


MHNG180016402024 	<u>ORDER BELOW EXH. 5</u> (20 th January, 2025)
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1] This application has been filed by the plaintiff under Order XXXIX, Rules 1 and 2 of the Civil Procedure Code for the temporary injunction against the defendants.

2] Heard learned advocate of the plaintiff and defendants at the length.

3] Facts giving rise to this application is that, plaintiff has filed this application for temporary injunction restraining the defendant or any other person acting through or under him from construction, selling, alienating or transferring the suit properties or creating any third party interest over the suit properties in any manner during the pendency and till final disposal of the suit. As per the argument of plaintiff, defendant no. 1 to 4 and he are brothers and sisters and defendant no. 5 to 7 are nephew of plaintiff. After the death of the parents of the plaintiff and defendant no. 1 to 4, they are legal heirs of the suit properties i.e. house property, ward no. 17, House no. 17000092(old), KALM00004653(new), total area 828.00 Sq.Ft.(76.92 sq.mt.) and as per Land Office Kalmeshwar bearing Nagar Bhumapan No. 1297, Sheet No. 77, Area 52.27 Sq.mt. and also of joint agricultural land situated bearing Bhumapan No. 107/1, area 2.20 H.R., Land rev-

enue 4.36, class I occupancy, Khate No. 216 situated at Mouza Dahegaon, Th. Kalmeshwar, Dist. Nagpur. Their names are also mutated on government record i.e. Nagar Parishad, Kalmeshwar and Land Record Office, Kalmeshwar. The plaintiff and defendants being coparcener and co-owners having undivided 1/6th share in the suit properties as the said properties are Joint Hindu Family Property and was in possession of plaintiff and defendants. The said properties are not partitioned in metes and bounds amount the plaintiff and defendants and still above said properties are joint properties.

4] Plaintiff further submitted that, defendant no. 1 in collusion with his son namely Nilesh Rambhau Bodkhe and Vilas Rambhau Bodkhe without informing and taking prior consent of the plaintiff started illegal construction over the house suit property with intention to grab the share of plaintiff. The Nilesh Rambhau Bodkhe and Vilas Rambhau Bodkhe have purchased house property which is situated behind and adjoining to suit property A and while carrying out construction on their purchased property, they also started construction on suit property A which is illegal. Therefore, the plaintiff had raised written objection dt. 25.05.2024 in Nagar Parishad Kalmeshwar, Th. Kalmeshwar. Thereafter, Office of Nagar Parishad, Kalmeshwar, Brahamni issued letter dt 18.06.2024 to defendant no. 1's son, Nilesh Rambhau Bodkhe and Vilas Rambhau Bodkhe to re-

strain illegal construction immediately. But the defendant no. 1 not stop illegal construction over the suit property. The Vilas Rambhau Bodkhe is working in the Nagar Parishad Kalmeshwar, engaged in illegal activity. Both Nilesh Rambhau Bodkhe and Vilas Rambhau Bodkhe have misused the Pradhan Mantri Awas Yojna by giving false affidavit and illegal information. The plaintiff has arranged many meetings for partition of above said properties but defendants will not ready for partition. The Vilas Rambhau Bodakhe, son of defendant no. 1 was threatening to kill the plaintiff and his wife and also abuse them in filthy languages.

5] It is further stated by plaintiff that, he is having 1/6th undivided share in the said properties and defendant no. 1 to 7 have no exclusive right, title and authority in any manner to create any third interest in the said undivided Joint Hindu Family Property. Hence, plaintiff filed this application.

6] The defendant nos. 1, 2, 8 and 9 have filed their say vide Exh.12, 12A and took objection and denied in toto. As per them suit is illegal. Construction of defendant are carried out and completed as per rules. That the share of the plaintiff and his collusion brother defendant no. 3 is left and same was measured by the Nagar Parishad, Kalmeshwar and also private engineer.

7] The defendant no. 3 has filed his say vide Exh. 15. Defendant no. 3 has admitted all the contentions of the plaintiff. Defendant no. 3 admitted the fact that, defendant no. 1 without informing and taking prior consent of the defendant no. 1 and defendant no. 3 started construction over the suit property A. The said properties are not partitioned in metes and bounds among the defendants and plaintiff still the above said property is joint. He further admitted the fact that, the defendant no. 1 with intent to grab the share of plaintiff in said property started constructing house illegally which is not permissible by law. Despite of notice dt. 18.06.2024 being duly received defendant no. 1 has not stopped the construction till today. Nilesh Rambhau Bodkhe, son of defendant no. 1 was also threatening to defendant no. 3 and abuse him with filthy language.

