

**Reg. Civil Suit No.73/2023  
Yadavrao -vs- Manohar**

**ORDER BELOW EXH.05**

(Dated 02/08/2023)

Plaintiffs have filed the present application under Order 39 Rule 1 and 2 of the Civil Procedure Code,1908 (in short "The Code") to restrain defendant No.1 from making construction of the house till decision of the suit.

2] Plaintiffs submitted that, they are the lease holder of the suit property. Originally house No.160, 159, 161(Old No.49) were in the name of father of plaintiff No.1 by name Kacharu Dudhukey and after his death the name of plaintiffs No.1 and his brothers mutated in record of rights. On 11/09/2017 plaintiff No.1 and his brothers executed mutual partition amongst them and get separated their share. The said partition deed was witnessed by defendant No.1, and after said mutual partition, house No.49 divided amongst three brothers of plaintiffs No.1 and numbered as 49/1, 49/2 and 49/3. There is 6 feet lane in between house of plaintiffs and defendant No.1, and said lane was and is used by plaintiffs and the people in locality for ingress and egress. This lane was used by plaintiffs and the people of locality since last 40 years. In the month of December 2022 plaintiffs learnt that, defendant No.2 allotted the fund to construct the house to defendant No.1 under the scheme of 'Pradhanmantri Aawas Yojana'. Hence, plaintiffs raised an objection to defendant No.2 to restrain the construction. However, defendant No.2 without making inquiry allotted the fund to defendant No.1, which is per se illegal. Defendant No.1 started construction over the lane. Plaintiffs stopped defendant No.1 from carrying out construction in lane, but defendant No.1 started quarreling with plaintiffs. Therefore, plaintiffs

lodged complaint with the New Kamptee police station and on the basis of complaint Non-cognizable offence came to registered. Defendant No.1 again started construction on 26/05/2023, at that time plaintiffs lodged complaint with Sabhapati, Panchayat Samiti, Kamptee, defendant No.2 and the Block Development Officer, of the Panchayat Samiti, Kamptee. On issuance payment from defendant No.2 and the office of Block Development Officer, Panchayat Samittee Kamptee, defendant No.1 misused that money and started construction in between lane. The construction work of defendant No.1 was not sanctioned by the Competent Authority and even though defendant No.2 and the office of Block Development Officer disbursed payment for construction. Defendant No.2 and the office of Block Development Officer without completing inquiry allotted fund to defendant No.1 for illegal construction. Despite complaint no action was taken by defendant No.2 and the office of Block Development Officer. Defendant No.2 and the office of Block Development Officer committed misappropriation of the Government funds by giving it to the wrong person. Hence, it is necessary to restrain the defendant No.1 from making any further construction till decision of the suit.

**3]** Defendant No.1 filed written statement at Exh.21 and adopted the same as reply to the present application vide pursis at Exh.22. Plaintiffs are not approached with clean hands. Plaintiffs suppressed material facts. There is no lane in between the house of plaintiffs and defendant No.1. Defendant No.1 is absolute owner of the Gram-panchayat house No.48 and he has small house. Defendant No.1 comes under below poverty line. Therefore, he applied seeking benefit under the scheme of 'Pradhanmantri Aawas Yojana', which was duly sanctioned and after full inquiry and investigation the Government issued funds in

favour of defendant No.1. The present plaintiffs are adjoining house owners and the relation between them become strained. Plaintiffs, as soon as heard about the fact that, defendant No.1 gets the benefit of 'Pradhanmantri Aawas Yojana', he lodged false complaint to the various authority. However, the Government authority found that, there is no illegality to grant fund in favour of defendant No.1. Defendant No.1 started construction over his own land and he has not made any encroachment. Plaintiffs have filed the present suit only to harass defendant No.1. Hence, plaintiffs have no prima-facie case. Finally, prayed for rejection of the application.

4] 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 plaintiffs made out prima-facie case?	:	<b>No</b>
2.	Whether plaintiffs proves that, balance of convenience lies in their favour?	:	<b>No</b>
3.	Whether plaintiffs will suffer irreparable loss if temporary injunction is not granted?	:	<b>No</b>
4.	What order...?	:	<b>The application is rejected.</b>

### REASONS

05] Plaintiffs have filed following documents in support of their contention.

Exh.4/1 - Copy of letter to Secretary of G.P. Gada

Exh.4/2 - Copy of letter to Sabhapati,

- Exh.4/3 - Copy of letter to Tahsildar
- Exh.4/4 - Copy of N.C.R. report
- Exh.4/5 - Copy of Namuna 8
- Exh.4/6 - Copy of Namuna 8
- Exh.4/7 - Copy of Namuna 8
- Exh.4/8 & 9 - Copy of photos
- Exh.4/10 - Copy of Kar Akarni list
- Exh.4/11 - Copy of Apasi Vatanipatra Lekh
- Exh.4/12 to 14 - Copy of Anusuchi Ka
- Exh.4/15 - Copy of legal notice
- Exh.4/16 & 17 - Copy of acknowledgment
- Exh.9/1 & 2 - Copy of photos
- Exh.12/1 - Copy of photo
- Exh.24/1 - Copy of police complaint

**06]** Defendant No.1 has filed following documents in support of his contention.

- Exh.20/1 & 2 – Tax receipts
- Exh.20/3 & 4 – Gao Namuna 8
- Exh.26/1 - Photographs

**Point Nos. 1 to 4 :-**

**07]** 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.

Here it is pertinent to note admitted facts amongst respective parties. It has not disputed that, house of plaintiffs and defendant No.1 are adjacent to each other. It has also not disputed that, defendant No.1

is making construction under the scheme of 'Pradhanmantri Aawas Yojana'.

