

**MHLA090017242020****ORDER BELOW EXH.5**

This is an application for temporary injunction restraining defendants restraining them from creating unauthorized and illegal construction over the suit property mentioned in para 3 of the application.

2. It is contended by plaintiff that, he has sold some of the portion of plot No.10, East West 30 Ft., South North 40 Ft. total 1200 Sq. Ft. to one Shivaji Ramchandra Shrimangale 30 years ago. Thereafter, plaintiff has again sold some portion East-West 30 Ft and South-North 40 Ft., total 1200 Sq. Ft. Thereafter, plaintiff had kept open space towards Eastern side admeasuring East-West 60 Ft and South-North 40 Ft. total 280 Ft for the purpose of passing year and sunlight. However, defendants are trying to encroach upon said space and started illegal construction over it.

3. It is further contended that, if defendants are not restrained from creating illegal construction then plaintiff would suffer irreparable loss. Hence, the application.

4. Defendants did not file their say on the present application. Hence, application has proceeded with their say.

5. Read the application, perused the documents filed in support of contentions and heard. In order to decide the

application, following points arise for my determination and I have recorded my findings thereon for the reasons given hereunder:

<b>Sr.No.</b>	<b>POINTS FOR DETERMINATION</b>	<b>FINDINGS</b>
1)	Whether plaintiff has <i>prima-facie</i> case in his favour ?	No.
2)	Whether balance of convenience lies in favour of the plaintiff ?	No.
3)	Whether plaintiff is likely to suffer the irreparable loss if temporary injunction is refused ?	No.
4)	Whether plaintiff is entitled for relief of temporary injunction as prayed ?	No.
5)	What Order ?	Application is rejected.

### REASONS

#### AS TO POINT NOS.1 TO 4: -

6. For the purpose of avoiding repetition of reasons, these points are answered together. Provisions of temporary injunction are laid down in section 94 (c) and (e) and in Order XXXIX Rule 1 and 2 of Civil Procedure Code, 1908 (In short C.P.C.). Section 37 (1) of Specific Relief Act, 1963 also deals with the provision of temporary injunction. According to the said provisions, granting either temporary or permanent injunction is discretionary and preventive relief. To obtain the relief of

temporary injunction, party seeking injunction must show prima-facie case and balance of convenience in his favour. It is also equally important to show how he will suffer irreparable loss if injunction is refused. These principles are laid down by Hon'ble Supreme Court in *Dalpat Kumar and anr. Vs. Pralhad Singh and others, AIR 1993 Supreme Court 276*. At the same time, while deciding the application of temporary injunction, Court must consider the convenience of the plaintiff as against the convenience the defendant. If the Court finds that, greater inconvenience will be caused to defendant then it will refuse the relief of temporary injunction because granting an injunction is an equitable remedy.

7. Applying the same analogy to the present case, it is necessary to primarily see on what basis plaintiff is claiming that he has prima facie case in his favour. For that purpose, I have perused documents filed on record. Plaintiff has filed on record copy of sale-deed bearing No.1890/1981, form No.8-A and Kaccha map of suit property. Except the said Kaccha map no other document is filed on record to prove that plaintiff is having open space admeasuring 280 Sq. Ft besides the suit property.

8. Plaintiff himself has contended that, he has sold portion of his land to different persons admeasuring 1200 Sq. Ft each. He has not produced those sale-deeds on record. Moreover, plaintiff has not brought on record any witness who would state on oath that 280 Sq. Ft. open space is remaining besides the suit property. There is no document on record which would justify four boundaries mentioned in the plaint in respect

of the suit property. Hence, prima-facie there is no document or evidence to show possession of plaintiff over the suit property. It is also important to mention here that, plaintiff could not prima-facie show that defendants are creating illegal construction over the suit property.

9. At this stage, plaintiff could not prove his prima-facie case to obtain injunction against defendants. In absence of that, irreparable loss of plaintiff could not be understood. Balance of convenience also does not lie in his favour. Thus, I answer Point Nos. 1 to 4 in the negative and record my findings accordingly.

**AS TO POINT NO.5: -**

10. In view of my negative findings upon point Nos.1 to 4, application deserves to be rejected. However, parties are litigating their case on their own merits. Therefore, it would be proper not to saddle costs of this application upon any one of them. Hence, to answer point No.5, I pass following order-

**ORDER**

**Application is rejected. No order as to costs.**

(Dictated and pronounced in open Court.)

Date : 20/03/2025.

**(N. J. Chavan)**  
3<sup>rd</sup> Jt. Civil Judge (J.D.), Udgir.