



R.C.S.No. 156/2025

**Jagajit Shrikant Bhosale Vs Rajendra Nanaso
Chavan**

CNR - MHKO130020412025

ORDER PASSED BELOW EXH.05 and Exh. 11
(Dt. 11/12/2025)

1. This is an application vide Order 39 Rule 1 and 2 of the Code of Civil Procedure. By way of instant application Plaintiff/applicant has prayed to restrain the Defendant from interfering with his possession over the suit property. It is submitted that suit property is land Gat No. 196/2 total admeasuring 0.19.20 R and out of it 0.05.61 R and bounded as follows.

Towards East – Internal Road,

Towards West – Internal Road,

Towards South – Property of Shri. Mendke,

Towards North – Property of Shri Akshay Krushnat Prabhavle. (here-in-after referred as suit property for the sake of brevity).

2. It is submitted that the issue in the present suit and application is with respect to illegal construction carried out by Defendant in the suit property.

3. It is submitted that suit property was originally owned by Anton Luis Farnandis and others. Anton Luis Farnandis and others by way of registered Sale Deed No. 2740 dated 08/09/2023 sold the suit property for consideration of Rs. 10,30,000/- to the Plaintiff and accordingly the name of Plaintiff was mutated over the 7/12 extract of the suit property on the basis of Sale Deed. Since then Plaintiff is the owner and possessor of the suit land. It is submitted that Defendant has no right and interest in the suit property. Despite this

fact in August 2025 the Defendant started digging the soil for erecting pillars in the suit property in August 2025 and now the construction is in progress. The Plaintiff got knowledge about the construction on 10/10/2025 since he is residing at Kolhapur and requested Defendant to stop the illegal construction but the Defendant did not pay any heed. Thereafter Plaintiff by way of written complaint to the Police Inspector, Murgud on 25/10/2025 and Chief Officer on 24/10/2025 intimated of the illegal construction but no cognizance was taken. Therefore the Plaintiff was constrained to file the present suit along with application for temporary injunction.

4. The Defendant filed his Written Statement at Exh. 24 and opposed the application and denied the averments therein. It is submitted that the construction carried out by Defendant is not illegal. It is submitted that the construction is being carried out by Defendant in Gat No. 198/1/B which is owned by the Defendants. It is denied that the construction carried out by Plaintiff is in Gat No. 196/2. It is submitted that if the prayer of Plaintiff with respect to temporary injunction is allowed then it will cause much hardship and irreparable loss to the Defendants because the construction is already completed half way. It is submitted that there is no contention of Plaintiff with respect to encroachment. The suit is barred for non joinder of the other coparcener in the suit property. Therefore the application being without merit be rejected.

5. Considering the pleadings in the plaint, Written Statement and Say following points arise for my determination to which I record my findings with reasons.

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether prima facie case lies in favour of Plaintiff?	:-	Affirmative
2.	Whether balance of convenience lies in favour of Plaintiff ?	:-	Yes
3.	Whether Plaintiff would suffer irreparable loss if injunction is refused ?	:-	Yes
4.	What order?	:-	As per final order

:- REASONS :-

For point no. 1 to 3:-

Point no. 1, 2 and 3 are inter related therefore they are discussed conjointly for the sake of convenience.

6. Suit of Plaintiff is for perpetual injunction and mandatory injunction. The Plaintiff has prayed to restrain Defendant permanently from interfering with the possession of Plaintiff over the suit property by way of perpetual injunction. The Plaintiff has also prayed to direct the Defendants to demolish the alleged illegal construction by way of mandatory injunction.

7. Plaintiff has filed documents vide list at Exh. 3 on record. At Sr. No. 1 of Exh. 3 is the 7/12 extract of Gat No. 196/2 which reveals that Plaintiff is in possession of 0.05.61 R land vide mutation entry bearing No. 15704. At Sr. No. 2 is the copy of registered Sale Deed dated 08/09/2023 bearing No. 2720/2023 which reveals that vendor Anton Luis Farnandis and

others had sold the suit property to the Plaintiff. It clearly mentions the boundaries which are described in the plaint. At Sr. No. 3 and 4 are the Written Complaints made by Plaintiff to the Police Inspector and Chief Officer, Murgud which reveals that Plaintiff had approached the legal authorities informing them about illegal construction carried out by Defendants. At Sr. No. 5 of list at Exh. 3 are the photographs which shows some part of construction. The Plaintiff has also filed the measurement map of Gat No. 196/2 vide list at Exh. 26. This map is prepared by Engineer and Land Surveying Consultants.

8. The Plaintiff has also filed the 7/12 extract of Gat No. 198/1/B on record vide list at Exh. 17. On perusal of 7/12 extract of Gat No. 198/1/B it reveals that Shantabai Tanaji Chavan is in joint possession along with Sagar Arjun Patil, Yogesh Shivaji Patil, Gajanan Gundopant Patil, Kiran Vitthal Gavankar in land admeasuring 0.12 R.

9. It is an admitted fact that Plaintiff is the owner and possessor of land Gat No. 196/2. Defendant have not denied that Plaintiff became owner of land Gat No. 196/2 admeasuring 0.5.61 R land vide registered Sale Deed No. 2740 dated 08/09/2023. The only contention of Defendants is that they are carrying out construction in the land owned by them in Gat No. 198/1/B. The Defendants have not denied that they are not carrying out construction. The Plaintiff have specifically pleaded that the said construction of Defendant is in the land owned by them and they have encroached on the land owned by Plaintiff. It is specifically pleaded that the construction of Defendant is an

encroachment on land owned by Plaintiff. Hence Plaintiff have made out the triable issue. The possession of the Plaintiff over the suit property i.e. land Gat No. 196/2 is not disputed.

10. It is settled principle of law that at the time of determination of application for temporary injunction the factum of possession would only be the relevant factor. The contention of Defendant with respect to encroachment would be decided at the time of trial by way of adducing evidence or by measurement of the properties as per the procedure prescribed by law. But at this stage if the Defendants are allowed to continue with the construction then more hardship and irreparable loss will be cause to the the Plaintiff as compared to the Defendants. The photographs shows that already major part of the construction is completed. In such circumstances if the construction is allowed to be completed then it will hamper the right of Plaintiff without any trial. The Plaintiff has made out the strong prima facie case. Accordingly I answer point no. 1, 2 and 3 in favour of Plaintiff/Applicant. In answer to issue no. 4 I pass following order.

ORDER

1. Application below Exh. 5 and Exh. 11 are allowed.
2. Defendants or their agents are restrained by way of temporary injunction from interfering with possession of Plaintiff over the suit property and carrying out construction in the suit property

bearing Gat No. 196/2 admeasuring 0.5.61 R and more specifically described in paragraph No. 1 of the plaint till the final disposal of the suit.

3. Cost in main cause.

Kagal.
Date:- 11/12/2025

(A.B.Madake)
Civil Judge Junior Division,Kagal.