

**Order Below Exh.05 in R.C.S. No.1441 of 2023**(Passed on this 20th day of January, 2024)**Shivkanta -Vrs.- Jayshree + 1**

CNR No.MHLA060032842023

The plaintiff has filed the present application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the C.P.C.') seeking temporary injunction restraining defendants or any other person on their behalf from causing obstruction and interference in the plaintiff's peaceful possession over the suit house and restraining defendants from constructing towards southern side of the suit house by encroaching over it till the final disposal of the present suit.

Subject matter of the present suit :-

02. The subject-matter of the present suit is **Plot No.4 H.No.2 - New M.C H.No.E-57 adm East-West 70 Ft and South-North adm 50 ft** situated at Mauje Ahmedpur, Tq.Ahmedpur, Dist. Latur. It has the following boundaries :

- Towards East - Road;
- Towards West - Land of defendant;
- Towards South - Plot of Nivrutti Reddy, At present - House of Ganpatrao Aradwad;
- Towards North - Godown of Zilla Marketing, At present - Zilla Madhyavarti Sahkari Bank Ltd. Branch Ahmedpur

(Hereinafter referred to as '**suit house**' for the sake of brevity).

Facts pleaded by the plaintiff :-

03. The plaintiff and defendants are neighbors interse. The plaintiff's house is adjacent to that of defendants and situated towards eastern side. The plaintiff is the owner and possessor of suit house. The plaintiff purchased the suit house on 21.03.1977 from Kanhaiyalal Ratanlalji Bhutada for consideration of Rs.7,000/- (Rupees Seven Thousand Only) through registered sale deed bearing D.B. No.775/1977. Since the purchase, the plaintiff is the owner and possessor of the suit house. After purchasing the same, on 16.11.1994 the plaintiff took permission from Municipal Council, Ahmedpur for construction and accordingly constructed therein. The plaintiff has legally constructed her house leaving some open space towards western side of her house to provide light and air to their rooms and in this open space in corner towards West-North, the plaintiff has constructed a bathroom. The doors of the plaintiff's room and windows are left facing towards open space.

04. The defendants have no any right or interest in the suit house. Earlier, the defendants' house was in the name of father-in-law of defendant No.1 Udhavrao Gurude. While constructing his house, Udhavrao Gurude had tried to leave the windows of the eastern wall of the second floor and sewage towards the side of plaintiff's suit house. The plaintiff has filed civil suit bearing R.C.S. No.129/1979 against Udhavrao Gurude and sought perpetual injunction to prevent the said windows and sewage from being released towards the plaintiff's suit house. The said suit was decreed and mandatory injunction was issued

against Udhavrao Gurude to close the window of his house which is opened towards the plaintiff's plot and close the sewage and pipes opened towards plaintiff's plot.

05. At present, the defendants have demolished their old construction on their plot and started a new construction therein without any legal permission from Municipal Council, Ahmedpur. Defendants are trying to make illegal construction without permission and without leaving any space around. At present, they have started digging therein. On 07.12.2023, the defendants marked their plot by occupying / encroaching up to two to three ft on the western side of the extension to construct their plot. At that time, the plaintiff requested defendants to move the said extended marks towards their plot. But defendants abused plaintiff and her relatives and threatened to kill them. In this regard, the plaintiff filed complaint at Municipal Council, Ahmedpur on 08.12.2023, but no action was taken against defendants. Again on 10.12.2023 at 7.00 p.m. the defendants removed the tiles from the western side of the plaintiff's suit property. On 11.12.2023, a complaint has been filed by plaintiff's relative at police station and Municipal Council, Ahmedpur and accordingly N.C.R. No.0820/2023 has been filed against defendants under Sections 504 and 506 r/w 34 of I.P.C.

06. On 13.12.2023 at 5.30 p.m. JCB excavated in the open space of plaintiff's suit property towards western side to one ft to north side and three ft to south side. By damaging and removing part of the bathroom of the plaintiff's house and mango trees of the plaintiff and flooring installed in this open space, the defendants

have excavated for their illegal construction. The defendants are trying to construct by encroaching on the plaintiff's land. On 14.12.2023, the plaintiff filed a complaint regarding the illegal activities of defendants and on the basis of that complaint police have registered a case against them bearing N.C.R. No.835/2023 under Section 427 r/w 34 of I.P.C.

