

Order below Exh.5 R.C.S. No. 248/2023
Shri. Suresh Jayram Bagul Vs. Smt. Vijaya Shantaram Bagul &
Ors
(Passed on 20/07/2024)

Plaintiff has prayed for temporary injunction restraining defendants from obstructing the lawful possession and use of way in suit property bearing **Gat No. 117, admeasuring 02 H 14 R + Pot kharaba 00 H 31 R** situated at Mouje-Sonjamb, Taluka Dindori, District Nahsik. Bounded as follows:

Towards East- Pimpalgaon-Vani State Highway

Towards West- Gat No. 130

Towards South- Gat no. 118

Towards North – Gat no. 102

out of which the property admeasuring 00 H 40 R + Pot kharaba 00 H 31 R, assessed 00 Rupees 19 Paise, owned and possessed by the Shri. Jayram Shankar Bagul towards east side southern lane. Bounded as follows:

Towards East- Pimpalgaon-Vani State Highway

Towards West- out of suit property the area given to the plaintiff and defendant as per partition.

Towards South- Gat no. 118

Towards North – Gat no. 102

02. It is stated that the suit property is ancestral property of the plaintiff and owned and possessed by him. The said property has been

allotted to the father of the plaintiff as per partition and accordingly the mutation entry no. 1749 has been certified. The suit property is in possession of this plaintiff and defendant no 1 to 3. The father of the plaintiff died and this plaintiff and defendants have their legal heirs. However, unwillingness of the defendant no. 3 for recording the name of legal heirs, their name not entered into the record of rights of the suit property. On 18/09/2023 defendant no.3 has obstructed the way as well as also destroyed standing crops and way. Therefore, this plaintiff sought temporary injunction against these defendants.

03. On the contrary, record shows that, the suit proceeds exparte against defendant no. 1A to 1D, 2, 4A and 4B, 5, and 6A to 6D. Suit proceeds without written statement against the defendant no. 3. Argument from the plaintiff side has been heard. No written statement and say filed by the defendant no. 3 moreover despite ample opportunities he has also not argued on the same. Hence, this application proceeds without his argument.

04. On hearing the plaintiff, following points arise for my determination and I have recorded my findings thereupon as follows:-

Sr. No.	Points for determination	Findings
1	Whether plaintiff prove prima-facie case in his favour ?	Yes.
2 W	Whether the plaintiff will suffer irreparable loss if injunction is not granted ?	Yes.
3 W	Whether balance of convenience tilts in favour of the plaintiff?	Yes.
4 W	Whether the plaintiff is entitled for the relief of temporary injunction as prayed ?	Yes.

5 W	What Order ?	Application is allowed.
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REASONS

05. It is settled principle of law that while deciding application for temporary injunction, mini trial should not be conducted. Three cardinal principles to be assessed while deciding this application are prima-facie case, balance of convenience and irreparable loss.

As to point no.1 :-

Prima-facie

06. To claim injunction, the plaintiff has to show prima-facie case in his favour. The term prima-facie case means a case which involves a fair and substantial question to be tried. A prima-facie case does not mean a case proved in its entirety but a case which can be said to have established if the evidence which is led in support of the same were believed. A triable issue is the crux of the expression prima-facie case.

07. Perused documents filed with **Exh.3** and other material on record. This is a suit for partition, perpetual injunction and declaration. The 7/12 extract of the suit property for the year 2020-2022 **Exh.3/1** shows that name of the father of plaintiff in the occupation column for the area admeasuring 00 H 40 R + Pot kharaba 00 H 31 R. As well as plaintiff and defendant no. 1 to 3 are in the occupation column for the area admeasuring 00 H 40 each. The mutation entry no. 1749 (**Exh.3/2**) shows that the father of the plaintiff got 00 H 40 + pot kharaba 00 H 31 R and the plaintiff and defendants no. 1 to 3 got 40 R each. So, what is the exact nature of the suit property will decide after full fledged trial on merits. In all, there is prima facie evidence to infer plaintiff possession

over the suit property at this stage. So, at this stage it can be inferred by documents are sufficient to show that suit property is also in possession of the plaintiffs and defendant no. 1 to 3. Hence, prima facie it appears that plaintiff has right in suit property. The revenue record of the suit property shows the name of the plaintiff and defendant no. 1 to 3. Therefore, apprehension of plaintiff that defendant no.3 obstructed possession and the enjoyment of the suit property as well as obstructed and destroyed the standing crops and way use by this plaintiff appears reasonable. Therefore, it would be appropriate to protect the plaintiff by granting temporary injunction. If temporary injunction is not granted, plaintiff will suffer irreparable loss, balance of convenience tilts in plaintiff's favour. Accordingly, I answer to point no.1 **in the affirmative.**

As to point no.2 and 3 :-

Balance of convenience and Irreparable loss

15. Balance of convenience means that comparative mischief or inconvenience which is likely to issue from with holding the injunction will be greater than that which is likely to arise from granting it. It is necessary to weigh the amount of substantial mischief that is likely to be done to the applicant if the injunction is refused and compare it with that which is likely to be done to the other side if the injunction is granted.

08. As discussed above, prima facie case lies in plaintiff's favour. If injunction is not granted the purpose of institution of suit will be fruitless and it will amount to rejection of relief at such primary level. The nature of property and share of the plaintiff in the same can certainly be decided at the conclusion of trial. However, till the disposal

of suit it is necessary to protect the interest of the plaintiff, and also to avoid multiplicities of the proceedings. If injunction is not granted plaintiff will suffer irreparable loss. Accordingly, I answer point no. 2 and 3 in *affirmative*.

As to point no.4 :-

(Entitlement of Temporary Injunction)

09. Temporary injunction is an equitable relief and cannot be claimed as a matter of right. It is settled principle of law that, pleadings should not be read in isolation and should be read as a whole. Even though, plaintiff has claimed relief in regard to property described in para 1 of the plaint. Plaintiff seeking relief of partition and declaration in respect of the suit property.

10. furthermore, the revenue record of the suit property shows the name of the plaintiff and defendant no. 1 to 3 as well as their father too. So, the nature of the suit property and plaintiffs share in the same will be decided on the full fledged trial on merits till then it is necessary to protect the interest of the plaintiff, and also to avoid multiplicity of the proceedings at this stage it is necessary to allowed the present application. Accordingly, I answer point no. 4 in *affirmative*.

As to point no. 5 :-

11. In view of reason discussed above and in answer to point no. 5, I pass following order,

ORDER

1.	The application Exh. 5 is allowed.
2.	Defendants and their agent, family members and power of

	attorney holders are temporarily restrained from obstructing the peaceful possession of the plaintiff over the suit property, as well as restrained from obstructing the northern side east-west road towards suit property which is use by the plaintiff, in the any form till the final disposal of this suit.
3. C	Cost in main Cause.

Date – 20/07/2024.

(Ashwini A.Pandit)
2nd Jt. Civil Judge Junior Division
Dindori
(MH03260)