


Reg. Civil Suit No.41/2024
Mangla -vs- Shilpa

ORDER BELOW EXH.05

(Dated 03/05/2023)

The plaintiff's have filed the present application under Order 39 Rule 1 and 2 of the Civil Procedure Code,1908 (in short "The Code") to restrain the defendant from carrying out further construction of column over the northern side of compound wall of their house till decision of the suit.

2] The plaintiffs submitted that plaintiff's grand mother by name Sitabai is the owner of house no. C/49. Deceased Sitabai had one son by name Sampat and one daughter by name Mohini. The said Sampat and Mohini has also died. Plaintiff's are the daughter of deceased Sampat. The H.No.C/49 was constructed by plaintiff's grandmother 50 years ago and the area is 123.56 sq.m. and plaintiff's have constructed their house on entire area i.e.123.56 sq.m. The defendant is plaintiffs neighbour and owner of H.No.C/117. The defendant recently trying to construct her house without following due procedure of law and without obtaining permission from the Municipal Council, Kamptee. Plaintiffs visited the spot and see that the defendant placed column near the compound wall towards north side of their house. The defendant tried to break the compound wall of plaintiff's house and adjust the said column in place of wall and also trying to adjust said column on some portion of land belonging to plaintiffs. As per the norms of Government plaintiffs have made construction and the defendant in the month of January 2024 started to make illegal construction. Thus, plaintiff's have lodged complaint to the Municipal Council, Kamptee on 27.3.2024 for stopping the said illegal construction, but the officers of the Municipal Council,


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Kamptee never visited the spot and also never give any direction to the defendant. Plaintiff no.1 approach to the defendant and requested to repair the wall, but the defendant not complied the request and continue to break the compound wall. Further more the defendant and her husband abuse the plaintiff in filthy language, therefore plaintiff no.1 approached the police station and lodged complaint on 27.03.2024, but the police suggested plaintiff no.1 to approach the Court. Plaintiff's under such circumstances filed the present application.

03] The defendant filed written statement at Exh 16 and the same has been adopted as reply to the present application by filing pursis at Exh.17. The defendant denied contents made in the application and submitted that, the defendant is registered owner of H.No.C/117, area 16.77 sq.m. and the said house purchased by the defendant from one Monika Tarachand Shende by registered sale-deed no. KMT401/2018 and accordingly her name came to be mutated in revenue record. The defendant started construction of her house within area and under the Government Housing Scheme. The competent authority visited the spot and after verifying documents required for the Government Scheme. The defendant obtained due permission for construction. During the construction the authority and the defendant see that, the north side compound wall of plaintiff's house has constructed over the plot area of the defendant. Therefore, the defendant moved an application before the Muncipal Council, Kamptee for removal of encroachment, but till date no any action taken by the Muncipal Council, Kamptee. Plaintiff no.2 is residing 200 feets away from the house of the defendant and she has no concern with the compound wall. The column which is going to construct is on defendants land and she is having map in that regard. The size of column is also reduced by the defendant. Plaintiff's have filed the present application to cause pecuniary loss and hardship to the

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defendant. Finally prayed for rejection of application.

04] Perused the application, say and record. Heard. From which, following points arise for my determination. They are answered with my findings for the reasons thereunder:

Sr.No.	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff made out prima-facie case...?	No
2.	Whether the plaintiff proves that, balance of convenience lies in his favour...?	No.
3.	Whether the plaintiff will suffer irreparable loss if temporary injunction is not granted...?	No.
4.	What order...?	The application is rejected.

REASONS

Point Nos. 1 to 4 :-

05] It is well settled law that, temporary injunction can be granted if the case is covered by three important principles i.e. i) prima-facie case, ii) balance of convenience and iii) on refusal of injunction, the applicant would suffer irreparable loss. On perusal of pleading of rival parties, there is no dispute regarding ownership and construction made by the defendant. The material dispute amongst respective parties is construction of column towards northern side of plaintiff's house. According to plaintiff's, the defendant is going to construct the column towards northern side by breaking the compound wall. Here it is pertinent to note that, plaintiffs have not produced property of their house on record. Further, on perusal of photographs at Exh. 4/8 and 4/9, from which it seems that, the construction of house has much completed and which is attached to the compound wall, however, plaintiff's have not


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approached to seek equitable relief of temporary injunction at the time of initial stage. This conduct of the plaintiff shows that, she has not come with clean hand. Apart from that, on perusal of photographs at Exh. 16/2 and 16/4 it appears that, the disputed column is inside of the compound wall and the defendant has not broken the entire compound wall. Thus under such circumstance I am of the view that plaintiff's have utterly failed to made out prima-facie case. The balance of convenience lies in defendants favour and the defendant would suffer hardship then plaintiff's. The application if rejected plaintiffs will not suffer any irreparable loss. Hence, I answer point Nos. 1 to 3 in negative and in answer to point No 4, I pass following order:-

ORDER

The application is rejected.

Dated : 03/05/2023.
Place: Kamptee.


(Amit A. Kulkarni)
Civil Judge, Junior Division
Kamptee.