

MHKO180003242025



ORDER BELOW EXH.05 IN R.C.S. NO.57/2025
(GUNANDHAR CHANDRAPPA NEJE v. SHRIDHAR
CHANDRAPPA NEJE)

This is an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (In short 'the CPC').

Facts put forth by the plaintiff in short are as follows :-

02. It is contended that, the plaintiff is owner and possessor of land admeasuring 3.37 Are out of total 1 Hectare 23 Are in Gat No.208, situated at village Dattawad, Tal. Shirol, Dist. Kolhapur, more specifically described in paragraph No.1 of the plaint (In short '**the suit property**').

03. The defendant is a brother of the plaintiff. Land of the defendant is adjacent to the suit property. The defendant is not concerned with the suit property. However, he is trying to cause obstruction to peaceful possession of the plaintiff in the suit property. On 17.03.2025, the defendant tried to carry out construction in a land adjacent to the Northern side of the suit property without leaving side margin and without obtaining permission from the Gram Panchayat. The defendant also tried to encroach upon the suit property. Hence, the plaintiff filed complaint against the defendant in the Police Station, Kurundwad and the Gram Panchayat, Dattawad on 18.03.2025. Thereafter, the Gram Panchayat, Dattawad issued notice to the defendant and thereby directed him to not to carry out construction without fixation of boundaries. In spite of that, on 01.04.2025 the defendant tried to encroach upon the suit property and to dispossess the plaintiff from the suit property. Hence, the plaintiff constrained to file

(2) Order Below Exh.05 in R.C.S No.57/2025.

instant suit and present application. By way of present application, the plaintiff has sought relief of temporary injunction restraining the defendant from causing obstruction to peaceful possession of the plaintiff in the suit property by encroaching upon or carrying out unlawful construction in the suit property. He also prayed that, temporary injunction may be granted against the defendant restraining him from dispossessing the plaintiff from the suit property and from changing nature of the suit property.

Defence of the defendant, in short, is as follows :-

04. The defendant has strongly resisted present application by filing his written statement and say vide Exh.15. He contended that, the suit property is ancestral property of himself and the plaintiff. On 20.07.2007, partition of ancestral land of the plaintiff and the defendant in Gat No.208 including the suit property took place between them by metes and bounds and an agreement to that effect came to be executed between them. Said agreement is nothing but 'वाटपाचे स्मरणपत्र'. The suit property is never allotted to the share of the plaintiff in said partition. On the contrary, Eastern portion of the property in Gat No.238 came to be allotted to the share of the defendant and Western portion of the property is allotted to the share of the plaintiff in the partition. The plaintiff has suppressed these facts from the Court and thus, he has not approached the Court with clean hands. Hence, the plaintiff is not entitled to get discretionary relief of temporary injunction. Moreover, description of the suit property is not true and correct. The defendant is carrying out construction in his own land and not in the land of the plaintiff. Gat No.208 is situated at *gavthan* and hence, the Gram

Panchayat Office informed the defendant that, it has no power to grant permission for construction in Gat No.208. Construction upto foundation level is completed and the defendant has invested huge amount for purchasing material for construction. The plaintiff has no prima facie case. Balance of convenience does not lie in favour of the plaintiff. If the application is allowed, the defendant will suffer an irreparable loss. Hence, the plaintiff is not entitled for grant of temporary injunction. The defendant lastly prayed that, the application may be rejected with costs.

05. Points for determination along with my findings and reasons thereon are as follows :-

POINTS	FINDINGS
1) Whether the plaintiff has made out prima facie case ?	... No.
2) Whether the balance of convenience lies in favour of the plaintiff ?	... No.
3) Whether the plaintiff will suffer irreparable loss as prayed if injunction is not granted ?	... No.
4) What Order ?	... Application is rejected.

06. In order to strengthen and substantiate the claim, the plaintiff has relied on various documents filed along with list of documents (Exh.03, 30 and 32).

07. On the other hand, the defendant has relied on various documents filed along with list of documents (Exh.16, 25 and 34) and affidavits of witnesses at Exh.18 to 23.

08. Heard learned advocate Shri. S.B.Magdum for the plaintiff and learned advocate Shri. S.D.Patil for the defendant, at length. Arguments are set forth in consonance of their pleadings.

