



R.C.S. No. 103/2023

**Sadashiv Chanbasappa Swami Vs. Shripati Tukaram
Torase.**

CNR - MHKO130006862023

ORDER PASSED BELOW EXH. 05
(Dt. 31/07/2023)

01. This is the application of the plaintiff filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure (In short C.P.C.) with request to restrain the defendants from causing obstruction and interference in the peaceful possession of the plaintiff over the suit property & to restrain them from obstructing the plaintiff while completing the roof-let of old house in the suit property till final disposal of the suit.

Brief facts of the plaintiff case is as under:-

02. The following property will hereinafter be referred as the suit property-

(A)

Sr. No.	Village	City Survey No.	Admeasuring Area
1.	Senapati Kapashi, Tal. Kagal.	694	158.5 Square miters.

03. As per the plaintiff, the suit property is belonging to the plaintiff and his brother. The plaintiff is having his residential house in the suit property. As the roof-let of the house is damaged, the plaintiff has taken work of removal of old roof-let and to construct the new roof-let of steel bled. The work was started in the month of June, 2023. For constructing the new work the plaintiff has removed old roof-let from his old house. Due to the current rainy season and the fact that there is no roof-let to the old house, the rainy season is causing damage to the suit property.

04. As per the plaintiff, the defendant is having no concern with the suit property. House of the defendant is situated towards the western side of the suit property. The plaintiffs house is old and is constructed by using stone, bricks & sand. The rainy season without roof-let is causing damage to the walls of the house. In such a factual aspects, the defendants are causing obstruction and interference to the plaintiff in completing the roof-let. As a result, the plaintiff has approached to the police station on 04/06/2023. However, he got no relief from there. The plaintiff has sent registered notice to the defendants on 09/06/2023 through his advocate. However, inspite of receipt of such a notice, the obstruction is going on. In fact, the defendant has not taken any objection while removing the roof-let from the suit property. The wall situated between the plaintiff & defendants house is common wall. Therefore, the defendants have no right to obstruct the plaintiff. However, as the obstruction is going on the current application is filed.

Brief facts of the defendants case is as under:-

05. The defendants have submitted their say vide Exh. No. 14. The defendants have denied the allegations specifically leveled against them. The defendants have admitted the ownership of the plaintiff over the suit property. In fact, the factual aspects pertaining to the existence and situation of the suit property are seems to be admitted to the defendants. The defendants have submitted that, the plaintiff has not impleaded his brother who is co-owner in the suit property. They further have submitted that, this plaintiff had instituted R.C.S. No. 194/2015 against his brother Narayan Swami. The same is still pending. The plaintiff on 22/08/2014 has measured the suit land through Dy. Superintendent of Land Records.

During the measurement it was found that the plaintiff has caused encroachment to the southern side of the defendants property bearing city survey No. 695 admeasuring 2.5 feet width & 33.3 feet length. In fact, it was also revealed that this defendants have caused encroachment in the suit property from the northern side. However, in front of the panchas and Measurement Officer, the defendants have handed over possession of the encroached portion to the plaintiff. But at that time the plaintiff has admitted that, he will hand over possession of the encroached portion to the defendants at the time of constructing new house in the suit property. However, the said fact is intentionally suppressed by the plaintiff from the Court.

06. It is further submitted by the defendants that, in the suit property and in the property of the defendants there is a south north triangular. The plaintiff has not come to the Court with clean hands. These defendants have also filed R.C.S. No. 109/2023 against the plaintiff which is pending. This defendants have also submitted their report before the Murgud Police Station against the plaintiff on 06/06/2023. This defendants have given reply to the notice sent by the plaintiff. Thus, on these factual aspects, as the current application is falsely submitted, the defendants have submitted to reject the same.

