

MHNS130007692025



R.C.S./149/2025

Babaji Namdev Kushare

Vs.

Keshav Tukaram Kushare

ORDER BELOW EXH.19 IN
REGULAR CIVIL SUIT NO.149 OF 2025

(Passed on 16th day of July, 2025)

1] The plaintiffs have filed this application for interim injunction for restraining defendants No.1 and 2 from disturbing plaintiffs possession over the suit property.

2] The plaintiffs have contended that application for interim injunction (Exh.5) is pending. It is necessary to pass urgent order till decision of interim application (Exh.5).

3] The defendants have initiated proceeding for ejectment of the plaintiff from the suit property. Revenue Officers are present at the suit property. They are about to eject the plaintiffs from the suit property. Therefore, it is necessary to restrain defendants No.1 and 2 from disturbing plaintiffs possession till decision of interim application (Exh.5).

4] Defendant No.1 appeared today and filed his say on this application. He has contended that the plaintiffs have preferred appeal against Encroachment Case No.123/2024 and 129/2024. The plaintiff could not get stay in that appeal. This present suit is not tenable U/s.138 of Maharashtra Land Revenue Code.

5] Plaintiff No.4 Murlidhar Namdeo Kushare has filed affidavit (Exh.20) and stated that he has not preferred appeal against Encroachment Case No.123/2024. On the other hand, defendants have filed copies of notice issued in the RTS appeal No.345/2025 and 344/2025.

6] Learned advocate for the plaintiffs argued that Section 138(5) of the MLRC, bars appeal or revision in case of filing of suit under sub-section 4. The said provision does not bar suit. At the most, appeal or revision, if any, would be barred.

7] It was further argued that the defendants have not denied proceeding of execution at the suit property. The plaintiffs have strong apprehension of being evicted. Therefore, protection by way of injunction is necessary.

8] On the other hand, learned advocate for the defendants strongly argued that the plaintiffs have suppressed material fact of filing appeal before Revenue Officers. This suit needs to be stayed in view of Section 10 of the CPC as appeal is pending against order of ejectment.

9] It was further argued that the defendants are prosecuting legal proceeding to obtain possession from the plaintiffs. They cannot be restrained by way of injunction in this suit.

10] The suit is filed for declaration of ownership that encroached area shown in maps vide measurement No.157/2023 and 158/2023 are owned by the plaintiffs. Section 138(4) of MLRC, empowers a person who is about to be ejected from any land under settlement of boundaries, to institute a civil suit to establish his title within one year from ejectment or settlement of boundary.

11] Sub-section 5 of section 138 provides that where a suit has been instituted against order of ejectment, such order shall not be subject to appeal or revision. I find merit in argument of learned advocate of the plaintiffs that appeal or revision would be barred in case of filing suit. There is no bar to take cognizance of the suit in case of filing of appeal or revision against order of ejectment.

12] It is pertinent to note that object of granting or refusing to grant injunction order is to maintain status-quo of the property till decision of litigation. Application for interim relief (Exh.5) is pending for decision. Admittedly, proceeding for ejection of the plaintiff is going on. If, plaintiffs are ejected, it would be resulted into serious injury to their rights. Therefore, it is necessary to maintain status-quo in respect of the suit property till interim application is finally decided. Therefore, it is necessary to restrain defendant No.1 and 2 from disturbing plaintiffs possession over the suit property. Hence, I pass following order-

ORDER

1. Defendant No.1 and 2 are hereby restrained from disturbing plaintiffs possession to the suit property till next date.
2. The plaintiffs are directed to serve copy of this order by Register Post AD to defendant No.2 and file affidavit of compliance within 48 hours.

Sd/-

(**A. J. Patil**)

Pimpalgaon (B)

Date : 16/07/2025.

Civil Judge, J.D., Pimpalgaon (B)

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