:: REASONS ::

AS TO POINT NOS.1 TO 3 :-

09. These points are inter-linked, hence they are taken together for discussion in order to avoid repetition.

10. Learned advocate Shri. S.B.Magdum argued that, the plaintiff is owner and possessor of the suit property. The defendant is not concerned with the suit property. However, the defendant is trying to carry out construction in the suit property by committing encroachment thereupon. The defendant has not obtained construction permission from the Gram Panchayat Office or the Collector Office. The plaintiff is having prima facie case and balance of convenience lies in his favour. In such circumstances, if temporary injunction is not granted, the plaintiff will suffer an irreparable loss. Hence, he prayed that, the application may be allowed. In support of his submissions, learned advocate Shri. S.B.Magdum has referred to and relied upon decision in the cases of **Dr. Mrs. Savitri Hamal v. Municipal Commissioner, Gangtok Municipal Corporation, Deorali, East Sikkim And Ors. [AIR Online 2018 SK 11]**, **Manikrao Yeshwantrao Patekar (Since deceased) through his L.Rs. Parvatabai Manikrao Patekar And Ors. v. Gangubai Ramrao Patekar And Ors. [2019(6) Mh.L.J. 210]**, **Mohan Vyas v. Surendra Vyas [AIR Online 2019 MP 1002]**, **State of Bihar v. Lal Babu Prasad [AIR 2024 PATNA 124]**, **Raigad Co-operative Housing Society Ltd. v. Suman Eknath Gaike**

And Ors. [2022(3) Mh.L.J. 110], Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass [2005(4) Bom.C.R. 408], Suresh Sopan Kadam and Ors. v. Jagannath Genu Kadam And Anr. [1992(2) Bom.C.R. 619], Shamsher v. Rustam And Other [AIR 1988 RAJASTHAN 188] and State of Karnataka And Ors. v. Venkataraj [AIR 1975 KARNATAKA 119].

11. In the case of **Dr. Mrs. Savitri Hamal (Supra)**, the Hon'ble Sikkim High Court directed to maintain status quo on construction to the respondents during pendency of the Appeal before it. It held that, "Changing the nature of the suit property during pendency of the Appeal would vitally effect the rights of the parties which is yet to be confirmed by this Court."

12. In the case of **Mohan Vyas (Supra)**, the Hon'ble Madhya Pradesh High Court upheld grant of temporary injunction in a case where the defendant was trying to raise construction and change nature of the joint family property without consent of the plaintiff.

13. In the case of **Lal Babu Prasad (Supra)**, the Hon'ble Patna High Court upheld grant of temporary injunction by holding that, allowing new construction over suit land would mean changing nature of suit property thereby causing irreparable loss to plaintiffs.

14. In the case of **Raigad Co-operative Housing Society Ltd. (Supra)**, the Hon'ble Bombay High Court upheld grant of temporary injunction wherein the prima facie case is made out by the plaintiff for grant of temporary injunction, balance of convenience was recorded in favour of the plaintiff with irreparable loss being caused to her in case of refusal to grant temporary injunction.

15. In the case of **Maharwal Khewaji Trust (Supra)**, the Hon'ble Supreme Court held that, unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed.

16. In the case of **Suresh Sopan Kadam and Ors. (Supra)**, the Hon'ble Bombay High Court held that, judicial approach should be to maintain status quo unless there are strong and exceptional reasons to alter status quo.

17. In the case of **Shamsher (Supra)**, the Hon'ble Rajasthan High Court held that, temporary injunction is a preventive relief and is generally granted taking note of the equity. The right to enjoy peacefully the property is an important right attached to any interest which may be carved out as a title of the plaintiff or as a right to continue in possession.

18. In the case of **S. Venkataraj (Supra)**, the Hon'ble Karnataka High Court held that, a temporary injunction maintaining the status quo may properly issued whenever the question of law or fact to be ultimately determined in a suit is grave and difficult and injury to the moving party will be immediate, certain and great if denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if granted.