07. Heard advocate Shri. S. S. Kestikar for the plaintiff and Advocate Shri. S. M. Sawardekar for the defendants.

08. On the basis of rival pleadings of both the parties, following points are arises for my determination and my findings with respect to the same is as under:-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has made out <i>prima-facie</i> case?	In the Affirmative.
2.	Whether balance of convenience lies in favour of the plaintiff?	In the affirmative.
3.	Whether irreparable loss will be caused to the plaintiff, if remedy of temporary injunction is refused?	In the affirmative.
4.	What order?	As per final order.

REASONS

As to points No. 1 to 3:-

09. All the points are interlinked with each other. Thus, to avoid repetition of facts, they are discussed together.

10. Perusal of the rival contention of both the parties, one thing is clear that both the plaintiff & defendants properties are adjacent with each other. The defendants have raised one ground pertaining to the non impleadment of the plaintiff's brother as a party to the suit. However, this is the interim stage, hence the same ground is not considered here at the moment.

11. There is no doubt about the ownership of both the parties over their respective properties. It is not disputed that, old house is their in the suit property of which the roof-let is removed at the moment. The plaintiff has come with the case that the defendants are causing obstruction to the fitting of new roof-let to the old house in the suit property. Per contra, the defendants have come with the case that on 22/08/2014 this plaintiff has measured the suit land through the Dy. Superintendent of Land Records. Wherein encroachment on either side (i.e. on the side of plaintiff &

defendants) was found. It is submitted that this defendants on the same day have handed over possession of the encroached portion to the plaintiff. At the same time, the plaintiff has admitted to hand over possession of the encroachment portion at the time of new construction. Now, in respect of the submission of the defendants the defendants have filed on record joint measurement map of the suit property and his property through Exh. No. 21.

12. During the course of argument, the defendants advocate Mr. Sawardekar has tried to brought to the notice of this Court that, the plaintiff has caused encroached in the suit property. But the bare perusal of that map it does not appear anywhere that encroachment is there made by the either side in their respective properties. What it implies that, at the moment there is no prima-facie supportive evidence to the facts put-forth by the defendants in support of their case pertaining to the encroachment.

13. The defendants in support of their case have filed affidavit of Narayan Swami (Exh. No. 90) who is real brother of the plaintiff. Who deposed that at the time of measurement, encroachment was found but the plaintiff has admitted to hand over possession of the encroached portion at the time of new construction. Per contra to rebut the same, the plaintiff has filed three affidavits of the witnesses Dattatray Walavalkar at (Exh. No. 16), Ganesh Bhoi at at (Exh. No. 17) & Prakash Ghatge at (Exh. No. 18). These three witnesses have deposed about the obstruction at the hands of defendants to the plaintiff in completing the work of new roof-let to the old house in the suit property.

14. At the moment, to the fact of encroachment as put-forth

by the defendants, there is no prima-facie evidence except oral submissions of the defendants. Thus, the fact put-forth by the defendants pertaining to the encroachment and handing over possession of the encroached portion in the suit property can not be considered at this stage.

15. At the moment, it is not in dispute that the roof-let of the house in the suit property is removed. Which means the house in the suit property is open from the upper side. Definitely at the moment rainy season is going on. Thus, if the defendants have not restricted at this moment from causing obstruction to the plaintiff, then it may cause damage to the old house which is admittedly lying without roof-let at the moment. Thus, due to these fact irreparable loss will be caused to the plaintiff. Hence, prima-facie case and balance of convenience is lies with the plaintiff. In such a factual aspects, I answered points No. 1 to 3 in the affirmatives & in answer to point No. 4 following order is passed:-

ORDER

1. The application (Exh. 5) is allowed.
2. The defendants are hereby restricted temporarily from causing obstruction and interference to the peaceful possession of the plaintiff over the suit property till the final disposal of the suit. They further are restrained temporarily from causing any obstruction and interference to the completion of the roof-let to the old house situated in the suit property
3. In the peculiar facts & circumstances there is no order as to costs.

Kagal.
Date: 31/07/2023.

(A. B. Jawale)
Jt. Civil Judge Junior Division,
Kagal.