



RCS No.424 of 2022  
Grmsevak Grampanchayat Indrathana,  
Smt.Pallavi Dashrath Ghadge  
CNRNo.MHLA130012412022

**ORDER BELOW EXH. 5**  
**(Dt.08-12-2023)**

1. This is an application under Section 39 (1) of the Code of Civil Procedure seeking temporary injunction restraining defendants from causing any interference in to the ownership and possession of the suit property.

**2. Description of the suit property**

Gram Panchayat House No.310, Adm. South-North 28 Ft. and East-West 35 Ft., situated at village Indarthana, Tq. Renapur, Dist. Latur, with open site. Bounded as –

East Agricultural Land of Sayyed Latif.  
West Open space and Pvt. Road.  
South House of Shaikh Nasir.  
North House of Chand Shaikh.

**Case of the plaintiff, in short**

3. It is the case of the plaintiff that the plaintiff is the owner in possession of the suit property. He and his family members are residing therein since last more than 12 years. His name is duly recorded in the Gram Panchayat Record. He is paying tax regularly. He has obtained electricity connection in the suit house. Sayyeda Begambee and Shaukat Latif are the neighbours of plaintiff's father's house No.309. They are the close relatives of the Sarpanch and Up-Sarpanch of the village. They instigated the Sarpanch and Up Sarpanch. On their instigation the sarpanch issued notice to the plaintiff on 03-10-2022 and 18-10-2022 and thereby directed him

to remove alleged encroachment over road. The plaintiff has never encroached over the road. In fact, no road is in existence there at the suit site. It is further contended that, he is in peaceful possession of the property since long. The defendants have no right to issue such notice. Hence, the plaintiff has filed this suit for the relief of perpetual injunction. It is further contended that as the plaintiff is in the possession of the suit property since more than 12 years and the very act of defendants of issuing notice is illegal, the plaintiff is having right to challenge the very legality of the said act of plaintiffs. He has prima facie case and balance of convenience also lie in his favour. Hence, he prayed to grant temporary injunction and restrain defendants to act upon the notice and cause any damage to the property of the plaintiff. It is further contended that in case the defendants are not restrained, the plaintiff will suffer irreparable loss. Prayed to allow the application.

4. Defendants duly served. Defendant No.1 appeared but did not contest the suit. As such, the suit is proceeding without W.S. of the defendant No.1. therefore, this application is also proceeding without say of the defendant No.1. Defendant No.2 and 3 did nto appear. Hence, the suit as well as this application is proceeding ex parte against them.

5. Perused application and the documents filed in support of the application. On the basis of contents of the application, following points arise for my consideration. Findings against

them are recorded for the reasons discussed below.

### **POINTS FOR DETERMINATION**

<b>Sr.</b>	<b>POINTS</b>	<b>FINDINGS</b>
(1)	Whether the plaintiff has prima facie case?	... Yes.
(2)	Whether balance of convenience lie in favour of plaintiff?	... Yes.
(3)	Whether plaintiff will suffer irreparable loss if injunction as sought for is not granted in his favour?	... Yes.
(4)	What order?	... The application is allowed.

### **REASONS**

#### **As to point No.1 to 3**

6. Heard, Shri. P. M. Adude, learned advocate for the plaintiff / applicant. The application is supported by an affidavit of the plaintiff / applicant.

7. It is the contention of the plaintiff that he is the owner in possession of the suit property. He has constructed house thereon. He has taken electricity connection and residing therein along with his family, since last more than 12 years.

8. The fact that the defendants have issued notice to the plaintiff, itself shows, that the plaintiff is in the possession over the suit property. Whether the possession of the plaintiff over the suit property is legal or unauthorised is a fact which will be

determined after the evidence will be adduced in the matter. However, as of now there is nothing on record to come to the conclusion that the possession of the plaintiff over the suit property is unauthorised and it amounts to encroachment. Even otherwise, the plaintiff claims to have been in the possession over the suit property since last more than 12 years. As such, the defendants should have placed on record some sort of document to show that, since which the plaintiff have encroached over the suit property. The suit summons duly served on the defendants. They chose not to contest the suit. Hence, adverse inference can be drawn against them. Whether the plaintiff is lawfully in possession of the suit property or his possession is unauthorised, unlawful and it amounts to encroachment is a question needs trial to come to any conclusion. Hence, there is prima facie case. The plaintiff claims to be in the possession of the suit property as such balance of convenience also lie in his favour. It is clear that the plaintiff is in the possession of the suit property. As such, his possession needs to be protected. In case his protection is not protected, he will suffer irreparable loss. In view of the above discussion, point Nos.1 to 3 are answered affirmatively.

**As to point No.4**

9. In the light of above discussed facts, point Nos. 1 to 3 are answered in the affirmative, therefore keeping in view the said findings and reasons recorded for arriving at such findings, in answer to point No. 4 following order is passed.

**ORDER**

- (1) Application is allowed with costs.
- (2) The defendants and their agents are hereby restrained from causing any sort of obstruction or interference into the possession of the plaintiffs over the suit property, till the suit is disposed of.

(Pronounced in open court)

Dt.08.12.2023

sd

(R.B. Hanwate)

Civil Judge (Jr, Dn), Renapur