19. On the contrary, learned advocate Shri. S.D.Patil argued that, ancestral land of the plaintiff and the defendant in Gat No.208 including the suit property came to be partitioned between the plaintiff and the defendant on 20.07.2007 and thereby Eastern Portion of said land came to allotted the share of the defendant and Western Portion of

the land came to be allotted the share of the plaintiff. Agreement namely 'वाटपाचे स्मरणपत्र' came to be executed between the plaintiff and the defendant to that effect. However, the plaintiff has suppressed these facts from the Court. Thus, the plaintiff has not approached the Court with clean hands. Hence, the plaintiff is not entitled for grant of temporary injunction. Apart from this, the defendant is carrying out construction in his own land and not in the land of the plaintiff. The defendant approached to the Gram Panchayat Office for obtaining permission for construction. However, the Gram Panchayat Office informed him that, it has not power to grant permission for construction in the land which comes in *gavthan*. Construction of the house till lintel level is completed and the defendant has invested huge amount for purchasing material for construction. Hence, the plaintiff has no prima facie case. Balance of convenience does not lie in favour of the plaintiff. In such circumstances, if present application is allowed, the defendant will suffer an irreparable loss. Hence, he prayed that, present application may be rejected with costs.

20. In support of his submissions, learned advocate Shri. S.D.Patil referred to and relied upon decisions in the case of **Harcharanjit Singh Thind (Capt.) v. Diksha Thind And Ors. [2008(3) Mh.L.J. 587]**, **State of Orissa And Anr. v. Puri Municipality And Ors. [AIR 1984 ORISSA 132]**, **Zilla Parishad, Gadchiroli And Ors. v. Chandramala Fattu Khobragade [2011(4) Mh.L.J. 605]**, **Ramgulam Prasad v. Mathura Prasad (deceased) through L.Rs. Ramvati @ Jamvati And Ors. [(2001) 08 MP CK 0010]** and **Shelke Beverages Private Ltd., Pune v. Rasiklal Manikchand Dhariwal And Anr. [2010(4) Mh.L.J. 282]**.

21. In the case of **Harcharanjit Singh Thind (Supra)**, the Hon'ble Bombay High Court held that, the party who suppresses material facts from the Court, does not deserve the grant of any discretionary relief, much less a temporary injunction.

22. In the case of **Puri Municipality And Ors. (Supra)**, the Hon'ble Orissa High Court vacated temporary injunction order granted by lower Courts by holding that, the balance of convenience lies with petitioners, the bungalow has been constructed upto the level of lintel and cost of materials are escalating.

23. In the case of **Zilla Parishad, Gadchiroli And Ors. (Supra)**, the Hon'ble Bombay High Court held that, it is well settled by a catena of judgments of this Court as well as the Apex Court that the grant of interim relief should not amount to granting of final relief, without a trial.

24. In the case of **Ramgulam Prasad (Supra)**, the Hon'ble Madhya Pradesh High Court upheld admission of document by the trial Court for collateral purpose for proving the possession of the lands by each of the co-sharers where said document was challenged on the ground of 'unregistered' and it was not challenged on the ground of 'unstamped'.

25. In the case of **Shelke Beverages Private Ltd., Pune (Supra)**, the Hon'ble Bombay High Court held that, decision as to grant or refusal of interim injunction is taken on three essential questions depending upon facts and circumstances, namely : Whether the plaintiff has made out prima facie case to justify grant of interim injunction; What would be

balance of convenience if injunction is granted as prayed for at the interim stage of suit and Whether any irreparable damage or loss may result to plaintiff if injunction is withheld.

26. In view of above mentioned pleadings and submissions of both the parties and rulings referred by both the parties it would be just and proper to evaluate merits of the application. The plaintiff has contended that, he is owner of the suit property admeasuring 3.77 Are out of total 1 Hectare 23 Are in Gat No.208. In support of his contention, he has filed on record 7/12 extract of Gat No.208 of the year 2024-2025 along with list of documents (Exh.03).

27. On the other hand, the defendant contended that, the suit property and the land showing in his name in Gat No.208 are ancestral properties of himself and the plaintiff and it came to be partitioned as per agreement namely 'वाटपाचे स्मरणपत्र'. To substantiate his claim, the defendant has filed on record original copy of agreement along with list of documents (Exh.16). On perusal of said agreement prima facie it appears that, the plaintiff and the defendant partitioned their ancestral property in Gat No.208 as per said agreement executed between them. It further appears that, said agreement is executed on stamp paper of Rs.50 and said stamp was purchased by the plaintiff.

28. Learned advocate Shri. S.B.Magdum strongly objected said agreement contending that, it is unregistered and insufficiently stamped and hence, it cannot be used for collateral purpose also. In support of his argument, he relied upon the decision in the case of **Manikrao Patekar (Supra)** wherein the Hon'ble Bombay High Court held that, when

compulsorily registrable document is not registered, its use for collateral purpose is not permissible under Section 49 of the Registration Act as well as Section 35 of the Bombay Stamp Act.

