

Order below Exh.No.5.

(Passed on 01-03-2018).

1. This is an application filed by the plaintiff under Order 39 Rule 1 and 2 Code of Civil Procedure for grant of temporary injunction for restraining defendants to developed further construction over suit portion till the final disposal of the suit.

2 . Plaintiffs and the defendants are cousin brother. The father of the plaintiffs were having ancestral house at village Shirnal East-West 66 ft. South- North 72 ft. In the life time of the father of plaintiffs and defendant partition of the house had been effected and they have received equal share. It was agreed in the partition that 6 ft. common space be kept open between their share. The partition was effected between plaintiffs and his brother Jaiwant after their father's death. The plaintiff no.1 has purchased the share of the defendant adm. East-West 39 ft. and South-North 36 ft. for the consideration of Rs. 2000/. from south east corner under registered sale deed no.2548/1988 on 14.07.1988.

3. The Grampanchayat Shirnal had prepared false and bogus register by giving false dimension of the houses. The defendant on the strength of false record illegally constructing on the common space (i.e.suit portion) which is kept open between the share of them and defendant. Due to illegal construction over the suit portion there is obstruction to the plaintiffs for going to his house. The brother of the plaintiffs Jaiwant without their consent compromised the suit R.C.S. No.

33/2009 with defendant. The alleged compromise is against the interest of plaintiffs and therefore it is not binding upon them. The evidence of the plaintiff in the said suit was closed so the plaintiffs withdrawn the said suit with permission to file fresh suit on the same cause of action. Plaintiffs have requested to the defendant on 04.03.2009 to remove the illegal wall construction and stop the further construction over the suit portion, but the defendant has refused. If defendant is not restrained then the plaintiffs will suffer irreparable loss which can not be compensated in terms of money.

4. Defendants have filed their written statement at exh.22. He has not disputed that plaintiffs are having ancestral house at Shirnal but he has denied its dimension. It is also not disputed that 6 feet way kept common for plaintiffs and the defendant. Plaintiffs were constructed basement over 1.5 feet and there is only 4.5 feet area for the way. The defendant has not denied that the brother of the plaintiffs Jaiwant has compromised the suit R.C.S. No. 33/2009, but he has denied that the said compromise is without consent of the plaintiffs. The defendant has denied the case of the plaintiffs. The defendant has contended that he has obtained construction permission from the concern Grampanchayat on 16.03.2009 and made construction over his house G.P. No. 65 adm. East-West 30.5 feet and South-North 40.8 feet. The construction of the defendant is legal one. Thus defendant has submitted to reject the application.

5. After considering the rival contentions of the parties, following points arise for determination along with my findings

thereon for the reasons noted below.

<u>Point</u>	<u>Findings.</u>
(1) Whether plaintiffs have made out prima -facie case in their favour ?	No
(2) Whether the balance of convenience lies in their favour ?	No
(3) Whether Plaintiffs will suffer irreparable loss if remedy of temporary injunction is not granted?	No
(4) What order ?	The application is rejected.

REASONS.

As to Point no. 1 to 3:-

6. Heard learned advocate for plaintiffs and defendant. In support of the application the plaintiffs have relied on the documents filed at exh.4. On the contrary defendant has relied on the documents filed at exh.31.

7. I have perused the documents filed on record by the both parties. According to the plaintiffs the defendant on the strength of false record illegally constructing over the common space (i.e. suit portion) which is kept open between them and the defendant and due to illegal construction over the suit portion there is obstruction to the

plaintiffs for going to his house. The defendant has denied the said fact and contended that after the due permission he has constructed his house. The defendant has to support his contention filed certified copy of Exh. 1 of R.C.S. No. 33/2009, I have gone through the said copy it appears the the said suit was filed for perpetual injunction and mandatory injunction and plaintiffs have applied for withdrawal of suit therefore permission was granted to plaintiffs to file fresh suit subject to cost of Rs.1000/.

8. It further appears from the certified copy of the report of the court commissioner appointed in R.C.S. No. 33/2009 that in the said suit he had visited the suit portion and submitted the report. As per his report over the suit portion there is construction of stone wall of plaintiffs towards eastern side and towards the north side there is constructed house of defendant and between their house there is 4.5 feet lane. It further appears from the certified copy of compromise memo filed in R.C.S. No. 33/2009 that the brother of the plaintiff Jaiwant had admitted the construction of house of the defendant and towards the south of his house there 3 feet lane. It further appears from the copy of construction permission order filed by the defendant that construction permission to the house no.65 was granted by the Grampanchayat Shirnal on 16.03.2009. It further appears from the copy of proclamation that Grampanchayat Shirnal had called the objection from people before granting construction permission to the defendant. The defendant has filed the abstract of House no. 65. It appears that in the name the defendant there is East-West 35 feet

portion and North-South 46 feet. These documents prima facie shows that there is constructed house of the defendant. Moreover it is pertinent to note here that plaintiffs have not filed any documents to show that the defendant is making further construction over the suit portion. So far as the contention of plaintiffs that the construction of the defendant is illegal this fact can not be considered at this stage it would be decide after evidence of both parties. Thus as discussed plaintiffs have not established their prima facie case, the balance of convenience does not lies in their favour and there is no loss to plaintiffs, thus the application deserves to be rejected. Accordingly, I answer point no. 1 to 3 in negative and in the result of point no.4 I pass following order.

ORDER.

Application is rejected.

(Gajanan B. Jankar)
Joint Civil Judge, J.D. Chakur

Date : 01-03-2018.