaintiff has filed the suit and the present application against the defendants for temporary injunction.

04. In spite of repeatedly calling the defendant No. 1 to 4 are absent. On service of suit summons and notices the defendants have appeared in the present suit, but they have failed to file their written statement and say to Exh.05. Hence, the suit proceeded without say to Exh. 5 and written statement against defendant No. 1 to 4.

05. After having considered the arguments advanced by plaintiff and on perusal of the pleading and the documents filed on record by the plaintiff, the following points arise for my determination. Findings thereon are recorded for the reasons discussed herein under :-

SR. NO.	POINTS	FINDINGS
1.	Whether there is a prima-facie case in favour of plaintiff ?	Yes
2.	Whether balance of convenience tilts in favour of plaintiff ?	Yes
3.	Whether irreparable loss will be caused to plaintiff, if relief sought is not granted ?	Yes

4.	What order ?	Application is allowed.
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REASONS

06. In order to prove the case, the plaintiff has relied upon following documents.

Sr. No.	Document	Exh.No.
1.	Copy of property card extract of the suit property bearing Gat no. 77.	3/1
2.	Map of Gat no. 77	3/2
3.	Photo printouts of present situation of the suit property	13/1
4.	Copy of property card extract of the suit property bearing Gat no. 72.	13/2
5.	Copy of property card extract of the suit property bearing Gat no. 73.	13/3
4.	Copy of property card extract of the suit property bearing Gat no. 75.	13/4

AS TO POINT NO. 1:-

07. Heard the learned Advocate for the plaintiff Shri. U. A. Mangave. Despite sufficient opportunities being granted, the Defendant Nos. 1 to 4 as well as their advocate have failed to appear before the Court at the time of hearing of the present application. The record reveals that defendants were granted

adequate opportunity to contest the present application. However, they have chosen to remain absent and have neither advanced arguments nor filed their say to the application at Exhibit-5.

08. In view of their absence and failure to contest the present application, the Court is constrained to proceed with the adjudication of the application on the basis of the material available on record and the submissions advanced on behalf of the plaintiff.

09. The learned Advocate appearing for the plaintiff has reiterated the contents of the plaint during the course of his arguments. The plaintiff has argued that, the suit property mentioned in para no. 1 of the plaint was commonly owned and possessed by plaintiff and other property card holders including the defendants. Accordingly, the names of plaintiff and other property card holders are mutated upon the property card extract of the suit property. However, the defendants have threatened the plaintiff and are trying to construct upon the suit property. Hence, he prayed to allow the application.

10. On careful perusal of the document (Sr.no. 1, Exh.3) placed on record it appears that, the names of the plaintiff's predecessor i.e. Sambhaji Ishwara Kumbhar appears on the property card extract of the suit property along with predecessor of the defendant no. 1 to 3. On perusal of the photographs filed along with (Sr. no. 1, Exh.13) it appears that, old construction is demolished and in place of it plinth (चौथारा) is constructed. Also, it appears that the plaintiff is owner of adjoining plot bearing C. S.

No. 73.

11. As discussed above, the property card extracts produced on record prima-facie disclose that the name of the plaintiff and her predecessor i.e. Sambhaji Ishwara Kumbhar is reflected in the revenue record in respect of the suit property. These revenue entries lend prima-facie support to the contention of the plaintiff regarding her ownership and possession over the suit property.

12. It is also pertinent to note that though the defendants have appeared in the present suit they have not filed their written statement nor have they filed any say or reply to the present application at Exhibit-5 despite sufficient opportunity being granted to them. Consequently, at this interlocutory stage the pleadings and documents of the plaintiff remain uncontroverted and unchallenged.

13. Therefore, on the basis of the documents produced on record and the absence of any rebuttal from the defendants, this Court is satisfied that the plaintiff has established a prima-facie case regarding her ownership and possession over the suit property. Accordingly, Point No.1 is answered in the affirmative.

AS TO POINT NO. 2 AND 3 :-

14. The Point Nos. 2 and 3 are interlinked with each other and arise out of the same set of facts and circumstances. Therefore, in order to avoid repetition, both these points are taken up together for discussion.

15. It is the contention of the learned Advocate appearing for the plaintiff that the defendants are attempting to interfere with and obstruct the peaceful joint possession and enjoyment of the plaintiff over the suit property. It is further submitted that if the ongoing construction is allowed then the the plaintiff will be deprive of her joint ownership and peaceful possession over the suit property. Despite the lawful ownership and possession of the plaintiff, the defendants are threatening to construct on the suit property thereby interfering with the said possession and are trying to create obstruction over the suit property.

16. As discussed above in Point No.1, the documents placed on record, particularly the property card extracts, prima-facie indicate that the plaintiff is entitled to the joint possession and ownership in view of being a legal heir of her late husband i.e. Sambhaji Ishwara Kumbhar. These documents lend prima-facie support to the claim of the plaintiff regarding her joint possession over the suit property.

17. It is further pertinent to note that though the defendants have appeared in the present proceedings earlier, they have failed to file their written statement or their say to the application at Exhibit-5, despite sufficient opportunity being granted by this Court. Therefore, the pleadings and contentions raised by the plaintiff remain un-rebutted at this interlocutory stage.

18. The relief of temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 is governed by

the well settled principles that the plaintiff must establish (i) a prima-facie case (ii) balance of convenience in his favour and (iii) likelihood of irreparable loss or injury in case the injunction is not granted.

19. In the present case, the plaintiff has prima-facie established her ownership and possession over the suit property on the basis of documentary evidence placed on record. If the defendants are not restrained at this stage, there is a reasonable possibility that they may interfere with or disturb the possession of the plaintiff which may result in multiplicity of proceedings and may cause unnecessary complications during the pendency of the suit.

20. Further, if the injunction is not granted till the final decision of this suit and the defendants succeed in disturbing the possession of the plaintiff, the plaintiff may suffer irreparable loss and injury which cannot be adequately compensated in terms of money. On the other hand, if the defendants are temporarily restrained from interfering with the possession of the plaintiff, no serious prejudice or hardship would be caused to them during the pendency of the suit.

21. Therefore, considering the material placed on record and the circumstances of the case, this Court is satisfied that the balance of convenience lies in favour of the plaintiff and there exists a likelihood of irreparable loss being caused to the plaintiff if the temporary injunction is refused. Hence, the plaintiff has successfully satisfied the essential requirements for grant of

temporary injunction. Accordingly, Point Nos. 2 and 3 are answered in the affirmative.

As To Point No. 4 :-

22. The observations and findings rendered while deciding this application at Exh. 5 are confined solely to the adjudication of the present application. They shall not, in any manner, prejudice the rights or contentions of either party at the stage of final hearing. The plaintiff is at liberty to lead evidence independently and to substantiate their respective claims on merits.

23. In the backdrop of the above discussion and in view of the affirmative findings on Point Nos. 2 and 3, this application is liable to be allowed. Hence, as every party approaches the court to exercise a lawful right with a hope to seek an equitable relief, it is not appropriate to impose the costs of this application on the plaintiff. Hence, the following order is passed:-

ORDER

1.	The application for temporary injunction is hereby allowed.
2.	The defendant no. 1 to 4 and/or anybody claiming through them are hereby restrained by the order of temporary injunction from creating any third party interest in the suit property and/or to prevent them from constructing over the suit property and

	obstructing the plaintiff's joint ownership and peaceful possession over the suit property mentioned in the plaint till the final decision of the suit.
3.	No order as to cost.

Peth-Vadgaon
Dtd. 10/04/2026

sd/-
(R. S. More)
3rd Jt. Civil Judge, Junior Division,
Peth-Vadgaon