29. On perusal of decision in the case of **Manikrao Patekar (Supra)** it appears that, facts and circumstances in said case and in the case at hand are totally distinct. Hence, decision in the case of **Manikrao Patekar (Supra)** is not helpful for the plaintiff. Furthermore, in the case of **Sanjay Shrikishanji Somani And Anr. v. Vishnupant Shankarrao Shahane, [2008(1) BOMCR 749]**, the Hon'ble Bombay High Court held that :-

“11. Rule 1 opens with wording "where in any suit it is proved by affidavit or otherwise....", Court may grant or refuse temporary injunction in favour of the plaintiff. The scope of consideration of prayer clause for injunction is, therefore, being governed by proof of facts by affidavit or otherwise. It is not obligatory on the part of the party, at this stage, to prove the documents in accordance with rules of Indian Evidence Act. The party to the suit may file various documents, for the consideration of prayer of temporary injunction under Order XXXIX, Rules 1 and 2 of the Code of 1908. The Court, at the first instance, is required to consider such prayer in view of the provision laid down under Order XXXIX, Rules 1 and 2 of the Code of 1908. If fact alleged by the plaintiff is supported by an affidavit or otherwise, meaning thereby some documents, Court has to record a prima facie opinion in respect of the existence of prima facie case, balance of convenience and irreparable loss to the party concerned. It is not the stage at which Court can exercise power of impounding the document. Apart from Order XXXIX, Rules 1 and 2 of the

Code of 1908, a look to provision under Section 34 of the Bombay Stamp Act would show that instrument not duly stamped are inadmissible in evidence. Instruments/documents are to be admitted in evidence, at the time of hearing of the suit, as noted in the foregoing paragraphs. Section 34 of the Bombay Stamps Act obligates the Court that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence. Thus, prohibition put by Section 34 of the Bombay Stamp Act is in relation to receiving any document or admitting any document in evidence. This stage has to be in relation to the hearing of the suit itself and not an application for temporary injunction.”

30. In the case of **Shamrao Ganpat Chintamani v. Kakasaheb Laxman Gorde**, [2008 (2) MhLJ 819] the Hon’ble Bombay High Court held that, “Formal proof of the documents, which otherwise is necessary at the time of deciding the suit in that strict sense is not necessary while considering the documents concerned at the time of consideration of the prayer for temporary injunction.”

31. If the case in hand is examined in the light of decision in the case of **Sanjay Shrikishanji Somani And Anr. (Supra)** and **Shamrao Ganpat Chintamani (Supra)** it appears that, prohibition put by Section 34 of the Bombay Stamp Act cannot be applied on unregistered and insufficiently stamped agreement filed on record by the defendant at the stage of determining temporary injunction application. The defendant has relied upon said agreement to show that, ancestral property of himself and the plaintiff in Gat No.208 came to be partitioned between them as per said agreement. The defendant has also filed on record

(12) Order Below Exh.05 in R.C.S No.57/2025.

affidavits of Mahadev Suryawanshi, Suresh Kamate, Parisa Sawale, Suresh Sidnale, Babar Desai and Aannappa Sidnale vide Exh.18 to 23 wherein they have testified that, ancestral property of the plaintiff and the defendant in Gat No.208 came to be partitioned between the plaintiff and the defendant on 20.07.2007 and the defendant is carrying out construction in his own land and not in the land of the plaintiff. It appears that, Babar Desai and Aannappa Sidnale are witnesses on alleged agreement between the plaintiff and the defendant.

32. On the other hand, even though the plaintiff stated that, he is owner and possessor of the suit property, he has not averred as to how he became owner and possessor of the suit property. In view of nature of the suit and pleadings of both the parties it is necessary for the plaintiff to incorporate averments as to how he became owner and possessor of the suit property. In absence of such averments, prima facie it appears that, the suit is not maintainable in it's present form.

