

MHNG090029122015



ORDER BELOW EXH. 92
(Passed on 23rd April 2025)

01] This application, filed by the defendants under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, seeks to restrain the plaintiff from changing the nature of the house property bearing no. 1at Gram Panchayat, Patan Sawangi.

02] It is submitted that the father of the plaintiff and defendants, namely Manohar Ingole, through a registered will deed, bequeath the house bearing no. 1 in favor of his widow. Accordingly, the widow's name was duly registered in the Gram Panchayat records. However, during the pendency of the suit, the widow (previously defendant no. 1) died. Therefore, her name was removed.

03] It is further submitted that on 8th August 2024, when defendant no. 2 was out of station along with his family, the plaintiff and his wife broke the lock of the house and illegally created possession. Now, they are trying to make permanent constructions on it. Since the plaintiffs are trying to change the nature of the suit property, it is necessary to restrain him. Hence, it is prayed to allow the application.

04] The application is strongly objected to by the plaintiff. It is specifically denied that the plaintiff created illegal possession of the suit property. It is also denied that the deceased, Manohar, bequeathed the

house property in favor of his wife. It is also specifically denied that on 8th August 2024, the plaintiff made an illegal encroachment and took possession, and that they are now trying to make any construction.

05] In fact, the present application itself, filed by the defendant, is untenable and bad in the eyes of law. The defendants have no authority to file such an application seeking any relief against the plaintiff since it does not come under the purview of Order XXXIX, Rules 1(b) and (c) of the Code of Civil Procedure.

06] A similar application was moved by the defendant (Exhibit 85), which was rejected by this court by its order dated 26th November 2024. Till today, the defendant never challenged that order.

07] The plaintiff is a co-owner of said property. Therefore, a co-owner cannot be restrained from enjoying the property as per his convenience. Since the last 25 years, the suit house property is in possession of the plaintiff. The defendants have never resided on it. The plaintiff alone is maintaining the suit house and keeping it in habitable condition.

08] The claim of changing the nature of the suit property is a concocted and imaginary story. No prima facie case lies in favor of the defendant. On that basis, it is prayed to reject the application.

09] In view of the rival contentions of the parties, the following points arose for my consideration, and I, record my findings thereon for the reasons thereto are as:-

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether there is a <i>prima-facie</i> case in favour of the defendants?	... Yes
2) Whether the balance of convenience lies in favour of the defendants?	... Yes
3) Whether defendants will suffer irreparable loss if a temporary injunction is not granted?	... Yes
4) What order?	The application is allowed.

REASONS

As to Point no.1 to 3:-

10] Heard both sides, perused the record. The matter was heard for a long period. Both sides argued the merits of the matter, which can be decided only after concluding the evidence and after considering the entire merits of the matter. At this stage, the contents of evidence brought on record cannot be considered. The defendant, by the present application, is seeking an injunction against the plaintiff on the allegation that the plaintiff is trying to change the nature of the suit property, and therefore, it is prayed to restrain the plaintiff by way of an interim order.

11] No doubt, this court, by order (Exhibit 85), rejected an application filed by the defendant under Order XXXIX, Rules 1 and 2. However, the relief sought in that application was not similar to the relief presently sought by the defendant. In that matter, the defendant was seeking relief for removal of the plaintiff's possession by way of an

interim order. At that time, this court observed that the relief did not fall under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure.

12] Now, I have perused the relief sought in the present application. The defendant is trying to restrain the plaintiff from making any alteration to the suit property. According to the defendant, the plaintiff is trying to make some construction, which, if allowed, will definitely change the nature of the suit property.

13] Order XXXIX, Rule 1(a) empowers the court to pass a temporary injunction order when the court is satisfied that the suit property is in danger of being wasted, damaged, or alienated. In such circumstances, any modification will definitely change the nature of the suit property and therefore may cause damages as well. In such circumstances, the relief sought in the present application is maintainable under the above provision.

14] The defendant also produced the photographs of building material accumulated by the plaintiff. The plaintiff, though disputing that fact, never denied that he is not going to make any construction. In such circumstances, and especially when the matter is at the final stage, and the defendant has presented evidence at this stage, instead of going into the minute details of the allegation, it will be proper to restrain the plaintiff from changing the nature of the suit property until the final disposal of the suit. It will not only serve the purpose but also protect the suit property. Hence finding to the point no. 1 to 3 are recorded in positive, and in answer to point no. 4, I pass the following order:

ORDER

1. The Application allowed.
2. The plaintiff is temporarily restrained from making any construction or alteration to the suit property until the adjudication of the suit without prior permission from court.
3. Both sides are directed to assist the court in expediting the matter for final disposal on its merit.

Saoner
Date: 23/04/2025

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