8] Defendant no. 3 is old aged person and his wife is handicapped. Defendant no. 3 further submitted that, taking undue advantage of this situation in order to grab his share in suit property started construction over the said property. He also lodge the police complaint against the Nilesh Rambhau Bodkhe, son of defendant no. 1. Defendant no. 3 also prayed for partition and separate possession of suit property in the interest of justice.

9] Notice through R.A.PD. sent to defendant nos. 4,5,6 and 7. But as per the track report notice duly served

upon the defendant no. 4,5,6 and 7. But they have not appeared before the court and failed to file their say. Hence, matter proceeded without say of defendant nos.4,5,6 and 7.

10] The points for determination and findings thereon along with reasons are as under.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff has made out the prima facie case?	Relating to the agricultural land .
2.	Whether the balance of convenience lies in favour of the plaintiff?	...Yes
3.	Whether any irreparable loss would caused to the plaintiff if the injunction as prayed is not granted?	...No.
4.	What order?	...As per the final Order.

REASONS

11] **As to points No.1 to 3 :** It is well settled law that for the grant of temporary injunction, three factors have to be satisfied which are (a): prima-facie case, (b): balance of convenience, and (c): irreparable loss.

12] The plaintiff has filed verified documents vide Exh. 4. I have gone through document No. 1 which is assessment copy. As per it, in ward no. 17, Property No. 17000092 is situated at Mata Mandir Ward, Kalmeshwar.

As per it, there are some common owners namely Rambhau Harbaji Bodkhe, Sudhakar Harbaji Bodkhe, Premchand Harbaji Bodkhe, Vitthal Harbaji Bodkhe, Kalawati Pilaji Dangre, Ghanshyam Dnyaneshwar Badre, Pawan Dnyaneshwar Badre, Shital Vinod Manmode. Document No. 2 is map of house. Document no. 3 is tax receipt of disputed house. Document no. 4 is a form of Pradhanmantri Avas Yojna. Document no. 5 is letter given to the Nilesh Bodkhe for the construction under Gharkul Scheem. Document no. 6 is affidavit of Nilesh Bodkhe. Document no. 7 is application given by the Premchand Bodkhe. Document no. 8 letter given to the Vilas and Nilesh Bodkhe. Document no. 10 is a 7/12 extract of agricultural land survey no.107/1. I have gone through the said document. It reveals that, this is common agricultural property of plaintiff and defendants. Document no. 13 is notice given by the advocate of the plaintiff. The Defendant no. 1 has filed the xerox copies of documents.

13] In this matter, P.M.A.Y has granted to the Nilesh Bodkhe and Vilas Bodkhe who are the son of defendant no. 1 and they are doing construction under the above scheme. As per the story of the defendant, plaintiff has not claimed that, the defendant no. 1 and his son encroached upon the land share of plaintiff. The plaintiff has only allegation is that, the suit property has not been partitioned. But, as

per the relinquish deed filed by the defendant no. 1 , it appears that, another defendants have given their shares to defendant no. 1. If they have given shares, it means partition has done. Also, the plaintiff has in possession of his share. Therefore, it cannot be said that, partition is not done.

14] As per the argument and documents, the defendant no. 1 has $4/6^{\text{th}}$ share in the disputed house property. The plaintiff and defendant no. 3 have $1/6^{\text{th}}$ share each in the house suit property. Therefore, plaintiff has no prima facie case relating house property as defendant no.1 is in possession of disputed property. As per the record, it appears that, agricultural land has not partitioned and as per documents it is common agricultural land of the plaintiff and defendants. Also, defendants have not stated about partition of agricultural land. Therefore, prima facie the case is in favour of the plaintiff and balance of convenience is also in his favour. If the application is not granted, Plaintiff will not suffer any irreparable loss as he has share and it was kept vacant by the defendant. Hence, this application should be partly allowed. Therefore, I have answered points No.1 to 3 accordingly

15] As to point No.4: Because of the answer to points No.1 to 3 accordingly and the answer to point No.4, I pass the following order.

ORDER

1. The application is partly allowed.
2. The defendants or their agent/ attorney or any persons acting on their behalf are restrained from alienating or disposing or creating third party interest over the suit agricultural land Survey no. 107/1 situated at Dahegaon, Th. Kalmeshwar, Dist. Nagpur.

Kalmeshwar
Date: 22.01.2025

(R. L. Rathod)
Civil Judge Junior Division
Kalmeshwar.

Exh.5

.. 9 ..

R.C.S. No.82/2024
Premchand Bodkhe Vs.
Rambhau Bodkhe

CERTIFICATE

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

Name of the Stenographer :- R.M. Parmal (Gr. III)