

**ORDER BELOW EXH. 5**

(Passed on 24 May 2023)

The present application is filed by the plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure for the grant of temporary injunction thereby restraining defendant no. 1 from making any construction on the suit property. The plaintiff also sought for maintenance of the status quo by the defendant.

**The case of the plaintiff, in short, is as under:-**

2. The property was Purchased by the plaintiff. A portion of that property was given by the plaintiff to the mother of defendant no. 1, (i.e. his aunt) for residence purposes only. The mother of defendant no. 1 assured the plaintiff that she will vacate the premises as and when required by the plaintiff.
3. The plaintiff further submitted that now the mother of the defendant resided with her daughter in Nagpur. In the last four years, the possession of the disputed portion was again restored to the plaintiff. But again on 08<sup>th</sup> May 2023 defendant no. 1 illegally started the construction on that portion, without prior permission from the plaintiff. The plaintiff tried to prevent the defendant from making such construction however defendant No. 1 threaten the plaintiff. On that basis it is submitted as defendant no. 1 is making illegal construction on the property of the plaintiff, he needs to be restrained by way of internal

protection. Hence, it is prayed to allow the application.

4. Defendant no. 1 by written statement-cum-Say at Ex 9 denied all the contentions of the application. Defendant no. 1 is coming with the case that he is having possession of Abadi land (government land). The plaintiff has no concern with that portion of land. The defendant also claims defence of adverse possession since he is enjoying the possession of the property for more than 40 years. Since 2001, the brother of defendant No. 1, namely Shivaji was continuously paying revenue to the gram panchayat. The construction is almost complete.

5. The plaintiff failed to prove the construction by the defendant as an encroachment. If an injunction order will be granted then defendant no. 1 will face irreparable loss. The plaintiff himself made encroachment up to 1 sq. m. Land. On that basis, it is prayed to reject the application.

6. Defendant no. 2 was yet not served in the present matter, still, as relief was sought against defendant no. 1, the plaintiff insisted on early adjudication of the present application before the appearance remaining defendant.

7. Because of the rival contentions of the parties, the following points arose for my consideration, and I, record my findings thereon for the reasons thereto:-

**POINTS**

**FINDINGS**

- 1) Whether there is a *prima-facie* case in favour of the plaintiff? .... **Yes**
- 2) Whether the balance of convenience lies in favour of the plaintiff? .... **Yes**
- 3) Whether the plaintiff will suffer irreparable loss if a temporary injunction is not granted? .... **Yes**
- 4) What order? **The application is allowed**

### REASONS

#### As to Points no.1 to 3 :-

8. Heard both sides. The plaintiff is claiming owner and possession of the suit property. According to the plaintiff, the disputed portion is part of the property purchased by him through a registered sale deed. The plaintiff also produced a copy of Sale deed no. 1105/1998 which shows that the plaintiff had purchased the house property through that sale deed. The sale deed also discloses a dilapidated condition house on that portion of the property. Hence the sale deed supported the case of the plaintiff.

9. The plaintiff also produced a copy of tax receipts on the payment of taxes by the plaintiff. Those documents also support the claim of the plaintiff. Form no. 8 A of house no. 620 and 621 bearing properties no. 868/1 and 868/2 clearly show possession of the plaintiff on both portions of the house property. Being revenue entries all these records establish the lawful possession of the plaintiff on these house properties.

**10.** The plaintiff also produced a copy of the map. But on perusal of that it is difficult to ascertain the exact location of the disputed property in the present matter. Hence that map is not assisting the plaintiff.

**11.** Because of the above documentary evidence, the plaintiff shows prima facie his ownership of the house property as claimed. But as plaintiff claims that construction by the defendant is illegal on his portion of land. The defendant denied the above fact but at the same time claim his right based on the right of her mother only. The defendant never discloses the mode of acquisition of ownership of the relevant property which he trying to construct.

**12.** The defendant though produced a copy of the receipt issued by defendant no. 2 but that cannot be a document of ownership. Even otherwise the Gram Panchayat endorsed on the receipt that it was temporary only. Therefore no lawful rights can be accrued by defendant No. 1 on that basis.

**13.** It is also admitted fact that the plaintiff failed to produce any documentary evidence or measurement map which clarifies the position and location of the disputed property. It will take time to get measure the property owned and possessed by the plaintiff and defendant no. 1. But if no order is passed then the purpose of the plaintiff behind filing of suit, will get frustrated. The defendant failed to point out the independent right of acquisition of lawful possession, still, he is trying to make a construction that too without prior sanction from

the Gram Panchayat that itself sufficient to invoke the power under Order XXXIX Rule 1 (a) of Code of Civil Procedure for protect the suit property.

**14.** Because of the above discussion, the finding the **point no. 1 to 3** are recorded **accordingly** and in answer to **point no. 4**, I pass the following order;

**ORDER**

- 1] The application at Ext.5 is allowed in the following terms.
- 2] Defendant no. 1 or anyone on his behalf is hereby restrained from making any construction or change of the nature of the suit property till adjudication of the suit or till further order.
- 3] Considering the nature of the dispute, the matter is expedited. Hence both sides are directed to assist the court in the early disposal of the matter on its merit.

Saoner  
Dt- 24.05.2023

(Santosh R. Bharad)  
**Jt. Civil Judge, Junior Division,**  
Saoner

**CERTIFICATE**

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

Name of Stenographer: N. B. Payade

**ENDORSEMENT**

Case argued on	:	22.05.2023
Order dictated on	:	24.05.2023
Transcription ready on	:	24.05.2023
Order Checked and signed on	:	24.05.2023