

ORDER BELOW EXHI.5 IN RCS No.114/2018.

(MHND250006012018)

Narayan Vs Narsing & others

1. Plaintiff has filed this application under O.39 Rule 1 and 2 of the Civil Procedure Code for temporary injunction against the defendants.

2. Heard. Perused application and all relevant documents produced on record. The following points are arisen for final decision of this application. Those points and my findings there on are as under.

NO	P O I N T S	FINDINGS.
1)	Whether the plaintiff has made out prima facie case?	Not required.
2)	Whether the balance of convenience lies in favour of plaintiff?	Not required .
3)	Whether plaintiff will suffer irreparable loss, if Injunction is not granted?	Not required .
4)	What order?	As per final order.

R E A S O N I N G**As to point Nos.01 to 04**

3. Perused application Exhi.5, plaint Exhi.1, supportive affidavit, written statement-cum say of defendant Nos.3 to 5 and 1, at Exh. 22 & 28 and submitted all the relevant documents on record. Due

service of summons defendant No.2 has not appeared in the court, therefore ex-parte order passed against him on 07.03.2019 below Exh.1. The point Nos.01 to 03 are co-related to each other's. Therefore, for avoiding repetition, those are discussed simultaneously hereinafter.

4. Needless to say that, it is the first rule that, the applicant must make out a prima facie case in support of the right claimed by him. But the prima facie case alone does not entitle applicant for temporary injunction. The applicant must further satisfy that, he will suffer irreparable loss or injury if the injunction as prayed is not granted and third important condition for granting interim injunction is that, the balance of convenience must be in favour of the applicant. Here, plaintiff has filed this suit for the partition & separate possession and perpetual injunction against the defendants along with this application. Except defendant No.1, defendant No.3 to 5 have raised so many objection by filing their written statement-cum say at Exhi.22. But, during the arguments of this application, both the advocates with consent of their respective parties agreed to dispose of this application vide pursis filed by them at Exhi.29. Therefore, without going in to the merit of this application for avoiding the controversy and

multiplicity of the proceedings, I recorded my findings on the point Nos.1 to 3 accordingly.

As to point No.4.

5. Relief under Order 39 Rule 1 and 2 of CPC is discretionary. Therefore, who is seeking relief of injunction, he must come to the Court with clean hands and he must disclose all facts for and against him in order to get the discretionary relief. But, here both the parties have jointly filed pursis at Exhi. 29 and theretofore, as per my view, following order is just and proper.

ORDER.

1. In view of the pursis Exh.29 application is hereby disposed off.
2. Both parties are directed to Co-operate for final decision of this suit without delay.
3. Cost in cause.

Date:14.10.2019.

Sd/-
(S.S.Dhapate)
Civil Judge, Jr.Dn. Umri,

CERTIFICATE

I affirm that the contents of this P.D.F. File judgment are same word to word as per original Judgment.

Name of Stenographer	:A.S.Kendre
Court name	:CJJD Court Umri.
Date	: 14.10.2019
Judgment signed by the presiding officer on	: 14.10.2019
Judgment uploaded on	: 19.10.2019