

MHND260000192021 	<u>ORDER BELOW EXH.05</u> <u>Yashodabai Vs. Sanjay+ 1</u> <u>REGULAR CIVIL SUIT</u> <u>NO.01/2021</u>
--	--

This is application under Order-XXXIX, Rule-1 and 2 of The Civil Procedure Code for grant of temporary injunction. Application is supported with affidavit.

2. **The brief facts of the plaintiff application is as under : -**

Present suit is filed for recovery of possession, perpetual injunction and measurement of agricultural land gut no. 24 ad measuring 0 H 17 R which is in the name of plaintiff which is more particularly described in the para no. 1 of the plaint situated at village ahmadpur (Be) Tq. Ardhapur Dist. Nanded. Plaintiff submitted that, the owner of 0 H 17 R land was Irbaji Dhabadege who was her father in law and after his death husband of plaintiff namely Zabu Irbaji Dhabadege became the owner and after his death present plaintiff is the owner of the suit property.

Defendants are the adjoining owner and they are trying to dig up the dhura and even trouble to encroach the suit land and lastly 12/01/2019 they dispossess the plaintiff. Now they are going to sell out the suit property. Hence, plaintiff filed present application to restrain the defendants from not to alienate the suit property till decision of the suit.

3. Defendants appeared and filed their written-

statement vide Exh. 16 and filed pursis Exh. 18 and adopted as a say to the Exh. 05. They denied the contentions of the plaintiff and submitted that, plaintiff is not owner and possessor of suit property nor they had made any encroachment even they are not going to sell out the suit property. Hence, they prayed to reject the application.

4. Heard, Ld. Advocate for plaintiff and defendants. Following points arise for my determination and I have given my findings thereon for the reasons given below :-

<u>Sr.No.</u>	<u>P O I N T S</u>	<u>FINDINGS</u>
1.	Whether the plaintiff have made out prima-facie case in her favour ?	Yes.
2.	Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3.	Whether the plaintiff will suffer irreparable loss if temporary injunction is not granted?	Yes.
4.	What order ?	The application is allowed.

R E A S O N S

AS TO POINT NO. 1 TO 3 :-

5. Heard ld. Advocate Shri. R.G. Jogdand for plaintiff. He submitted that, plaintiff is the owner of land gut no. 24 to the extent of 17 R land as per 7/12 extract and copy of 7/12 extract filed on record alongwith namuna no. 8-A i.e. holding. As per record she is owner of 0.17 R land

situated at ahmadpur (Be) Tq. Ardhapur. He submitted that, defendants has wrongly dispossess the plaintiff and they are going to sell out the suit property. Hence, application be allowed.

6. Heard ld. Advocate Shri. K.B. Deshmukh for defendants. He submitted that, plaintiff is not owner and possessor of disputed land i.e. 0.17 R land. Even suit is not maintainable as all necessary and proper parties has not been made in the suit. He further argued that, plaintiff is not owner even since long 50 years the defendants are owner and possessor of the property. They have not made any encroachment as alleged by the plaintiff. Also they are not going to sell out the suit properties.

7. To grant Temporary injunction I have been guided by the authority of Hon'ble Apex Court in the case of ***Gujarat Bottling co. ltd. Vs. Coca Cola co. (1995) 5 SCC 545***. In this Honb'e Apex court has laid down the three fundamental principles in deciding the application for temporary injunction. No doubt to grant or to reject the temporary injunction is a discretion of the court.

8. To grant temporary injunction it is for the plaintiff to establish prima-facie case in his favour. ld. Advocate Shri R.G. Jogdand for plaintiff submitted that, as per 7/12 extract plaintiff is owner and said entry has not been challenged by the defendants before competent authority. If at this juncture, if injunction is not granted from not to alienating suit property or creating third party interest then plaintiff will suffer irreparable loss.

9. Considering, the facts and circumstances of the cases and if injunction is not granted at this juncture then the plaintiff will suffer irreparable loss which can not be compensated in terms of money. Per contra, if injunction is granted then defendant will not suffer any irreparable loss. Hence, I answer point no. 1 to 3 in the affirmative.

POINT NO. 4 :-

10. In view of above discussion I have recorded my findings in the affirmative consequently, following order -

:: O R D E R ::

1. The application (Exh.05) is allowed .
2. Defendants and anybody claiming through defendants are hereby temporarily restrained from creating third party interest or alienating the suit property i.e. gut no. 24 ad measuring 0.17 R land situated at village ahmadpur (Be) by way of any mode till final disposal of suit.
3. Costs in cause.
4. Pronounced and dictated in open court.

Date: 26/07/2022.

(M.D.Birhari)
Civil Judge Jr. Dn.
Ardhapur.

CERTIFICATE

I affirm that the contents of this [P.D.F.](#) file order are same, word to word, as per the original order.

Name of the Jr. Clerk: A.V. Shahane

Court of : Civil Judge Junior Division, & JMFC, Ardhapur
Dist. Nanded.

Date of pronouncement of Judgment/Order :
26.07.2022

Judgment/Order signed by the Presiding Officer :
26.07.2022

Judgment/Order uploaded on : 27.07.2022