


MHKO150002352022 	<p style="text-align: center;"><b><u>ORDER PASSED BELOW EXH. 5 IN</u></b></p> <p style="text-align: center;"><b><u>R.C.S. NO. 50/2022</u></b></p> <p style="text-align: center;">Rahul Bhumbar vs. Surekha Patil</p>
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This is an application filed by plaintiff under order XXXIX rule 1 and 2 of the Code of Civil Procedure Code, 1908.

2. Suit property – suit property mentioned in paragraph no. 1 of present application. (In short "suit property")

3. **In short case of the plaintiff is as under-**

According to plaintiff, the defendant no. 1 is daughter of Maruti. The plaintiffs are the children of Balu. The Maruti, Balu, Yashwant and Shripad are the brothers. The partition between Shripad, Yashwant, Maruti and Balu was effected many years ago. In respect of partition, one agreement was executed between father of plaintiff, defendant, Shripad and Yashwant. In this circumstances, the suit property came by partition in the share of father of plaintiff. After demise of father, the plaintiffs are the possessors of the suit property. The defendant is adjoining holder. The defendant is not concern with suit property. But, the defendant has obstructed to the plaintiff's possession. The plaintiff requested defendant for not to obstructing, but defendant refused request of plaintiff. Therefore, plaintiff filed present suit for perpetual injunction.

4. By way of present application, plaintiff prayed temporary injunction that is restraining defendant from causing obstruction to their

possession till disposal of present suit. The plaintiff lastly prayed for allowing application.

5. The defendant has appeared and filed her written statement at Exh. 26. She denied all allegation, pleading and prayer of plaintiff. According to defendant, her father Maruti is owner and possessor of suit property. The other brothers of Maruti are not concern with suit property. After demise of Maruti, the defendant is owner and possessor of suit property. The agreement which was pleaded by plaintiff is false agreement. She has not executed any agreement or any map. The partition in respect of suit property was not effected as pleaded by plaintiff. She is owner and possessor of suit property. The plaintiff is not concern with suit property. She lastly prayed for rejection of application.

6. Heard learned advocate Shri. R. M. Kole for plaintiff and advocate Shri. D. D. Ajagekar for defendant.

7. The following points are arises for my determination and I have given my findings thereon are as follows-

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiff has prima-facie case for grant of temporary injunction as prayed for?	No
2.	Whether balance of convenience lies in favour of plaintiff?	No
3.	Whether the plaintiff would suffer irreparable loss, if temporary injunction is refused?	No
4.	What order ?	As per Final order.

8. Prima-facie case, balance of convenience, and irreparable loss are the three ingredients for temporary injunction.

### REASONS

#### As to point No. 1 to 3 -

9. The plaintiff has pleaded that, as per oral partition the suit property is came in the share of their father namely Balu. In this circumstances, the Balu is owner and possessor of suit property. The advocate for plaintiff relied on agreement and map which was produced on record. The advocate for defendant submitted that, the agreement and map are false one. The plaintiff pleaded that, 689 sq. meter property was possessed and it comes in partition. But, there is no evidence produced on record.

10. On perusing pleading of plaintiff it appears that, the plaintiff pleaded that, in oral partition the suit property came in share of Balu. The plaintiff pleaded that, area of property is 689 sq. meter. On perusing agreement, the area of property that is 689 sq. meter is not mentioned in agreement. The area that is 689 sq. meter is not mentioned in map. Thus, from the agreement and map it comes on record that, the area of suit property that is 689 sq. meter is not mentioned.

11. On perusing documents on record it appears that, the Maruti that is father of defendant is owner of suit property. The agreement dated 03.04.1997 shows that, the agreement executed by defendant. But, the area of property that is 689 sq. meter is not mentioned in agreement. On perusing record it appears that, there is no record which prima-facie shows that, the 689 sq. meter area was received by plaintiff in partition.

The plaintiff fails to prove that, the 689 sq. meter area was received by father of Balu in partition. In this circumstances I conclude that, the plaintiff fails to prima-facie establish that, the Balu that is predecessor of plaintiff was received 689 sq. meter area in partition and they are in possession of that area. The revenue record and notices which was issued by Tahasildar shows that, the plaintiff has not possessed area of 689 sq. meter.

12. In this circumstances I conclude that, the plaintiff fails to prove and prima-facie shows that, they have possessed 689 sq. meter area of suit property. Therefore, plaintiff fails to prove prima-facie case. The balance of convenience not lies in favour of plaintiff. If application rejected then no irreparable loss will be caused to the plaintiff. Therefore, I answer point no. 1 to 3 in negative.

13. Considering all above discussion, the application of plaintiff needs to be rejected. Hence, in answer to point no. 4, I pass following order,

**ORDER**

1. The application at Exh. 5 is rejected.
2. Considering peculiar circumstances, there is no order as to cost.

Place - Ajara.  
Date - 11.10.2023.

(S.P. Jadhav)  
Civil Judge J.D., Ajara.