07. On 07.12.2023, 10.12.2023 and 13.12.2023, the plaintiff requested defendants not to do such illegal activities but they flatly refused and threatened to kill him and his family members. If the present application is not allowed, the plaintiff will suffer an irreparable loss which cannot be compensated in terms of money. Therefore, she prayed to allow the application.

Facts pleaded by defendants :-

08. Defendants appeared and filed their written statement at **Exh.20**. They filed pursis below **Exh.22** and submitted that, their written statement below Exh.20 be treated as say of the present application. They contended that, the plaintiff's suit is false, imaginary and against facts and law. They contended that, as the present suit is for simplicitor injunction, it is not maintainable. The Nazri Nakasha filed along with the suit is false and imaginary. Defendant No.1 is the owner and possessor of M.C. No.E-62 adm 70 x 14.4 ft and 44 x 35 ft, M.C. No.E-62/B adm 26 x 10 ft, M.C. No.E-62/C adm 26 x 11 ft. Prior, the father-in-law of defendant No.1 namely Udhavrao Gurude was the owner and possessor of Plot No.13, Old H.No.6. He had constructed on the

said plot with the permission of Municipal Council, Ahmedpur. The said permission is of 20.10.1973 bearing No.95. Defendant No.1 has applied to the Municipal Council, Ahmedpur for building permission and duly paid the fees for the same.

09. They further contended that, civil suit bearing R.C.S. No.129/1979 was regarding not to make windows on the eastern side of the first floor of defendant's house and also for non-discharge of sewage into the plaintiff's plot. Accordingly, defendants did not made such windows and the sewage was also not discharged into the plaintiff's plot. The important point is that, at that time the construction of plaintiff's house was not done and it was open plot.

10. The defendant's house is very old and has fallen down so they are trying to construct it in their own area of property. The plaintiff has a habit of making civil and criminal cases against people. The plaintiff and her relatives have given false complaints against defendants and their relatives at Ahmedpur police station and Municipal Council, Ahmedpur and have caused mental harassment to them. They denied all other contentions of the plaintiff. Hence, they prayed to reject the application with cost.

11. Heard Ld Advocate Shri D.L. Ghogare for the plaintiff and Ld Advocate Shri S.V. Deshmukh for defendants.

12. Following are the points for my determination along with my findings and reasons thereon.

SR NO.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether plaintiff has a <i>prima facie</i> case ?	NO
2.	Whether balance of <i>convenience</i> lies in favour of plaintiff ?	NO
3.	Whether plaintiff will suffer an <i>irreparable loss</i> , in case temporary injunction is not granted ?	NO
4.	What order ?	Application is rejected.

Undisputed facts :-

- a) The plaintiff and defendants are neighbors interse. The plaintiff's house is adjacent to that of defendants and situated towards eastern side.

Arguments advanced by Ld Counsels for both the parties :-

13. Ld Counsels for both sides conducted argument at length. Ld Counsel for the plaintiff argued that, as per Para No.4 of the written statement it is admitted that plaintiff and defendants are neighbours. He invited the attention of the Court towards Para No.2 of the plaint and Para No.3 of the T.I. application which pertains to description of the suit property and argued that in written statement there nowhere mentioned that description of suit property is wrong. Boundaries are also admitted by defendants. Further, he invited the attention of the Court towards sale deed (Exh.4/4) and argued that plaintiff purchased the suit property from Kanhaiyalal vide sale deed which is a

document of source of title. He further argued that, defendants removed tiles from plaintiff's property and trying to encroach therein. Defendants have no any right on plaintiff's open space. TDR though used for fiscal purpose, prima facie shows plaintiff as owner and possessor of suit property. If defendants constructed on plaintiff's property, irreparable loss will be caused to plaintiff. Ld Counsel for the plaintiff further invited the attention of the Court towards certain documents at Exh.23 and argued that, it is not on record on what basis property transferred to defendant No.1. The plaintiff has a prima facie case and also balance of convenience lies in her favour. If the present application is not allowed, the plaintiff will suffer an irreparable loss which cannot be compensated in terms of money. Hence, he prayed to allow the application.

