

CNR-MHLA15000469-2019



**ORDER BELOW EXH.5**  
**(Passed on 16/09/2022)**

The present application is moved by plaintiffs under Order XXXIX Rule 1 & 2 of C.P.C for restraining defendants from interfering and obstructing over field Gat No.166 Adm. 5 H. 32 R. situated at village Kalkoti Tq. Chakur Dist. Latur which is described in para No.2 of plaint (herein after shortly referred as ' Suit Property/ Suit land').

2. Defendant no. 1 to 5 have filed written statement and say vide Exh. 17 and opposed temporary injunction application on various ground.

3. Points for determination along-with my findings and reasoning thereon as under.

Sr. No.	Point	Finding
1.	Whether plaintiffs prove prima facie case?	..In the affirmative.
2.	Whether balance of convenience lies in favour of plaintiffs ?	..In the affirmative.
3.	Whether irreparable loss will be caused to plaintiffs if temporary injunction is not granted ?	..In the affirmative.
4.	What order ?	Application is allowed.

**Reasons****Points no. 1 to 3 :-**

4. To avoid repetition of facts & discussion, point No.1 to 3 are taken together for sake of convenience.

5. Learned Advocate for the plaintiffs submitted that plaintiffs have filed suit for perpetual injunction against defendant no. 1 to 5. Plaintiff no.1 is husband of plaintiff no.2 and plaintiff no. 3 to 5 are grand son of plaintiff no.1. Plaintiffs are owner and possessor of suit property which are described in para no.2 of plaint. Defendants have no concerned with suit property. Defendants are haste to dispossess plaintiffs from suit land by way of threat to kill. It is necessary to restrain defendants from obstruction over suit property till the decision of suit. So plaintiffs have filed present application for temporary injunction against defendants.

6. Per contra it is submitted by defendant no. 1 to 4 that they have filed written statement vide Exh.17. According to them, suit of plaintiffs is false and vexatious. They denied that, plaintiff purchased suit property. Plaintiff are not owner and possessor of suit property. Plaintiffs are illegally trying to laid down pipeline. Plaintiffs have to be made application before Tahsildar. Court has no jurisdiction to entertain present suit. Plaintiffs are desiring to construct water course. Plaintiffs are trying to damage the land of defendants. Lastly defendants have prayed for rejection of temporary injunction application. Defendants also filed written notes of arguments vide Exh.25.

7. The provision of temporary injunction provided in order 39 Rule 1 and 2 C.P.C. as a discretionary relief. While exercising this discretion court has to see that requirements are made out by Plaintiffs.

(a) *Existence of prima facie case as pleaded, necessitating protection of the plaintiffs right by issuing order of temporary injunction;*

(b) *When the need for protection of the plaintiffs are compared with the or weighed against the need for the protection defendants rights, the balance of convenience lies in favour of the plaintiffs.*

(c) *Clear possibility of irreparable injury being caused to plaintiffs if the temporary injunction is not granted.*

8. Heard both side. Perused record & documents. It is case of plaintiffs that they are owner & possessor of suit property & defendants have obstructed in peaceful possession of plaintiffs & damaged pipeline in suit property. Plaintiffs have filed 7/12 extract of field Gat No.166 for the year 2017 - 2018 vide Exh.8. It shows that plaintiffs No. 1 to 5 are having 5 H.32 R. land in said field Gat No. 166. Plaintiffs have also filed 7/12 extract of said field for the year 1990 to 2001 which shows that plaintiff No. 1 has 2 H.64 R . Registered sale deed bearing No.2870/2003 shows that plaintiff No.1 have also purchased 2 H.38 R. from Gajanan & Balasaheb. Prima facie, it appears that plaintiff No.1 was owner of suit property to the extent 5 H. 32 R.& he effected partitioned of said suit property between himself & plaintiff No. 2 to 5 by mutation

entry No. 645 dated 12.11.2013. Though, it is submitted on behalf of defendants that said partition deed of plaintiffs is not registered one. However, whether partition deed is valid or not can not be decided at this stage. Prima facie, revenue documents shows rights of plaintiffs with suit property. Furthermore, defendants have not claimed any right with suit property.

9. It also appears from affidavit of Machindra Murke, Vasant Bhaware & Dhondiram Indrile that plaintiffs are owner & possessor of suit property as described in plaint. Defendants obstructed in peaceful possession of plaintiffs & damaged pipeline. Defendants have not filed any counter affidavit to rebut said affidavit. Plaintiffs have also filed copy for permission of water from irrigation department. At this stage, defendants have not brought anything on record to show that said pipeline lay down from the field of defendants. Bare words of defendants are not sufficient to hold that said pipeline lay down from the field of defendants. It is also submitted by defendants that plaintiffs have not filed application under section 49 of Maharashtra Land Revenue Code & this court has no jurisdiction. However, it appears from plaint that plaintiff have not claimed any relief for construction of water course. Plaintiffs have prayed relief for perpetual injunction. So, submission on behalf of defendants in respect of jurisdiction can not be accepted at this stage.

10. It is also submitted on behalf of defendants that plaintiffs have shown wrong four boundaries of suit property. However, it appears from written statement that defendants have not pleaded

any other four boundaries of suit property. So, submission on behalf of defendants can not be accepted.

11. After considering above all things and discussion prima facie it appears that plaintiffs have right over suit property and they are in possession over suit property. Defendants are obstructing in a peaceful possession of plaintiff over suit property. Defendants are denying right & ownership of plaintiffs in written statement. Plaintiff No.1 filed complaint against defendants in respect of obstruction in field on 22/09/2019. This act of defendants also cause harm to plaintiffs. So plaintiffs have proved prima facie case. If defendants are not restrained from obstruction then it will cause harm on the right of plaintiff over suit property. If temporary injunction is granted in favour of plaintiff then it will not cause any loss to defendants. If injunction is not granted in favour of plaintiff then it will also cause loss to plaintiff. Said loss or injury can not be compensated in terms of money. So, I answer point no.1 to 3 in the affirmative and in answer to point no.4 I proceed to pass the following order.

**ORDER**

1. Application [Exh.5] is allowed.
2. Defendants their agents, servants, through anybody are hereby restrained from interference and obstruction over the suit land which is mentioned in para no.2 of application, till decision of suit.

Date : 16.09.2022.

(Prashant P. Kale)  
Civil Judge J. D., Chakur