

MHKO140009302025



Regular Civil Suit no.225 of 2025

**Soma Vaiju Naik
Vs.
Barku Khirgu Gawade**

ORDER BELOW EXHIBIT- 5

[Passed on: 06/03/2026]

1. This application is made by plaintiff for grant of temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 and thereby prayed –
(a) to restrain the defendant or any other persons on his behalf from causing any type of obstruction to the possession of plaintiff, and
(b) to restrain the defendant from carrying out construction in the suit property.

Subject Matter of the suit:

2. Agricultural Land situated at village Pundra, Kanur (Budruk), Taluka Chandgad, Dist. Kolhapur, in Grampanchayat Gat no.137/A. Area 869 sq. ft. to the extent of Area 15X20=300 sq. ft. is subject matter of the suit. It's four boundaries are- Towards East- property of Mangesh Naik, Towards West- property of Laxmi Dattu Gavade, Towards South- property of defendant, Towards North- house of plaintiff no.2. (Hereinafter it is referred to as 'the suit property')

Facts pleaded by the plaintiff:

3. It is contended that, the plaintiff has filed present suit for perpetual & mandatory injunction. The description of the suit property is mentioned in the map enclosed with the plaint. It is submitted that, the suit property is originally owned by Vaiju Naik who is predecessor of plaintiff no.1. His name was recorded in the Grampanchayat office in respect of suit property. The suit property is

open land (परसु). The name of plaintiff is recorded in the Grampanchayat record and the defendant has no concern with it. The suit property is ancestral property of plaintiffs. As per oral partition the suit property as described in plaint para-1 is allotted to plaintiff no.1. The portion situated towards north side of said suit property is allotted to plaintiff no.2. However, plaintiff no.2 has constructed a house thereon.

4. Thus, the plaintiff is lawful possessor of the suit property including open space (परसु). He is using the said portion of land for storing agricultural articles, fire woods and to tie the cattle. The defendant is causing obstruction to the possession of plaintiff and illegally trying to carryout construction in the suit property. The said construction is illegal and it is necessary to restrain the defendant from carrying out construction in the suit property. The plaintiffs requested the defendant but he ignored the same and threatened for bad consequences. Prima-facie case and balance of conveniences is in favour of plaintiffs. If the application is not allowed, then the plaintiffs will suffer irreparable loss. Therefore, it is prayed allow the application.

Facts Pleaded by the Defendant:

5. The learned advocate for defendant filed written statement at Exh.24 and raised objection to the present application. It is submitted that, the contention of the plaint are false. The suit is not tenable and plaintiff is not entitle for any relief as prayed. It is further submitted that, the property bearing Grampanchayat no.173/B and 173/C are owned and possessed by the defendant. The plaintiff has no concerned with the said property. The suit bearing no.193/2022 was filed for perpetual injunction in respect of Grampanchayat property no.173/C. Said matter was compromised before panch. The plaintiffs agreed that, they will not cause any

obstruction to the possession of defendant over land bearing Grampanchayat property no.173/B. The defendant has started construction of house in the said property no.173/B. It is completed up to 10 feet. The plaintiffs have no concerned with the said property and construction. In spite of that plaintiffs are causing obstruction and trying to stay the construction of defendant. If the construction is stayed, then it will cause irreparable loss to the defendant. Hence, application is not tenable. It is liable to be rejected.

6. I have read the application, say thereon and perused the documents. Heard learned advocate Shri. N. N. Gavade for plaintiff and Shri. R. B. Patil for defendant. Following are the points for my determination along with my findings and reasons thereon.

Sr. no.	Points	Findings
1	Whether plaintiff proves prima facie case ?	No
2	Whether balance of convenience lies in favour of the plaintiff ?	No
3	Whether plaintiffs would suffer irreparable loss if the application is rejected ?	No
4	What order?	As per final order.

REASONS

As to Point no.1 to 3

7. *At this stage it is necessary to see that, whether the plaintiff has a prima facie case or not. Order 39 Rule 1 & 2 of Code of Civil Procedure confers discretionary power on civil court to grant temporary injunction where it is proved by affidavit or otherwise that, the suit property is in danger of being wasted, damaged or alienated by the party to the suit or where the defendant threatens to*

dispossess the plaintiff or to cause injury. The purpose of granting temporary injunction is to protect the subject matter of suit during the pendency of the suit. But for getting the relief under this rule the plaintiff must prove that, he has a prima facie case, the balance of convenience is lies in his favour and more hardship will cause to him if injunction is not granted.

8. I have heard the arguments of both side. The learned advocates for both side, initially narrated their facts of the case and referred documents, affidavits filed on record. Documents are referred in the order at appropriate place. The learned advocate **Shri. N. N. Gavade**, for plaintiff argued that, the plaintiffs have properly described the suit property and filed necessary documents which shows that the suit property is owned and possessed by the plaintiffs. It is submitted that, the defendant is not relatives of plaintiffs. The property of defendant is not adjacent to the suit property. The name of plaintiff is recorded in the Grampanchayat record since long time. He further argued that, there is no document on record to show the legal right of defendant over the suit property. He argued that, recent Grampanchayat extract does not have entry regarding the open space/(परसु). But there is no Grampanchayat resolution regarding the entry of defendants name. Rather old documents clearly shows that, longstanding entry is in the name of plaintiff. House having open space is clearly mentioned in the Grampanchayat extract. So, it is necessary to stay the construction. He further argued that, if the instruction is not stayed, then it will change the nature of suit property and will cause further complications. He argued that, the nature of suit property cannot be changed by way of construction during pendency of the suit. If the construction is completed, then the plaintiff will suffer irreparable loss. It is submitted that, the plaintiffs have prima-facie case and

balance of convenience. Therefore, it is prayed to grant temporary injunction in favour of plaintiffs.