33. Furthermore, the defendant has filed on record 7/12 extract of Gat No.208 of the year 2006-2007 along with list of documents (Exh.16). He has also filed on record 7/12 extracts of Gat No.208 of years 2003 to 2014 and 2015 to 2024 along with list of documents (Exh.34). On perusal said 7/12 extracts prima facie it appears that, land admeasuring 3.375 Are is shown in the name of the plaintiff and land admeasuring 4.375 Are is shown in the name of the defendant in 7/12 extract of years 2003-2004 to 2013-2014. However, land admeasuring 3.77 Are is shown in the name of the plaintiff and land admeasuring 3.37 Are is shown in the name of the defendant in 7/12 extract of years 2015-2016 to 2023-2024.

34. At the face of record it appears that, area of the land of the plaintiff which was showing as 3.375 Are in 7/12 extracts of Gat No.208 in years 2003-2004 to 2013-2014 is showing as 3.77 Are in 7/12 extract of years 2015-2016 to 2023-2024. In such circumstances, the plaintiff should have explained how area of the suit property is increased from 3.375 Are to 3.77 Are. However, it appears that, the plaintiff has not given explanation neither in the plaint nor in temporary injunction application (Exh.05) regarding increase in the area of the suit property. Taking benefit of it, learned advocate Shri. S.D.Patil argued that, incorrect entry in respect of area of the suit property has been made in 7/12 extract in the year 2015 during computerization of 7/12 extracts. In absence of averments of the plaintiff, argument advanced by learned advocate Shri. S.D.Patil cannot be completely ruled out. Hence, at the face of record it appears that, the plaintiff has suppressed material facts relating to increase in area of the suit property from 3.375 Are to 3.77 Are in 7/12 extract since 2015-2016.

35. The plaintiff contended that, the defendant has not obtained permission for construction from the Gram Panchayat under the Maharashtra Village Panchayats Act, 1958 or the Collector under the Maharashtra Land Revenue Code.

36. It is significant to note that, the Maharashtra Village Panchayats Act and the Maharashtra Land Revenue Code are the complete codes providing machinery for redressal to the grievances pertaining to construction permission within the limits of village and in agricultural land, respectively. The plaintiff contended that, the Gram Panchayat directed the defendant not to carry out construction without

fixation of boundaries of his land. However, it is not the case of the plaintiff that, the defendant is carrying out construction in his own land without fixation of boundaries.

37. Apart from this, on perusal of photographs of a construction of the house of the defendant prima facie it appears that, the house has been constructed upto the level of lintel. In such circumstances, in view of decision in the case of **Puri Municipality And Ors. (Supra)**, as the house has been constructed upto the level of lintel and as cost of materials are escalating, if the defendant is restrained from carrying out further construction of his house, he will suffer an irreparable loss.

38. In the backdrop of above peculiar facts and circumstances prima facie it appears that, the plaintiff has suppressed material facts relating to increase in area of the suit property from 3.375 Are to 3.77 Are in 7/12 extract since 2015-2016. Except 7/12 extract of Gat No.208 of the year 2023-2024, the plaintiff has not filed on record any other documentary evidence to prima facie show that he is in possession of land admeasuring 3.77 Are in Gat No.208. It further appears that, facts and circumstances in the rulings relied upon by the plaintiff and facts and circumstances of the case at hand are totally distinct. Hence, those rulings are of no help to the plaintiff.

39. On the other hand, it appears that, house of the defendant is constructed upto the level of lintel. Witnesses namely Mahadev Suryawanshi, Suresh Kamate, Parisa Sawale, Suresh Sidnale, Babar Desai and Aannappa Sidnale have testified that, ancestral property of the plaintiff and the defendant in Gat No.208 came to be partitioned

between the plaintiff and the defendant on 20.07.2007 and the defendant is carrying out construction in his own land and not in the land of the plaintiff. In view of above discussion it appears that, the plaintiff has not made out a strong prima facie case in order to grant temporary injunction in his favour. Balance of convenience does not lie in favour of the plaintiff. In such circumstances, the plaintiff will not suffer an irreparable loss if temporary injunction as prayed by him is not granted. Resultantly, in view of above discussion, I answer point Nos.1 to 3 in the negative.

AS TO POINT NO. 4 :-

40. In view of negative findings to point Nos.1 to 3, present application is liable to be rejected. Resultantly, in answer to point No.4, I pass following order :-

:: ORDER ::

1. Application (Exh.05) is hereby rejected.
2. Both parties shall bear their own costs.

(Dictated and pronounced in the open Court).

Date : 19.06.2025.

(Balasaheb S. Gaikwad)
Civil Judge Junior Division,
Kurundwad.