

MHNG110001782026



ORDER BELOW EXH.05 R.C.S NO.12/2026
(Pradip Bawankule Vs. Vinayak and Ors.)

01. This is an application filed by plaintiff for temporary injunction Under Order-39 Rule-1, 2 of Code of Civil Procedure against defendant for restraining them from carrying out on going construction.

02. It has contended that he is owner of area 1800 Sq.Ft out of plot No.01 having total area 3000 Sq.ft having Gram panchayat property No.324, Ward No.03 situated at village Ambadi, Ta. Kuhi, Dist. Nagpur. (Hereinafter referred as “suit property”).

03. The plaintiff had constructed house over 1056 Sq.ft. to southern side of the suit property. He had kept open 744 Sq.ft. space marked in letter “A” to “D” (hereinafter referred as disputed space). The suit plot is ancestral property. The father of plaintiff got it in the oral partition. The name of father of plaintiff mutated in the Gram Panchayat record. Defendant No.01 is the uncle of the plaintiff and defendant No.02 and 03 are his son. Other property has been given to the share of defendant No.01. The defendants have no concerned with the disputed space. Though defendants have carrying constructing over the disputed space of the suit property. The plaintiff has raised

objection about construction of defendants, despite of that they have not stopped their on going construction. The plaintiff as well as Gram Panchayat had issued notice to the defendant No.01. They have not stopped on going construction.

04. Defendants have filed written statement cum reply and denied contention of the plaintiff. As per the defendant, plaintiff has not produced any documents about the title over the suit property. The mere entry in Gram Panchayat record and payment of tax does not confer ownership to the plaintiff. The suit property was purchased in the name of late Bandu Mahadeo Bawankule, who is the uncle of plaintiff and brother of defendant No.01. The said property is ancestral property and all legal heirs having undivided share in it. The dispute between the parties about the partition of ancestral property is sub-judice in the appeal before Hon'ble District Judge, Nagpur. The plaintiff can not claim exclusive ownership and possession over the suit property specially over disputed space. The issue of partition is pending between the parties. The plaintiff has failed to proved exclusive possession over the suit land. The defendant are carrying construction over their own property. Hence, defendants have prayed to reject the application.

05. Perused the application and say. I have gone through the record. Heard counsel for both the parties.

06. Following points arise for determination against which the findings are recorded for the reasons to follows.

Sr.No.	POINTS	FINDINGS
1	Whether plaintiff has made out prima facie case in his favour ?	No.
2	Whether balance of convenience lies in favour of plaintiff ?	No.
3	Whether irreparable loss would be caused to the plaintiff, if injunction is refused ?	No.
4	What order ?	Application is rejected.

REASONS

07. In support of his contention the plaintiff has filed on the record documents below list Exh.04. On the other hand in defendants have filed on documents on record below Exh.13 in support of their contentions.

AS TO POINT NOS.01 TO 03 :-

08. These points are inter-linked therefore, taken together for discussion. According to the plaintiff, suit plot bearing No.01 had come to the share of his father Madhukar in oral partition. Out of which, he had constructed house over the area 1056 Sq.ft. and area 744 Sq. ft kept open which is disputed. The name of plaintiff is mutated in the Gram Panchayat record and these facts clearly shows from the Gram Panchayat record. Despite of that defendants are carrying construction over disputed space belongs to him. On the contrary defendants have contended that suit plot had purchased in the name of Bandu Bawankule who is uncle of plaintiff and real brother of defendant No.01. The

said plot is ancestral property and no partition took place between them. As such, all legal heirs are having undivided share in it.

09. The plaintiff claiming ownership over the suit property on basis of entries effected in the Gram Panchayat record. No other document showing ownership has placed on record by the plaintiff. It is settled law that entries in the revenue record or Gram Panchayat record are considered only for fiscal purpose. Such entries can not confer any title. Therefore, plaintiff has to prove his ownership over the suit property by producing document of title. Going through the sale deed filed by defendant, it shows that suit property plot bearing No.01 had purchased in the name of Bandu Mahadeo Bawankule, who is the uncle of plaintiff and real brother of defendant No.01. It is the case of plaintiff that in the oral partition plot bearing No.01 came to share of his father. However, plaintiff has not filed any documents in respect of alleged partition. As per the record it appears that the litigation in respect of partition of properties is pending between the parties. It is settled that all co-sharers are having joint ownership and possession over the ancestral and joint family properties. The plaintiff has not filed any document showing alleged partition. Therefore, prima-facie it can not establish that partition took place between the parties and suit property came to the share of father of plaintiff.

10. It is not in dispute that plaintiff has constructed

house over the area 1056 Sq.ft. But said fact is not sufficient to prove the partition as alleged. Going through record, it is clear that plaintiff has not established ownership over the suit property as alleged. The fact of partition also prima-facie not established. On the other hand, it is presumed that all legal heirs are having joint ownership and possession of their ancestral and joint family properties. As such, plaintiff has failed to established prima facie ownership and possession over the disputed space. Moreover, injunction can not be granted against the co-sharers. The plaintiff has failed to prove the prima-facie case. Consequently, balance of convenience is not lies his favour and no irreparable loss will be caused to him, if injunction is refused. These facts and circumstances shows that plaintiff is not entitled for temporary injunction as claimed. Accordingly, I record negative finding to point No.01 to 03 and in answer to point No.04 following order is passed.

ORDER

1. Application Exh.05 is rejected.
2. No order as to cost.

Date :-11/03/2026

(P .K. Mutkule)
Civil Judge Junior Division,
Kuhi, Dist. Nagpur.

Certificate

I affirm that, the contents of this PDF are same words to words, as per the original order.

Name of Stenographer : Sau V. R. Swarkar.

Name of Court : C.J.J.D., Kuhl.