

**Reg. Civil Suit No.159/2019**

(CNR : MHNS200010672019)

*Sou. Mangala Dnyaneshwar Patil. Vs.*

*Shri. Sachin Shankar Mundhe.*

**ORDER BELOW EXH. 05**

*(Passed on 19/12/2019)*

This is an application filed by the plaintiff under Order 39, Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908.

2] This is suit for declaration and perpetual injunction in respect of CTS No.3227 admeasuring area of 83.5 Square Meters having Sinnar Municipal Council property No.1534 which is more particularly described in para No.1 of the plaint(Hereinafter referred as "the suit property" for short). According to plaintiff the suit property is own and possessed by plaintiff and she is paying regular taxes. The CTS No.3230 belonging to defendant is situated towards western side of the suit property. The defendant has obtained permission from Municipal Council for construction. However, he is not constructing in accordance with said permission and he has encroached over the suit property by excessive construction of wall. In spite of moving application to Sinnar Municipal Council no any action is initiated. Due to said excessive construction and encroachment over the suit property, the plaintiff has filed present suit along with instant application for temporary relief.

3] Defendant has opposed the application by filing his Say-cum-Written Statement below Exh.13. Defendant has denied allegation in respect of excessive construction and alleged encroachment. He has not disputed ownership of the plaintiff over the suit property. He has also contended that he has obtained permission from the Municipal Council for construction in his property. He further contended that, the CTS No.3230 is purchased by the defendant. The plaintiff is not having any concern with the same. The defendant is constructing in his

property by obtaining prior permission from the Municipal Council. The false suit is filed only to obstruct the construction of defendant and therefore he has prayed for rejection of the application.

4] Perused the application, Say/Written Statement and entire record of the case. Heard learned Advocate Shri. S.M. Nawale for the plaintiff and learned Advocate Shri. G.C. Barke for the defendant.

5] Following points arise for my determination, I have recorded my findings thereon supported by reasons thereto as follows :-

| <b>Sr. No.</b> | <b><u>POINTS</u></b>  | <b><u>FINDINGS</u></b>           |
|----------------|---|----------------------------------|
| 1)             | Does the plaintiff has made out <i>prima facie</i> case in her favour ? ..  | ...No.                           |
| 2)             | Does the plaintiff establish that, balance of convenience lies in her favour ? ..   | ...No.                           |
| 3)             | Does the plaintiff prove that, she is going to suffer irreparable loss if injunction as prayed by her is not granted against defendant ? .. | ...No.                           |
| 4)             | What order ? ..   | ... Rejected as per final order. |

### **REASONS**

6] The plaintiff in support of her case has placed reliance on documents filed along with list Exh. 3 viz. Copy of property card bearing No.Z2W7000307, Tax Receipt dated 18/03/2019, Assessment Extract, Light Bill, The application dated 10/06/2019 moved before the Municipal Council, Aadhaar Card of the plaintiff. The plaintiff along with list Exh.17 has also filed on record documents viz. The property

card of CTS No.3227, Property Card Receipt, Light Bill, property extract, the reminder letter dated 16/07/2019. The defendant has not filed any supporting evidence.

**As to Points No.1 to 3 :-**

7] As these points Nos. 1 to 3 are interlinked with each other, oral and documentary evidence on these points is common and therefore to avoid repetition of contents, they are taken together for discussion.

**SUBMISSION BY RIVAL SIDES :-**

**Argument by learned Advocate for the plaintiff :-**

8] The learned Advocate for plaintiff submitted that, the suit property is owned and possessed by the plaintiff. The CTS No.3230 belonging to defendant is situated towards Western side of the suit property. The defendant is not constructing in accordance with permission obtained from the Municipal Council. He has encroached over the suit property by excessive construction and he has also constructed wall in the suit property. The document produced along with list Exh.3 establish ownership of plaintiff over the suit property. The Municipal Council in spite of application dated 10/06/2019 and reminder letter dated 16/07/2019 has not initiated any action and therefore it is necessary to prevent said illegal construction and encroachment over the suit property.

**Argument by learned Advocate for the defendant :-**

9] The learned Advocate for the defendant submitted that the defendant is owner and possessor of CTS No.3230. He has purchased the said property. The defendant is constructing over his property by obtaining prior permission from the Sinnar Municipal Council. The allegations as to encroachment and excessive construction are false and

fabricated. The Sinnar Municipal Council has not issued any notice for contravention of conditions from said permission granted for construction. The false suit is filed only to harass the defendant and to stop his construction. The defendant has never encroached upon the suit property and said fact can be revealed during course of hearing by appointment of Court Commissioner. Hence, due to no any encroachment the plaintiff is not going to suffer any loss but the defendant is going to suffer huge loss if his construction is restrained by order of injunction. Hence, he has prayed for rejection of the application.

**Conclusion :-**

**10]** After considering rival submissions of both sides, the respective ownership over the suit property and adjacent CTS No.3230 are undisputed. The defendant has obtained permission from the Sinnar Municipal Council for construction is also undisputed. The main grievance of the plaintiff is that, the construction of defendant is excessive and he has encroached over the suit property by construction of wall compound. However, in said regard the Sinnar Municipal Council has not issued any notice to the defendant for contravention of condition from permission for construction.

**11]** In regard to *prima facie* case, the plaintiff must have to prove alleged encroachment and excessive construction. In said regard no any measurement map is placed on record to reflect alleged encroachment. At this initial juncture no any convincing evidence is placed on record by plaintiff except bare allegations regarding encroachment and excessive construction. The defendant has specifically denied alleged encroachment. The defendant is constructing over the portion belonging to him. Therefore, during course of hearing the plaintiff is at liberty to adduce evidence to establish excessive construction and encroachment over the suit property. Therefore, the

plaintiff has failed to made out *prima facie* case in her favour by proving alleged encroachment and excessive construction in contravention of permission from Municipal Council.

12] Moreover, the ownership of defendant over the CTS No.3230 is undisputed. It is also brought on record that the defendant has obtained permission from the Sinnar Municipal Council for construction. Hence, in such circumstances granting injunction against the defendant restraining construction will cause great economic loss and inconvenience to the defendant. Therefore, the element of irreparable loss and balance of inconvenience are not favourable to plaintiff. Hence, the plaintiff has failed to made out all essential prerequisite conditions for grant of temporary injunction. Hence, I answer points No. 1 to 3 in negative.

**As to Point No. 4 :-**

13] In view of my above findings below points No. 1 to 3, the application necessary deserves to be rejected. In result, following order is passed :-

**:- ORDER :-**

- 1) The application(Exh.5) is rejected.
- 2) Cost in main cause.

(Dictated and pronounced in open Court)

Sd/-XXX

( D. S. Jadhav )

Jt. Civil Judge, Junior Division,  
Sinnar

**MHNS-20-2407**

Place : Sinnar  
Date : 19/12/2019

This P.D.F. file Order/Judgment is same word to word, as per the original order.

|                     |   |
|---------------------|---|
| Name of Court       | Shri. D. S. Jadhav,<br>Jt. Civil Judge, Junior Division and<br>Judicial Magistrate, F.C., Sinnar, Tal.<br>Sinnar, Dist. Nashik. |
| Dictated on         | 19/12/2019  |
| Transcribed on      | 19/12/2019  |
| Checked & Signed on | 19/12/2019  |