

MHND140021882022



**ORDER BELOW EXH.6**  
**(Order on application for temporary injunction)**

This is an application filed by plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. The suit is for perpetual injunction.

**02. Description of suit property :**

<b>Property No.</b>	<b>Ad-measuring area</b>	<b>Village</b>
House no. 713/1, new no. 2198 (CTS No. 61)	South north 30 ft x east west 10 ft	Hanegaon, Tal.Degloor, Dist. Nanded

Aforementioned property is here in after referred as 'suit property'.

**Plaintiff's case in short :**

**03.** Plaintiff is owner and in possession of suit property vide registered sale deed 331/2018. The plaintiff had old constructed house over said suit property. Plaintiff obtained construction permission and demolished the old construction. Defendants came on the suit property and stopped the labors from carrying construction. Defendants asked the plaintiff to leave way between suit house and open plot of defendant no. 1.

**04.** Entire house no. 713 was owned by deceased Ismail Hussainsaab, who was father of the plaintiff. Deceased Ismail had four sons, Plaintiff,

Maheeb, Husain and Jilani. After the death of Ismail, suit house was partitioned in to four equal shares. Plaintiff's brother Husain and Jilani sold their share 30ft x 20ft to defendant no. 1 and delivered the possession to him. Defendants are obstructing plaintiffs possession over suit property. Therefore, plaintiff has filed the present suit and the present application for temporary injunction to restrain defendants from obstructing upon suit property.

**05. Defence in short :-**

Defendants opposed the application by filing say at **Exh.15**. It is stated that, plaintiff is owner an in possession of suit property. Vendors of plaintiff had no right to sell gram panchayat house no. 713/1 to the plaintiff. Construction permission obtained by plaintiff is not legal. It is admitted that defendant no. 1 purchased 30 ft x 20 ft out of house no. 713. Prima-facie case does not lie in plaintiff's favour. Accordingly, prayed for rejection of application.

**06. Argument by Ld.Advocate Shri. Parvez Kazi for the plaintiff :-**

Ld. Advocate for the plaintiff submitted that, prima facie case lie in plaintiff's favour as he is owner and in possession of suit property by registered sale deed. Defendant is obstructing plaintiff's peaceful possession over suit property. Therefore, if injunction is not granted plaintiff will suffer irreparable loss. Balance of convenience tilts in plaintiff's favour. Accordingly, prayed for allowing the application.

**07. Argument by Ld.Advocate Karadkhedkar for defendants :-**

Per contra, the Ld. Advocate for Defendants submitted that, prima facie case does not lie in plaintiff's favour. Sale deed 331/2018, nowhere states the details of suit property. Through this application plaintiff seeks to make illegal construction. If injunction is granted, defendants will suffer irreparable loss. Balance of convenience does not tilt in favour of plaintiff. Accordingly, prayed for rejection of application.

**08.** Heard arguments advanced by Ld. Advocates for both sides at length. Perused documents filed by the plaintiff and defendants.

**09.** On hearing both the sides, following points arise for my determination and I have recorded my findings thereupon as follows:-

<b>Sr.No.</b>	<b>Points for determination</b>	<b>Findings</b>
1	Whether the plaintiff proves prima-facie case in his favour ?	No
2	Whether balance of convenience tilts in favour of the plaintiff ?	No.
3	Whether the plaintiff will suffer irreparable loss if injunction is not granted ?	No.
4	Whether the plaintiff is entitled to the relief of temporary injunction as prayed ?	No
5	What Order ?	Application is rejected.

## REASONS

10. It is settled principle of law that while deciding application for temporary injunction, mini trial should not be conducted. Three cardinal principles to be assessed while deciding this application are prima-facie case, balance of convenience and irreparable loss.

**As to point no.1 :-**

### *Prima-facie*

11. To claim injunction, the plaintiff has to show prima-facie case in his favour. The term prima-facie case means a case which involves a fair and substantial question to be tried. A prima-facie case does not mean a case proved in its entirety but a case which can be said to have established if the evidence which is led in support of the same were believed. A triable issue is the crux of the expression prima-facie case.

12. To prove prima facie case in plaintiff's favour, plaintiff has filed on record extract no. 8, map, sale deed 331/2018, construction permission etc. To counter plaintiff's case, defendants filed on record extract no. 8 of house no. 713/1 and 713/2. The plaintiff is claiming possession over suit property by virtue of sale deed 331/2018. It is important to note that the sale deed 331/2018 nowhere state suit property as its subject matter. The subject matter of sale deed is CTS no. 61, whereas the suit property is gram panchayat house no. 713/1. Therefore, it cannot be prima-facie said that plaintiff is in possession of suit property by virtue of sale deed.

13. In sale deed 331/2018 as well as plaint, plot of defendant no. 1 is shown on the western side. However, the details of plot is not stated and extract of plot possessed by defendant no. 1 is not stated by the

plaintiff. Mutation entry extract of grampanchayat house no. 713/1 filed by plaintiff vide Exh. 26/1 shows that the mutation is entered on the basis of registered sale deed. However, the registered sale deed nowhere mentions grampanchayat house no. 713/1.

14. The pleadings in the plaint and documents filed by plaintiffs are vague. In view of the documents on record and pleadings in the plaint, plaintiff's case appears to be doubtful. Hence, plaintiff has failed to prove prima facie case in his favour. Therefore, I answer point no. 1 in *negative*.

**As to point no.2 and 3 :-**

**Balance of convenience & irreparable loss**

15. As discussed above the plaintiff has failed to prove prima facie case in his favour. Plaintiff did not file any document to show his possession over suit property. Balance of convenience does not tilt in plaintiff's favour. No irreparable loss would be caused to the plaintiff, if injunction is not granted. In this context Judgment of Hon'ble Bombay High Court in *Bhavna Vs.Navneet reported in 2015(3)MH LJ 472* assumes importance. In para 8 therein, his Lordships has observed that “*Once the prima facie is not established, the further aspects as to balance convenience and irreparable loss are immaterial and they need not be considered.*” In this view of reason discussed above, I answer point No. 2 and 3 in *negative*.

**As to point no.4 :-**

**(Entitlement to Temporary injunction)**

16. Relief of temporary injunction is an equitable relief. Plaintiff has

failed to prima facie prove his possession over suit property. Plaintiff failed to prove three cardinal principles for grant of temporary injunction. In absence of prima facie case in plaintiff's favour, temporary injunction restraining defendants cannot be granted. Accordingly, I answer point no.4 in ***negative***.

**As to point no.5**

17. In answer to point no.5, I pass following order,

**ORDER**

01. The application **Exh.6** is rejected.
02. Costs in main cause.

**Date – 10.01.2023.**

**( R. N. Khan )**  
Jt.Civil Judge Jr. Division, Degloor.