

	<p><u>ORDER BELOW EXH.5 IN R.C.S. No. 621 / 2025</u> (Satling Vs. Gundu) CNR- MHLA140025372025</p>
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1. Plaintiff has filed the instant application for a temporary injunction for restraining defendants from raising the construction over the suit property under Order XXXIX, Rule 1 of the Code of Civil Procedure.

The case of plaintiffs is as under :

2. Plaintiff and defendants are the neighbors. He further contended that the suit property is allotted to him by the government on 18.06.1987. Since then, he has been in the possession of the suit property and residing there with his family. However, defendants are making the encroachment over the suit property from western and southern side by raising construction over it. Therefore, his son has filed the criminal case against the defendants bearing STC No. 174/2024. However, they did not stop the construction. Hence, he has filed suit for injunction and consequential relief.

3. Defendants have filed their say at Exh.No.13 and resisted the claim of plaintiff. They specifically pleaded that the plaintiff has no locus standi to file the present suit. According to them they have been constructing the house over 30 x 40 area out of the survey no. 18 which has been specifically described in para no. 2 of the written statement and same is allotted to them under Earthquake Rehabilitation Scheme in the year 1993. The same plot is owned by the

Maharashtra Government. However, 8-A extract is not issued by Gram Panchayat. Since, the allotment they have been residing in aforesaid area in the capacity of the owner. They further, asserted that, ownership certificate in the name of plaintiff in respect of suit property is canceled by the Government. Thus the plaintiff has no concern with construction of defendants. They further contented that, they have been paying the government taxes in respect of allotted area and taken the light connection there. They further specifically pleaded that with the previous permission of Gram Panchayat they have been constructing over the aforesaid 30 x 40 area out of the S.No. 18. Therefore, plaintiff has no concern with their allotted area. They further contended that suit is bad for the non-joinder of necessary parties. Hence, prayed to reject the application with the cost.

4. Perused application, record, and say filed by defendants. Perused the document on record. Heard learned advocate of the parties.

5. The following are points for determination along-with my findings thereon for the reason to follow:

Sr. No.	Points for Determination	Findings
1.	Whether the plaintiff has a prima-facie case?	Yes
2.	Whether the balance of convenience lie in favour of the plaintiff ?	Yes
3.	Whether the plaintiff would suffer irreparable loss if the application of temporary injunction is refused?	Yes
4.	What order?	As per final order.

REASONS

6. The plaintiff has produced documents in support of his case vide Exh.No.4 i.e. the original ownership certificate in respect of suit property issued by the Maharashtra Government on 18.06.1987, house tax and water receipts vide Exh.No.4/2 and 4/3, photographs, affidavit of neighbors vide Exh.No. 27, 28 and 29 and certified copy of RCS No.1033/2023.

7. The defendants have also produced on the record water tax receipts vide Exh.No. 17/1, light bill vide Exh. 17/2, photocopy of the letter dated 11.05.2016 at Exh.No.17/3, Special Gram Sabha report dated 06.05.2016 at Exh.No.17/4, beneficiary list, photocopy of the map of S.No. 18 vide Exh.No. 17/8, certificate issued by the Gram panchayat Sarani dated 08.07.2025, 7/12 extract of S.No. 18 vide Exh.17/10, photocopy report of Grampanchayat and Panchayat Samiti Officials dated 25.03.2025, affidavit of the witnesses vide Exh.No.26 and 30.

8. It is admitted fact that, S.No.18 is owned by Maharashtra Government and defendant are constructing the house in the survey no. 18 which is situated within the limit of village Sarani. It is admitted by the defendant that, plot allotment process is not yet completed.

9. At present the plaintiff has filed the application for the temporary injunction to restrain defendants from constructing over the suit property. It is the case of plaintiff that, suit property allotted to him by Government on issuing ownership certificate in the year 1987. On the perusal of ownership certificate issued by Maharashtra Government in name of plaintiff vide Exh No.4/1, it can be seen that 50 x 30 area

out of S.N.18 is given to plaintiff on 18.07.1987 by Tahsildar, AUSA. As against this defendants contended that, the ownership certificate issued in the name of plaintiff is canceled by Maharashtra Government. However there is nothing on record which prima facie substantiate it. Therefore, I do not find any force in the argument of defendants that, the plaintiff has no locus standi to file the present suit.

10. Defendants come to the case that, 30x40 area out the survey no. 18 which is specifically described in para 2 of written statement allotted to them by Sarani Gram Panchayat in the year 1993. Since, then they have been enjoying the same in the capacity of the owner. On perusal of beneficiary list vide Exh. 17/11, it appears that name of defendant No.1 is appeared at serial No.99. However, at present no prima facie evidence on record to support the contention of the defendants that, 30x40 area out of survey no. 18 is allotted to them by Sarani Gram Panchayat and with the prior permission of Gram Panchayat they have been constructing the house there. It is admitted by the defendant that, plot allotment process is not yet completed. Moreover, defendants contended that, they have been residing in 30x40 area out of a survey no. 18 since 1993. However, the Gram Panchayat certificate dated 08.07.2025 vide Exh. 17/9 is silent about it. Moreover, on the basis of Gram Panchayat Panchanama dated 25.03.2025, it can be prima facie inferred that, the plaintiff has been residing in the suit property.

11. It is a material to note that, the defendants nowhere denied that, they are raising the construction which is adjacent to the suit property. Hence, the apprehension of the plaintiff seems probable. Hence, the plaintiff apprehended that if temporary injunction is not

granted defendants will make the encroachment over the suit property by constructing the house and it would cause irreparable loss to him. Therefore, the plaintiff apprehension seems probable and if temporary injunction is not granted it would cause the multiplicity of the proceeding as well as irreparable loss to the plaintiff, which could not be compensated in the term of money. If the order of restraining the construction over the suit property is passed, it would not cause any prejudice to defendants so as there is no prima facie document which demonstrate that, they have been construing the house on the alleged allotted area. Therefore, plaintiff has made out the prima facie case. The balance of convenience is also tilted the favor of plaintiff. Thus, I answer the point nos. 1 to 3 in affirmative and record my findings accordingly. In order to answer point no.4, I pass following order:

:: ORDER ::

1. The application is allowed.
2. The defendants are hereby restrained from raising construction over the suit property till final decision of this case.
3. Cost in cause.

Date: 15/11/2025
Ausa.

(Smt. S. H. Nalawade)
3rd Jt. C. J. J.D, Ausa.