**08]** Before further discussion here it is pertinent to note the subject matter of the present suit. Plaintiffs have mentioned at Annexure 'A' appended to the plaint, which I reproduce hereunder for ready reference-

### **Schedule of Property**

The plaintiffs is owned and possession of the suit properties i.e. Chaltata / City Survey No.160, admeasuring 66.68 sq. meter, situated at village Gada, Kamptee, within the local limit of Kamptee. Which is bounded as under,

To the east	- House No.162
To the west	- Road
To the north	- House / plot No.159
To the south	- House / plot No.161

I perused averments of plaint in its entirety. From which it appears that, the crux of the case is 6 feet lane in between the house of plaintiffs and defendant No.1. In this respect it has alleged by plaintiffs that, the said 6 feet lane was and is used by plaintiffs and the people of locality for egress and ingress since last 40 years. However, in the month of December 2022 plaintiffs came to know that, defendant No.2 allotted the fund to defendant No.1 for construction of house under the scheme of 'Pradhanmantri Aawas Yojana'. Accordingly, defendant No.1 started construction. This pleading demonstrate that, the dispute is pertaining to that 6 feet lane which is situated in between house of plaintiffs and defendant No.1. It has not plaintiffs' case that, defendant No.1 has made construction on the land owned by plaintiffs by way of encroachment. Further, it has not plaintiffs case that, the said 6 feet lane is public way.

Therefore, the dispute is limited to lane of 6 feet in between house of plaintiffs and defendant No.1. But the said 6 feet lane is not a subject matter of the present suit. Plaintiffs made their house No.160 as a subject matter of the present suit which is mentioned at Annexure A.

**09]** Now coming to the present application. According to plaintiffs there is 6 feet lane in between house of plaintiffs and defendant No.1 and plaintiffs as well as people of locality are used that area for egress and ingress since last 40 years. Plaintiffs in support this contention did not file any prima-facie documentary evidence to show that there was and is sanctioned lane in between house of plaintiffs and defendant No.1. Apart from that, photographs at Exh.4/8 and 9 indicates that, there is space between house of plaintiffs and defendant No.1. But there is no documentary evidence on record to show that such space is sanctioned by the competent authority. Here I perused map at Exh.4/12, 13 and 14, but there is no any space or lane shown, all the plots are adjoining to each other and there is approach road to plot Nos.161, 159 and 160. It has not plaintiffs' case that, due to said construction their approach way has been closed or affected and they have not any alternative way.

**10]** So far as dispute of 6 feet of lane is concerned, I perused Exh.4/1, wherein it has mentioned that, the space between the house of plaintiffs and defendant No.1 is about 4 feet. Thus, there is material infirmity in plaintiffs pleading and in said complaint. Further, I perused photographs at Exh.4/8 and 9, from which it appears that, the wall under construction is built by extending some distance. However, plaintiffs have not clarified in their pleading that, alleged 6 feet area is a public road or private property.

**11]** In paragraph No.6 of the application plaintiffs contended that, they have learnt that, defendant No.2 allotted the fund for construction of house to defendant No.1. Therefore, they raised an objection to defendant No.2. In this respect I perused document at Exh.4/1, plaintiff No.2 on behalf of plaintiff No.1 has filed the said complaint to defendant No.2 on 26/12/2022 regarding alleged construction. Further, I perused document at Exh.4/2 and 3, from which it appears that, plaintiff No.2 has filed complaint to the President, Panchayat Samiti, Kamptee on 26/05/2023, contending that, defendant No.1 has started construction by making encroachment over the way of egress and ingress and due to which they themselves and the people in locality are suffering hurdle. On minute perusal of these applications, it has seen that, plaintiffs had knowledge of alleged construction on 26/12/2022 and 26/05/2023 respectively, then why did plaintiffs delay in filing the suit, why did plaintiffs wait until most of the construction done by defendant no.1, but there is no any explanation. This conduct on the part of plaintiffs demonstrate that, they are not come with clean hands. No doubt, defendant No.1 has not filed documents related to permission, sanction for construction of house on record. However, as noted above there are no recitals in plaint that, defendant No.1 is making construction of his house over the land of plaintiffs. Furthermore, plaintiffs prayed for removal of encroachment and construction made by defendant No.1, but the plaint is silent exactly on how much area defendant No.1 has made an encroachment, because photographs at Exh.4/9 shows that, some space is available between two houses. Furthermore, plaintiffs have not annexed plaint map with the plaint in order to show an encroachment.

**12]** Plaintiffs have produced affidavits of one Lahanabai Godaru Uke and Jago Kacharu Dudhuke at Exh.27 and 28 respectively. In the

said affidavits there is no contention of these deponents that, their houses are situated in that locality and due to construction of house of defendant No.1 their approach way has been closed.

**13]** In these circumstances I am of the considered view that, plaintiffs utterly failed to make out prima-facie case. Therefore, balance of convenience does not lie in their favour. The application if rejected no irreparable loss would caused plaintiffs. Hence, I answer point Nos. 1 to 3 in negative and in answer to point No 4, I pass following order:

**ORDER**

The application (Exh.5) is rejected.

Dated : 02/08/2023.  
Place: Kamptee.

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