

MHKO140002782025 	R.C.S. No.67/2025 Sarita Rukmanna Naik Vs. Sarita Aappa Taral
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**ORDER BELOW EXHIBIT 5**

**(Date- 19/04/2025)**

1. By way of this application, the plaintiff has prayed for ad interim injunction in respect of suit property (as described in plaint para-1). It is submitted that, the suit property including open space admeasuring 15 feet situated towards southern side of plaintiffs house is subject matter of the suit. According to plaintiff said open space is owned and possessed by the plaintiff. But the defendant started illegal construction over the said open space and causing obstruction. It is submitted that, if the construction is completed then the plaintiff will suffer irreparable loss and nature of suit property will be changed. Hence, the present application.

2. I have perused the entire application along with the documents. Heard the learned advocate for the plaintiffs The adv. For plaintiff argued that, there is extreme urgency to grant ad-interim injunction as the construction is going on in the suit property of the plaintiff. It is argued that, if the construction is not stayed then the purpose of the suit will be defeated by delay. She referred all the documents filed on record, photo copies and argued that plaintiff is absolute owner of the suit property.

3. Order 39 Rule 3 of Code of Civil Procedure provides that the Court shall in all case, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the

opposite party so it is clear in view of aforesaid provision that, issuance of notice is a general rule and granting injunction without notice is an exception. Therefore it is the duty of plaintiff to satisfy the court that if the ad interim ex-parte injunction is not granted then the purpose of granting injunction would be defeated by delay.

4. *The Hon'ble Supreme Court in **Morgan Stanley Mutual Fund vs Kartick Das (1994) 4 SCC 225** Provided certain guiding principles in relating to the grant of an ad interim injunction., the Hon'ble Supreme Court held that, - As a principle, ex-parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex-parte injunction are-*

- a) Whether irreparable or serious mischief will ensue to the plaintiff,*
- b) Whether the refusal of ex-parte injunction would involve greater injustice that the grant of it would involve,*
- c) The court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented,*
- d) The court will consider whether the plaintiff had acquiesced for sometime and in such circumstance it will not grant ex-parte injunction,*
- e) The court would expect a party applying for ex-parte injunction to show utmost good faith in making the application,*
- f) Even if granted, the ex-parte injunction would be for a limited period of time*
- g) General principle like, prima facie case, balance of conveniences and irreparable loss would also be considered by the court.*

5. Present suit is filed for perpetual injunction restraining the defendant from carrying out any construction in the suit property. The

plaintiff submitted that the defendants have started digging work too close to the house of plaintiff and thereby collapsed kitchen side wall of plaintiff's house. Photo copies show that some digging work for the purpose of construction is going on adjacent to the house. The plaintiff is claiming ownership over the said portion of land where construction is going on. At this stage it is not necessary to go into the merits of the case. Prima-facie it appears that, some construction is going on. Plaintiff has filed complaint before BDO, Chandgad regarding the said construction.

6. The plaintiff has filed on record village form no.8 of suit property which shows that the name of plaintiff is appearing in the column. The plaintiff on affidavit stated that the defendant have started construction in the suit property and said construction is illegal. On perusal of the photocopies, it is seen that the construction is started and some digging work is going on. At this stage it is not necessary to go into the merits of the case, but it is seen that there is dispute in respect of the encroachment. So if the said construction is completed it would result into complication to both side. Therefore to avoid the said complication and multiplicity of litigation it would be proper to stay the said construction till the appearance of defendants. It is to be clarified as to whether the defendants are carrying out alleged construction in the suit property. For that purpose opportunity is given to other side to show the same. But till their appearance it is necessary to protect the nature of suit property as it is. The stay will be for short period and therefore it will not cause irreparable loss to be defendants . If the ad-interim ex-parte injunction is granted then no prejudice or hardship will cause to defendants. But on the contrary if injunction is not granted then irreparable loss will be caused to plaintiff and the purpose of granting injunction would be defeated by delay. Hence, I pass following order.

**ORDER**

1. Application is allowed.

2. The defendant is hereby temporarily restrained from carrying out construction over the suit property (as described in plaint para.1, 1 ) till their appearance or till further order of the Court, whichever is earlier.
3. The plaintiff to comply mandatory provisions as laid down in Order 39 Rule 3 of the Code of Civil Procedure, that is - to delivered to opposite party, or to send by registered post, the copy of application for injunction together with affidavit, copy of plaint, copies of document on which the applicant relies.
4. Plaintiff to file an affidavit stating that the copies aforesaid have been so delivered or send, in the court today itself or immediately on next day.

**Returnable on**

Date: 19/04/2025

**Sd/-**  
[Waman D. Jadhav]  
Jt.Civil Judge Junior Division, Chandgad.  
[Judge Code- MH3143]