

CNR No.MHNG130027322023



Regular Civil Suit No. 138/2023
(Ashok Pandurang Gaydhane vs. Nasiba Dilawar Kuresi and ors.)
(Appearance for Plaintiff Ld. Advocate Shri. D. T. Harinkhde
The application is proceeded without reply against defendants)

ORDER BELOW EXH. 5
(Passed on this 25th day of June, 2024)

This is an application by plaintiff under Order 39 R(1) (c) of Code of Civil Procedure for restraining defendant No. 1 to 9 from making further encroachment over the suit property till the decision of the suit.

2. ***The case of the plaintiff can be summarized as follows-***

The subject matter of the suit is immovable property bearing Survey No. 184 an area admeasuring 00 H 96 R situated at village Nagardhan, Tah. Ramtek, Dist. Nagpur. The exact description of the suit property is shown in the map attached with the plaint and same is shown as **A, B, C, D, E, F, G** in the Red. The disputed property or encroachment property is shown as **C, D, E, F** in Blue colour in the map. The defendant No. 1 to 9 initially encroached upon the suit property and thereby constructed houses therein. The houses of defendants are being shown in Blue colour in the map attached with the plaint. The adjoining land to the present suit property is Survey No.7 which is on the eastern side of the suit property. The defendant No. 1 to 9 also encroached on Survey No.7.

3. The suit property is ancestral property of plaintiff and he continuous to be in possession of the suit property. The Land Survey Department has prepared K prat of the suit property and identified suit

property of the plaintiff in the Black lines and same is shown by the plaintiff in the Red colour in the plaint map.

4. The plaintiff is old aged person and he is residing at Ramtek. The defendant No. 1 to 9 are trying to take disadvantage of the old age of the plaintiff and thereby trying to further encroach upon the suit property. The defendants already constructed houses on the eastern side of suit property by making encroachment. If, the defendant No. 1 to 9 further encroach upon the suit property, the plaintiff would suffer irreparable loss at this stage, therefore, plaintiff is constrained to file present application to restrain defendants from making further encroachment over the suit property, till the decision of suit.

5. On the other hand, the present application has been proceeded without reply.

6. Considering the nature of controversy, the following points arise for my determination and I have recorded my findings thereon with reasons as follows :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether there is a prima facie case in favour of plaintiff ?	In the affirmative
2.	Whether there is balance of convenience in favour of plaintiff ?	In the affirmative
3.	Whether plaintiff would suffer irreparable loss, if interim relief is refused ?	In the affirmative
4.	What order ?	Application is allowed.

REASONS

7. All points are interconnected to each other, therefore, they are required to be taken up together.

8. Before considering prayer of plaintiff, the settled position of law on this point, needs to be mentioned herein. The cardinal principles for grant of temporary injunction are spelt out by the Hon'ble Apex Court in landmark judgment of **Dalpat Kumar vs. Pralhad Singh [(1992) 1 SCC 719]**, wherein it has held that-

“It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it”.

9. It is pertinent to note here that the party is not entitled to an order of injunction as a matter of right. The Hon'ble Apex Court in the case of **Shiv Kumar Chadha Etc. Etc. vs. Municipal Corporation of Delhi [1993 SCC (3) 161]** reiterated the said dictum and held that;

“It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit”.

10. On this settled legal position, it is required to note here that it is the case of the plaintiff that defendant No. 1 to 9 are having intention to encroach further over the suit property, particularly, on the open space remaining in the suit property. On the other hand, defendant No. 1 to 9 have not filed their reply to this application.

11. While considering claim of the plaintiff with reference to the documents filed on the record, it is seen that the plaintiff is owner and possessor of the suit property as it reveals from 7/12 extract of the suit property. It is further seen that the plaintiff had conducted measurement of the suit property and during the measurement, it was found that there was encroachment over the suit property. It is further seen that the plaintiff has made various applications to the revenue department for removal of encroachment. Thus, it is seen that the grievances of plaintiff is genuine and material one and same is supported by the documents. Thus, I am inclined to hold that the plaintiff has prima facie case and balance of convenience in his favour, at this stage.

12. In the instant case, the defendant No. 1 to 9 have not filed reply to this application and as per the case of plaintiff, defendant No. 1 to 9 had already made encroachment over the suit property by constructing houses therein. Thus, in my opinion, the possibility cannot be ruled out that defendant No. 1 to 9 may further encroach over the suit property, at this stage.

13. Thus, interest of the plaintiff is required to be protected at this stage by granting temporary injunction in his favour. If an interim relief is not granted to the plaintiff, he would suffer irreparable loss or injury at this stage and same cannot be compensated later on. However, if an interim relief is granted to the plaintiff, defendant No. 1 to 9 would not suffer irreparable loss and injury at this stage. Hence, I answer all the points in favour of

plaintiff.

AS TO POINT NO. 4 :-

14. In view of findings to point No. 1 to 3, the application is deserved to be allowed. Hence, I proceed to pass following order-

ORDER

1.	Application is allowed.
2.	The defendant No. 1 to 9 or any person on their behalf or through them are hereby temporary restrained from making further encroachment over the suit property (referred in the map attached with the plaint) particularly, on the remaining open space, except area being shown as C, D, E, F / blue colour, in the map attached with the plaint, till the decision of suit.
3.	Cost in cause.

Nagpur.
Dated : 25.06.2024

(S. M. Sarode)
Civil Judge Senior Division,
Ramtek.

CERTIFICATE

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