


MHNS13001594-2024 	RCS No. 337/2024 Deubai ..Vs.. Jitendra Bhosale
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**ORDER PASSED BELOW EXH.05**

The present application is filed by the plaintiff under Order XXXIX Rule 1 and 2 of Code of Civil Procedure seeking temporary injunction against the defendant no. 1 and 2 to restrain them from obstructing the possession of the plaintiff over the suit property till the final disposal of the suit.

**2. The case of the plaintiff in the brief is as under;-**

The plaintiff contended that she is the owner and possessor of land in,

- a. Gat No. 503 ,00 H. 32 R
- b. Gat No. 665, 00 H. 61 R
- c. House property bearing Grampachayat Property No.395 situated at Umbarkhed, Tal. Niphad, Dist. Nashik .

(More specifically described in paragraph no.1 of the application) (for the sake of brevity and convenience herein referred as the “suit property”).

**3.** It is further contended that, the suit property is absolute property of plaintiff . It is stridhan of plaintiff . She is the exclusive owner of the suit property . Defendant 1 and 2 are residing in suit property C i.e. the house property. The plaintiff is in possession of the

suit property. Defendant no. 1 and 2 have no right, title and interest in the suit property, but they are obstructing to the possession of the plaintiff over the suit property. The plaintiff time to time requested the defendants for not to obstruct the possession of the plaintiff. However, the defendants did not pay heed to it. Therefore, the plaintiff has filed present suit for perpetual injunction. By way of present application the plaintiff seeks to restrain the defendant no. 1 and 2 for not to obstruct his possession over the suit property till final disposal of the suit.

4. Defendant no. 1 and 2 were duly served. Defendant no. 1 to 2 filed their written statement and say at Exh.17. They contended that the suit is filed in collusion with defendant no. 3 and 4. There is no cause of action occurred to file the instant suit. In fact, defendant no.1 and 2 are cultivating the suit property . There is no obstruction at the instance of defendant no. 1 and 2. Hence, they prayed that the application may kindly be rejected.

5. Read the application, affidavit in support of the application and documents on record. Heard learned advocate Shri. Bhadange for the plaintiff and Shri. T. P . Ghumare for defendant no. 1 and 2 .

6. From the consideration of facts and pleading, following points arise for my determination and I have recorded my findings against each of them for reasons enumerated below:-

Sr. No.	<u>POINTS</u>	<u>REASONS</u>
1	Whether the plaintiff has made out prima-facie case ?	<b>Yes.</b>
2	Whether the balance of convenience is in favour of the plaintiff ?	<b>Yes.</b>
3	Whether the plaintiff will suffer irreparable loss in the event of refusal of temporary injunction ?	<b>Yes.</b>
4	What order?	<b>Application is allowed.</b>

### REASONS

#### AS TO POINTS NO. 1 TO 3 :-

7. All points are interlinked. Hence, in order to avoid repetition of the points they are discussed together.

8. In order to succeed, the plaintiff has to prove the three essential ingredients that is prima-facie case in her favour, balance of convenience lies in her favour, irreparable loss likely to be caused, if injunction is not granted in her favour.

9. The plaintiff has relied on the 7/12 extract, Grampachayat Tax assessment extract of the suit property and copy of mutation entry no. 192 and 1089 of the suit property. She submitted copy of statement recorded before Tantamukti Samiti .

10. It is the contention of the plaintiff that the suit property is her stridhan property and came from her parents. It is her exclusive property. Hence, defendant no. 1 and 2 have no right and concern in

the suit property. Per contra, defendant no. 1 and 2 contended that the suit is filed in collusion with defendant no. 3 and 4 . Defendant no. 1 and 2 are in actual possession of the suit property. Defendant no. 1 and 2 developed the suit property .

**11.** According to Section 157 of Maharashtra Land Revenue Code, 1966 there is presumption of correctness of entries in record of rights and register of mutations. Therefore, the revenue record shows that the plaintiff is in possession of the suit property.

**12.** In such circumstances, prima facie 7/12 extract and mutation entry of the suit property shows the possession of the plaintiff.

**13.** It is worthwhile to note that the defendants have not denied plaintiff's possession over the suit property. Prima-facie, the copy of statement of plaintiff and defendant no.1 recorded before Tantamukti Samiti shows obstruction at their instance to the plaintiff's possession.

**14.** The plaintiff has prima-facie proved his possession to suit property and obstruction by defendants to his possession. Thus, the plaintiff has raised bonafide dispute requiring trial. As such, the plaintiff has proved prima-facie case in his favour.

**15.** The balance of convenience between parties as to be weighed, considering documents on record and submissions made by the parties. There would be multiplicity of proceeding if the temporary injunction to restrain the defendants from obstructing of possession of the suit property is not granted. In such circumstances,

the balance of convenience tilts in favour of the plaintiff. The plaintiff has shown that she will suffer irreparable loss which can not be compensated in terms of money, if injunction as prayed is not granted in his favour till final disposal of the suit. Hence, I answered points No.1 to 3 in affirmative. Therefore, in answer to point No. 4 following order is passed :-

**ORDER**

1. Application Exh. 5 is allowed.
2. The defendant no. 1 and 2 and anybody on behalf of them are hereby temporarily restrained from obstructing the possession of the plaintiff over the suit property (more specifically described in paragraph no. 1 of the application) till the final disposal of the suit.
3. Cost in main cause.

***( Dictated & pronounced in open Court )***

Date:- 10/03/2025

( P.D.Kolekar )  
Civil Judge Junior Division  
Pimpalgaon(B.)