14. On the other side, Ld Counsel for defendants argued that, the present suit is for perpetual injunction whereas it is the pleading of plaintiff that she is the owner of the suit property. Defendants have not encroached on the plaintiff's property. He invited the attention of the Court towards Exh.4/1 and argued that on Namuna No.8-A of M.C. H.No.E-57 situated at Ahmedpur there is written only E-57 but its area is not mentioned. The construction of defendants' house was old so they demolished the same and making new construction in the same place. He invited the attention of Court towards 'subject' of application filed at Exh.4/7 and 4/8 and argued that the intention of plaintiff is to stop

construction of defendants. The photographs filed by plaintiff do not show that defendants are doing construction in plaintiff's property. There is no dispute as regards the ownership of the plaintiff over the suit house. At present, defendants are living at rental house. Defendants have a prima facie case and also balance of convenience lies in their favour. If the present application is allowed, they will suffer an irreparable loss. Hence, he prayed to reject the application with cost.

REASONS

AS TO POINTS NO.1 TO 3 :-

As Points No.1 to 3 are interlinked with each other, I prefer to discuss them together in order to avoid repetition of facts.

15. The Court while deciding the application of temporary injunction has to take a prima facie view from the material on record. *Prima facie* case does not mean that it must be shown in all probability that the plaintiff would succeed the suit. *Prima facie* case means that there must be a bonafide substantial question to be tried at the hearing and there is probability that the plaintiff will be entitled to the relief sought by him/her.

16. At this stage, it is necessary to see that, whether the plaintiff has a prima facie case or not. *Order XXXIX Rule 1 and 2 of the C.P.C. 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, she has a prima facie case, the balance of convenience lies in her favour and more hardship will cause to her if injunction is not granted.

In view of aforesaid principle of law, now it is necessary to see, whether the plaintiff establish the requisite criterion for grant of equitable relief.

17. The suit is for perpetual injunction. So far as the ownership of the plaintiff in respect of suit house is concerned, there is no dispute in that regard. The main contention of the plaintiff is that, defendants are trying to make illegal construction without permission and without leaving any space around and trying to construct by encroaching on the plaintiff's land. To substantiate her claim, the plaintiff has filed several documents on record along with list vide **Exh.04, 09 and 26** as under -

- a) Copy of Namuna No.8-A of M.C. H.No.E-57 situated at Ahmedpur dated 12.12.2023;
- b) Copy of receipt of construction permission fees paid to Municipal Council, Ahmedpur dated 16.11.1994;
- c) Copy of construction permission issued by Municipal Council, Ahmedpur dated 16.11.1994;

- d) Copy of sale deed bearing D.B.No.775/1977 dated 18.03.1977;
- e) Copy of Court decree in R.C.S.No.129/79;
- f) Copy of N.C. Reports filed at Ahmedpur police station dated 11.12.2023 and 14.12.2023;
- g) Copy of letters filed at Municipal Council, Ahmedpur dated 08.12.2023 and 11.12.2023;
- h) Photo copies of disputed suit site;
- i) Lay out map.

18. On going through all these documents, prima facie it appears that, the plaintiff is the owner of M.C.H. No.E-57. Further, the documents transpires that the plaintiff has initiated the proceedings in respect of removal of encroachment over her suit house. The copies of NCR shows that the said reports are in respect of the activities done by the defendants that they removed the tiles from the plaintiff's suit house, abused and threatened to kill her. As per the letters to Municipal Council, Ahmedpur, it appears that the plaintiff has approached the Municipal Council, Ahmedpur to stop the unauthorized construction / illegal activities at the hands of defendants. From the said letters, it appears that plaintiff has apprehension about illegal construction and encroachment over her suit house at the hands of the defendants. The photographs (**Exh.9/1** and **26/3**) reveal that defendants have demolished their house and now, they are constructing new building on their plot. As regards the decree in R.C.S.No.129/79 is concerned, it appears that mandatory injunction was issued

against defendant Udhavrao S/o Sadashivrao Gurude to close the windows of his house, Plot No.13 situated at Phule Nagar, Ahmedpur which is opened in the eastern wall of first floor towards the plaintiff's plot and also close the waste water drain and pipes opened in the plaintiffs plot situated at Phule Nagar, Ahmedpur. Whereas in the present suit, it is the prayer of plaintiff that defendants be restrained from causing obstruction and interference and also be restrained from constructing over the suit house by encroaching over it.

