

MHNG180002132021



ORDER BELOW EXH. 5
(Passed on this 8th February, 2021)

1. Perused the record. Heard Ld. Council Shri. V.K. Kautkar for the plaintiff. Present suit is filed for the relief of permanent injunction i.e. to restrain the defendants from causing obstruction to the construction of the plaintiff.

2. Facts of the case in nutshell :

The plaintiff and defendants are real brother. Their father Ganpatrao was the original owner of the suit property. After his death, mutual partition took place between the plaintiff and defendants. On the the basis that, the plaintiff received eastern side of portion house facing north consisting of Chapri and two rooms alongwith courtyard and also vacant open side. The said property is duly recorded in the Municipal record i.e. property No. 761. Defendants also received equal portion of same of the property. The plaintiff applied for Gharkul scheme in the year 2019. the same is granted to him. Accordingly, he is carrying out construction over his property as per sanction map. However, defendants are obstructing the construction of the plaintiff. He also reported the obstruction to Police Station on dt. 16/09/2019. He also issued notice to the defendants through his council on dt. 15/12/2020. But, defendants have not stopped their illegal construction. On these grounds the plaintiff prayed for temporary injunction. He also prayed for ad-interim exparte injunction against the defendants.

3. It transpired from the record and the documents that, Gharkul scheme is granted in favour of the plaintiff in the year 2019. Accordingly, he carried out construction upto plinth level. As per his pleadings, obstruction started in the year 2019. He also issued notice on dt. 15/12/2020. It is settled principle of law that, injunction before issuing notice to opposite party can be granted in the exceptional circumstances or where there is possibility of frustration of object of the suit. In the present suit, plinth level construction is already carried out by the plaintiff. There is no extreme emergency like demolition of structure or forceful taking possession of his property. Hardly, five to six days would be sufficient to serve notice on the defendants. It is not the case where object of granting the injunction would be defeated by the delay. The plaintiff averred that, he received the property through mutual oral partition. Therefore, considering the facts it would be advisable to issue notice of other party. Rather it would be helpful to decide temporary injunction application on merit. Hence I pass following order :

ORDER

1. Issue notice to defendants returnable on 15/02/2021.
2. E.P. and S.B. is allowed if required, subject to payment of Bhatta.

Kalmeshwar.
Date : 08.02.2021

(H. N. Pole)
Jt. Civil Judge Junior Division,
Kalmeshwar, Dist. Nagpur.

ENDORSEMENT

Application Argued on	:	08.02.2021
Order dictated on	:	08.02.2021
Transcription Ready on	:	08.02.2021
Order checked and signed off	:	08.02.2021

CERTIFICATE

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

Name of the Stenographer :- R.M. Parmal (Lr. Gd)