9. On the other side, learned advocate Shri. R. B. Patil for defendant argued that, the description of the suit property is false and incorrect. The description of suit property is not sufficient so as to it's clear identification. He argued that, the suit is not tenable on the said technical ground. The rough sketch map filed in the suit is not proved and has no legal value. The plaintiff has suppressed the material fact and not entitled for the equitable relief. It is argued that, the property no.173/B is owned and possessed by the defendant. The defendant is carrying out construction in the said property. The plaintiff has no right to stay the said construction. He argued that, if the application is allowed and construction is stayed, then the defendant will suffer irreparable loss. Hence, it is prayed to reject the application.
10. The learned advocate for defendant relied on **Lucy Narona Vs. Raghunath Jew Bije Chhauri Math {1992 (2) Civil L.J.694}**. *In this case the Hon'ble Orissa High Court held that, Order 7 Rule 3 of the Code of Civil Procedure requires that where the subject matter of the suit is immovable property the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in records of settlement or survey, the plaint shall specify such boundaries or numbers.* On the same point the learned advocate relied on **Abdul Majid Vs. Abdul Ghaffar {1997 AIHC 2933}**. *In this case the Hon'ble Allahabad High Court held that, in the case of claim for adverse possession the burden is on the plaintiff to establish identity and extent of the suit property. The learned advocate also relied on **Ushabai Sharadchandra Bannore Vs. Vasudev Baliramji Mehare {2004(2) Mh LJ 594}**. The Hon'ble Bombay High Court held that, the maps or*

plans made for the purpose of any cause must be proved to be accurate. The onus of proving that such map is accurate lies on the party who produces it. On the same point defendant relied on Ramchandra Bhikaji Jagtap Vs. Dudharam Langru Padvekar, {2004(1) Mh LJ 278}, Ram Kishore Sen Vs. Union of India, {1966 AIR S.C. 644}.

11. I have gone through the aforesaid authority. It is settled position of law that, the burden of proof is on the plaintiff to establish the correct description of the suit property so as to identify the same. In the present matter, it is seen that the plaintiff has filed suit claiming perpetual injunction and mandatory injunction. According, to plaintiff they have owned and possessed the suit property wherein the defendant has illegally encroached and started construction. This fact is denied by the defendant. According, to defendant he is carrying out construction in the property bearing G.P. N.173/B.
12. So admittedly there is no dispute that the defendant is carrying out construction. The dispute is about the location where the disputed construction is going on. The aspect for consideration is that whether the plaintiff is lawful possessor of the suit property as on the date of filing of suit and whether the defendant is carrying out construction in suit property Gat no.137/A. The plaintiff has filed on record several extracts issued by Grampanchayat which shows that the name of plaintiff is recorded for house property no.137/A which having a open space (परसु). Photographs shows that the construction is going on. The plaintiff has filed on record recent Grampanchayat extract issued by Grampanchayat for year 2025-2026 which shows that the name of plaintiff is recorded for house no.137/A. But the entry as to the open space/disputed portion is not appearing in the recent Grampanchayat extract filed by the plaintiff.

13. On the contrary the learned advocate for defendant filed on record documents regarding property no.173/B & 173/C. On perusal of the said extract of property no.173/B, it is seen that the name of defendant is recorded in respect of the open space and hut. So the plaintiff and defendant have filed documents regarding property no.137/A and property no.173/B. Admittedly, the name of plaintiff and defendant is recorded in respect of their aforesaid properties. But at this stage nothing is on record to believe that the disputed construction is going on in property no.137/A. The burden is on plaintiff to prove that the defendant has encroached in the suit property no.137/A by adducing reliable evidence. At this stage, no such evidence is filed on record. Moreover, on perusal of the recent property extract it is seen that the entry regarding open space/(परसु) is not appearing. However, the legality of said deletion of entry is matter of adjudication. Considering the documentary evidence and averments of both side, at this stage prima-facie it is not establish that the construction is going on in property no.137/A.
14. However, it is matter of adjudication that whether the defendant has encroached and the construction is illegal. At this stage it would not be proper to stay the construction for uncertain period. If the injunction is granted, then at this stage the defendant will suffer more hardships and inconvenient as compared to the plaintiffs. The defendant has already started the construction and may have spent money for that. If the construction is stayed for uncertain period, then the defendant will suffer inconvenience. On the contrary, the plaintiff will not suffer any hardships or inconvenience. Because, the disputed construction will be subject to final decision of the present suit and if ultimately it is found that the defendant has encroached then the said construction will be liable to be demolished with the expenses of defendant.

15. In view of aforesaid discussion, I am of the view that, the plaintiff has no prima-facie case for getting the temporary injunction.

Accordingly I answer point no. 1 to 3 in Negative.

As to point no. 4

To answer point No. 4 I pass following order.

ORDER

The application is rejected.

Date: 06/03/2026

[Waman D. Jadhav]
Joint Civil Judge Junior Division, Chandgad.
[Judge Code- MH03143]