

ORDER BELOW EXH. 24 IN R.C.S. No. 27/2020
(Ruma Vs. Bapu & Others)

CNR NO. MHLA130001182020

The present application is filed by the plaintiff stating that she has filed suit for partition and separate possession wherein she claimed temporary injunction against defendants nos. 1, 2 & 7. Ad-interim exparte injunction is already granted against defendants nos. 1, 2 & 7 till their appearance, wherein the report of suit summons shows that suit summons is received unserved against defendants nos. 1 & 2 and defendant no. 7 appeared and filed his written statement and say on temporary injunction application. As the suit summons is not served to defendant nos. 1 & 2, therefore, it is difficult to argue on temporary injunction application, therefore, the temporary relief granted may continue till next date and time may granted for argue on temporary injunction application.

02. The ld. advocate for defendant no. 7 filed his say and submitted that the present application is contrary to the provisions of statute. The Court has passed ad-interim injunction against defendant no. 7 on 24/1/2020 and restricted the defendant no. 7 to make any further construction in land Gat No. 195 till his appearance. On 18/2/2020, the defendant no. 7 appeared and filed his written statement as well as say, therefore, the order passed on 24/1/2020 is vacated. Now the plaintiffs are intentionally avoiding to argue on temporary injunction application and filed the present application, therefore, application may be rejected.

03. Heard ld. advocate for defendant no. 7. The plaintiff and her ld. advocate remained absent when called out repeatedly. He did not argue.

04. After perusal of record it is seen that the suit is filed for partition and separate possession, wherein she filed application for temporary injunction. After hearing the ld. advocate for the plaintiff on 24/1/2020 ad-interim exparte injunction is granted against defendant nos. 1, 2 & 7 till their appearance. and the matter was fixed on 18/2/2020. On the said day, the defendant no. 7 appeared and filed his written statement as well as say on the application. On 18/2/2020, the plaintiff as well as her ld. advocate remained absent. The order as to ad-interim exparte injunction stands vacated to the extent of defendant no. 7, when the defendant no. 7 appeared.

05. While passing an order as to ad-interim injunction, the plaintiff was directed to comply as per O. 39 R. 3 of the Code of Civil Procedure. After perusal of record it is seen that the plaintiff did not comply the said direction. Today, the ld. advocate for plaintiff filed a pursis at Exh. 23 stating that he has made compliance u O. 39 R. 3 of the CPC. But, the affidavit regarding the same is not filed on record. Therefore, it cannot be said that the compliance had been made by the plaintiff. When the plaintiff has not complied with the said order he cannot be allowed to take advantage of order as to temporary injunction. Hence, I pass the following order.

ORDER

1. The application is rejected.
2. No order as to costs.

Dated 20/02/2020

**(O. M. Mali)
Civil Judge J.D. Renapur.**