

ORDER BELOW EXH.20 IN R.C.S. No.561/2025

Vinayak Vs. Bhimashankar & Ors.

(Passed on 16.01.2026)

CNR NO.MHLA060027312025

The present application is filed by defendant No.7 for vacating ex-parte ad-interim injunction.

02. The plaintiff has instituted the present suit for partition and separate possession of the suit properties and has filed an application at Exh.05 seeking temporary injunction. By order dated 26.08.2025, this Court granted ex-parte ad-interim injunction restraining the defendants from alienating or altering the nature of the suit property.

03. The applicant i.e defendant No.07 contending that while granting ex-parte relief, the plaintiff has not complied with the mandatory provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, and therefore the said ex-parte ad-interim injunction deserves to be vacated forthwith.

04. It is further submitted on behalf of Defendant No.7 that non-compliance of Order XXXIX Rule 3 CPC itself vitiates the injunction order and amounts to abuse of process of law.

05. Per contra, the plaintiff has filed reply at Exh.25 denying all the allegations. It is specifically contended that the plaintiff has acted bona fide, without any intention to suppress facts or disobey the procedure of law. It is submitted that the suit is essentially one for partition, wherein all co-sharers are restrained from creating third-party interests or altering the nature of joint property.

06. The plaintiff has further contended that Defendant No.7 has deliberately suppressed the material fact that the defendants were attempting to change the nature of the suit property, which necessitated urgent protection. It is submitted that the ingredients of prima facie case,

balance of convenience and irreparable loss are clearly in favour of the plaintiff and that the injunction is necessary to prevent multiplicity of proceedings.

07. I have carefully considered the rival submissions, pleadings on record and the material produced.

08. The principal ground urged by Defendant No.7 for vacating the ex-parte ad-interim injunction is alleged non-compliance of the proviso to Order XXXIX Rule 3 CPC. Heavy reliance is placed on the decision of the Hon'ble Supreme Court in *Time City Infrastructure and Housing Limited, Lucknow vs. State of U.P and Others* (SLP (C) No.21747 of 2025).

09. There can be no dispute with the legal proposition laid down by the Hon'ble Supreme Court that grant of ex-parte injunction is an exception and the Court must record reasons showing that delay would defeat the very purpose of injunction, and the applicant must effect prompt service and file an affidavit of compliance. However, the said judgment cannot be read as laying down an inflexible rule that every technical or curable lapse must mechanically result in vacation of injunction, irrespective of the facts and nature of the suit.

10. A careful reading of *Time City Infrastructure* (supra) shows that the ex-parte injunction therein was set aside because there was total and conscious non-application of mind by the trial court, complete absence of recorded reasons, and sustained procedural violation causing serious prejudice. The said judgment does not lay down that an otherwise just and equitable injunction in a partition suit must be vacated merely on a hyper-technical objection, particularly when no demonstrable prejudice is shown.

11. In the present case, the suit is for partition and separate possession. The rights of co-sharers are undivided and fluid till final adjudication. It is well settled that any unilateral alienation or alteration of

the nature of joint property during pendency of partition proceedings leads to multiplicity of litigation and irretrievable complications.

12. The apprehension expressed by the plaintiff that the defendants were attempting to alter the nature of the suit property cannot be brushed aside at this stage. The urgency pleaded by the plaintiff justified immediate protective intervention. The injunction merely preserves status quo and does not confer any undue advantage upon the plaintiff.

13. Importantly, Defendant No.7 has failed to demonstrate any real or irreparable prejudice caused due to continuation of the ex-parte injunction. Mere restraint against alienation or change in nature of joint property cannot be said to cause injustice to a co-sharer, whereas vacation of such protection may permanently prejudice the rights of the plaintiff.

14. The law is equally well settled that procedural provisions are handmaids of justice and not its mistress. Order XXXIX Rule 3 CPC is intended to ensure fairness and transparency, not to arm a litigant with a technical weapon to defeat substantive justice. Where the injunction is otherwise justified on the touchstone of prima facie case, balance of convenience and irreparable injury, the Court is not bound to vacate it solely on technical grounds.

15. In the present matter, this Court finds that The plaintiff has made out a strong prima facie case; The balance of convenience lies in preserving the suit property in its existing condition; The plaintiff would suffer irreparable loss if the injunction is vacated, whereas Defendant No.7 suffers no comparable prejudice by its continuance.

16. The conduct of Defendant No.7 in seeking vacation of injunction, without disclosing the true nature of the suit as one for partition, and without establishing any substantial hardship, indicates an attempt to defeat interim protection rather than to advance the cause of justice.

17. Therefore, this Court is of the considered opinion that the ratio of *Time City Infrastructure* (supra) does not assist Defendant No.7, as the facts of the present case stand on a materially different footing. The equities in the present case overwhelmingly favour continuation of protection. Consequently, the application filed by Defendant No.7 is devoid of merits, lacks bona fides, and deserves rejection with costs to discourage frivolous and obstructive litigation.

ORDER

01. The application for vacating ex-parte ad-interim injunction is rejected with costs.

Place :- Ahmedpur.
Date :- 16.01.2026.

(M.C. Hasge)
Jt. Civil Judge Junior Division,
(Court No.02) Ahmedpur,
Dist.Latur.