



R.C.S. No. 109/2023

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

CNR - MHKO130007502023

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

01. The current application is filed by the plaintiff 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 making any construction in the suit property and to restrain them from further making any obstruction & interference in the peaceful possession of the plaintiff in the suit property.

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.	695	164.20 Square meters.

03. As per the plaintiff, the suit property is belonging to him. To the eastern side of the suit property, property of the defendants bearing city survey No. 694 is situated which is the house property. The defendants on 22/08/2014 have measured their property at the hands of Measurement Officers from the Dy. Superintendent of Land Records Office. During the measurement, to the southern side encroachment at the hands of defendants in the suit property admeasuring 2.5x33.3 feet was found. So also the encroachment at the hands of this plaintiff, in the property of the defendants was also found. However, at the same time, the plaintiff has handed over the

possession of encroached portion to the defendants. The defendants have admitted to hand over the possession of encroached portion while making construction in their property. However, the defendants have not acted upon as per their words.

04. As per the plaintiff, when the defendants on 02/06/2023 have removed roof-let from their old house and have started construction of new roof-let. At the time, this plaintiff has sought for possession of encroached portion, to which this defendants have denied. Thus, the plaintiff has approached to the Murgud Police Station on 06/06/2023 and has filed his report with them. However, thereafter this defendants on 08/06/2023 have issued false notice to the plaintiff and have instituted false suit bearing R.C.S. No. 103/2023, this suit is already pending. The plaintiff is retired from the Military by serving to the nation. However, the defendants are goon persons. Thus, to restrain the defendants, this application is filed.

Brief facts of the defendants case is as under:-

05. The defendants have submitted their say vide Exh. No. 10. The defendants have denied the allegations leveled against them. They have specifically denied description of the suit property. They have specifically denied the fact of measurement and of the encroachment as pleaded by the plaintiff. The defendants have submitted that, they have not made any encroachment in the suit property.

06. It is submitted by the defendants that, the defendants have never disputed ownership of the plaintiff over the suit property. The defendants are having their ownership over the property bearing C.S. No. 694. The defendants are having their joint possession in the

above property along with other brother. As the old roof-let in the house property was damaged. The defendants have removed the same. The defendants have taken work of construction of new roof-let in the month of June, 2023.

07. It is specifically submitted by the defendants that, as their house is lying without roof-let the on going rainy season is causing damage to the defendants house property. In fact, the plaintiff is having no concern with property bearing C.S. No. 694. Only with intent to restrict the defendants from completing the work of roof-let. The plaintiff is causing obstruction by different modes. The wall situated in between the plaintiff & defendants house property is common wall. The defendants are putting new roof-let to their house. Thus, there is no issue of encroachment at the hands of these defendants.

08. It is contended by the defendants that, these defendants have first constructed their house in C.S. No. 694 and thereafter the plaintiffs have constructed their house in C.S. No. 695. Thus, as the plaintiffs property is later constructed. There is no point in the allegations of encroachment. The defendants are having full right to complete the work of roof-let in his property. The plaintiff has no right to restrict them. Thus, with these submissions, the defendants have prayed to reject the application.

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

10. 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 Negative.
2.	Whether balance of convenience lies in favour of the plaintiff?	In the Negative.
3.	Whether irreparable loss will be caused to the plaintiff, if remedy of temporary injunction is refused?	In the Negative.
4.	What order?	As per final order.

REASONS

As to points No. 1 to 3:-

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

12. It appears that, the plaintiff has come with the specific case of the encroachment at the hands of defendants over the suit property. It is not in dispute that the plaintiff and defendants properties are situated adjacent to each other. It is also not in dispute that the roof-let of the defendants house is removed & the same house is lying without roof-let.

13. It is not in dispute that, the defendants in the current suit have already instituted R.C.S. No. 103/2023 for perpetual injunction against the plaintiff in the current suit. This Court while deciding interim application below Exh. No.5 has granted interim protection to the plaintiff (defendants in the current suit) against the current plaintiff in respect of the same properties.

14. In the current application, the plaintiff has come with

the case of encroachment admeasuring 2.5x33.3 feet at the hands of defendants in the suit property. But, at the moment, except the words of the plaintiff, there is no prima-facie evidence to point out the encroachment allegedly made by this defendants in the suit property. At the moment, rainy season is going on. Roof-let of the defendants house is removed. Which prima-facie suggests that the house is open from upper side. Thus, if this interim injunction is granted, then it may cause damage to the house property of the defendants.

15. Thus, in the backdrop of these factual aspects, it appears that the plaintiff is having no prima-facie case. Balance of convenience does not lying with him and if remedy of injunction is refused, it will not cause any damage to the plaintiffs. Resultantly, I answered points No. 1 to 3 in the negatives & in answer to point No. 4 following order is passed:-

ORDER

1. The application (Exh. 5) is rejected.
2. 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.