

MHNG080024302023



RCS No.121/2023

Omwati Vs. Raju & Ors.

ORDER (BELOW EXH.13)

(Passed on 26.06.2025)

Defendant No.1 praying for temporary injunction against defendant No.2 and 3 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

2] **The brief facts of defendant No.2 are as under :**

According to defendant No.1 he is in possession of suit properties. As suit is pending before this Court the defendant No.2 and 3 was tried to disturb the peaceful possession of the Defendant 1 in the June-July 2024 by forcefully entering into Suit property "B" i.e The Agricultural land bearing Survey No. 48, Mouza-Pawangaon, Occu-Class - II, Area 3.03 HR., P.H. No: 18 Th Kamptee, District Nagpur. Then the incidence was reported to the New police station Kamptee, at that time the Defendant no 2 and 3 insisted the Defendant no 1 to withdrawal of police complainant. The Defendant no 1 was agreed to withdrawal of the same and it was agreed by mutually between Defendant no 1 and Defendant no 2 and 3 that they would not enter upon the suit properties till the decision of suit.

3] Defendant no 2 and 3 on 19-06-2025 entered again into suit property "B" i.e The Agricultural land bearing Survey No.

48, Mouza- Pawangaon, Occu-Class - II, Area 3.03 HR., PH. No: 18 Th - Kamptee, District Nagpur forcefully along with the J.C.B (MH-40-CH-5737). When the Defendant no 1 tried to stop but defendant No.2 and 3 threaten to cause his death. Defendant No.1 had approached to police station Kamptee. But Police machinery suggested to take help of civil court.

4] Defendant no 2 and 3 again on 21-06-2025 forcefully entered into the suit property "B" along with tractor then the son of the Defendant no 1 tried to stop them then again Defendant no 2 and 3 instructed to the Driver of the Tractor to run over the son the of the Defendant no 1. But somehow, he saved his life and written complaint was given to the police station new kamptee on 21-06-2025 regarding the incidence. Even after lodging the complaint with police station no cognizance was taken by the police authority.

5] Since the matter is pending before this court defendant no 2 and 3 had not to enter into the property mentioned in paragraph No.2. Looking to the conduct of Defendant no 2 and 3 defendant No.1 will suffer irreparable loss. Finally prayed to allow the application.

6] The plaintiff absent since the matter is listed on 16.07.2025. Hence, application is decided on its merits.

7] Following points arise for my determination to which my findings with reasons thereon are as under.

Sr. No.	POINTS	FINDINGS
1	Whether the plaintiff is having prima facie case in her favour ?	...No.
2	Whether the balance of convenience lies in favour of the plaintiff ?	...No.

3	Whether the plaintiff will suffer irreparable loss if the temporary injunction is not granted ?	...No.
4	What order ?	Application is rejected.

REASONS

AS TO POINTS NO.1 to 3 :-

8] All these points are interrelated with each other, hence, I am discussing them together in order to avoid repetition.

9] Read application, heard learned Advocate Shri. Sankalp L.S. Meshram for defendant No.1 and perused record.

10] Admittedly present suit of the year 2023. First prayer is for cancellation of relinquishment deed executed by plaintiff in favour of defendant No.4 to 5 and defendant No.1 to 3, partition, separate possession and perpetual injunction. Defendant No.2 to 5 had appeared and filed their written statement below Exh.18 on 27.03.2024. Following issues were framed below Exh.20.

- 1] Does the plaintiff prove that suit properties are ancestral properties of the plaintiff and the defendants ?
- 2] Does the plaintiff prove that in partition suit properties came in the share of Late Harinarayan Yadav?
- 3] Does the plaintiff prove that she and the defendants have equal 1/6th share in the suit properties?
- 4] Does the plaintiff prove that defendants No.1 to 3 got executed relinquishment deed dated 24/09/2021 by playing fraud upon her and defendants No.4 and 5?
- 5] Does the plaintiff prove that order dated 09/09/2023 passed in Lok Adalat in R.C.S. No.55/2017 is not binding on her and defendants No.4 and 5?
- 6] Whether the suit is within limitation ?
- 7] Whether the plaintiff is entitled for cancellation of relinquishment deed dated 24/09/2021?

- 8] Whether the plaintiff is entitled for quashing and setting aside order dated 09/09/2023 passed in Lok Adalat?
- 9] Whether the plaintiff is entitled for partition and separate possession? If yes, what would be respective shares of the parties?
- 10] Whether the plaintiff is entitled for the relief of perpetual injunction as prayed?
- 11] What order and decree?

11] It is the matter of record that suit was proceeded Ex-parte against defendant No.1. Subsequently he appeared and filed his written statement below Exh.36. As per written statement of defendant No.1 issues were modified and issue No.12 was added as per order of this court dated 20.06.2025. Learned Advocate for defendant No.1 argued that defendant No.2 to 5 had admitted the case of plaintiff. Previously in the year 2024 defendant No.2 and 3 had attempted to obstruct possession of defendant No.1 matter went up to police station. Subsequently on 21.06.2025 defendants again obstructed possession of defendant No.1.

12] As per the ratio laid down the Hon'ble Supreme Court in the case of Gujarat Bottling Co. Ltd. v. Coca Cola Co., (1995) 5 SCC 545 : (1995) 84 Comp Cas 618 at page 574 *The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the*

interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the “balance of convenience” lies. [See: Wander Ltd. v. Antox India (P) Ltd. [1990 Supp SCC 727] , (SCC at pp. 731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

13] It was duty upon party to claim injunction that he has strong prima facie case along with tilting balance of convenience in his favour so that temporary injunction can be granted in his favour. But the fact of this case is that defendant No.1 had not sought relief of injunction against the plaintiff or defendant No.2 to 5 since there was obstruction at the hands of defendants in the year 2024. Law protects to vigilant not to the person who was sleeping over his rights. Considering all this aspect of the matter my findings to point No.1 to 3 in the negative and in answer to point No.4. I pass following order.

ORDER

1. Application is rejected.
2. Costs in cause.

(Q.R. Syed)
Date : 26/06/2025 2nd Joint Civil Judge Junior Division,
Kamptee, Dist. Nagpur

ENDORSEMENT

Case argued on	:	26/06/2025
Order dictated on	:	26/06/2025
Transcription ready on	:	26/06/2025
Order checked and signed on	:	26/06/2025

CERTIFICATE

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

Name of Steno :- **Vrushabh Wanjari**