19. On the other side, the defendants contended that, defendant No.1 has applied to the Municipal Council, Ahmedpur for building permission and duly paid the fees for the same. Ld Counsel for the plaintiff argued that, it is not mentioned why there are different entries of name of defendant No.1 in Exh.23/1 to 23/3 and from this, it appears defendants made false documents. Therefore, it would be just and proper to go through the documents filed on record by the defendants at **Exh.23** as under -

- a) Copy of Namuna No.8 of M.C. H.No.E-62 situated at Ahmedpur dated 20.09.2023;
- b) Copy of Namuna No.8 of M.C. H.No.E-62(B) situated at Ahmedpur dated 20.09.2023;
- c) Copy of Namuna No.8 of M.C. H.No.E-62(C) situated at Ahmedpur dated 20.09.2023; and
- d) Copy of construction permission payment receipt dated 10.11.2023.

20. On perusal of all the above documents filed by defendants, it appears that defendant No.1 is the owner of M.C.H.No.E-62, E-62(B) and E-62(C). Further, from construction permission payment receipt dated 10.11.2023 (**Exh.23/4**), prima facie it appears that defendant No.1 has paid the amount in respect of the building permission of her house i.e., M.C.H. No.62-E, E-62(B) and E-62(C). It may be noted that, though M.C.H.No.62-E, E-62(B) and E-62(C) appears to be sub-divided, the same remained one piece of land.

21. It is pertinent to note that, there is no dispute that the house of defendant No.1 is demolished and she is constructing the new one therein. It can safely be said that an interlocutory injunction should normally be granted to restrain apprehended or threatened injury, where the injury is certain and imminent or where the mischief is likely to be done is of an overwhelming nature for instance demolition or destruction of property. In the present case, already demolition is done by defendants. Merely, on the basis of police complaint, letters filed by plaintiff to Municipal Council, Ahmedpur, photographs and other documents mentioned aforesaid, it cannot be said that defendants encroached the portion of land of suit house as alleged by the plaintiff. No such certain and imminent circumstances appears to be occurred which warrant granting of temporary injunction. However, the fact of alleged encroachment over the suit house at the hands of defendants and illegal construction constitute the foundation of

the plaintiff's claim in the present suit. Suffice to note that these are matters for adjudication.

22. For the purpose of deciding the application for interim injunction, the Court has to see prima facie only, that too, on the aspect of possession only. Considering the aforesaid discussion and the documents, it is hardly to believe any obstruction or encroachment at the hands of defendants over some portion of the suit house. No case has been made out from the material on record by plaintiff that defendants are carrying out illegal construction in the suit house by encroaching therein.

23. The second important factor for consideration is that, whether balance of convenience lies in favour of the plaintiff. It is settled principle of law that, while determining the balance of convenience it is necessary to see that, to whom more inconvenience or mischief will be caused. In view of the above discussion as well as considering the documents on record, this Court is of the view that balance of convenience does not lie in favour of the plaintiff. At this stage if the injunction is not granted, no prejudice will be caused to the plaintiff.

However, all the above observations are made prima facie for deciding the present application and findings taken herein will not affect the final adjudication of the suit.

Accordingly, I answer Points No.1 to 3 in the Negative.

AS TO POINT NO.4 :-

24. In view of discussion and findings as to Points Nos.1 to 3, the application is liable to be rejected. As far as imposition of cost is concerned, it would be just and proper not to impose cost on any party at this stage and to include such cost in the final decision of the suit. Accordingly, I proceed to pass the following order.

O R D E R

1. Application (**Exh.05**) is rejected.
2. The costs of the application be included in final decision of the suit.

(Dictated and pronounced in open Court).

Place : Ahmedpur.

(Kanchankaur B. Gadiwale)

Date : 20.01.2024.

Jt. Civil Judge Junior Division,
(Court No.04) Ahmedpur,
Dist.Latur.