

RCS No. 28/2021
Taked Budruk II V/s. Yadav Memane
MHNS230007032021

ORDER BELOW EXH.05

Heard Mr.R.G.Waje, the learned advocate for the plaintiff. Perused the entire record including affidavit. This is a suit for declaration and injunction. The suit is instituted to prevent the defendant from raising construction on the property owned by plaintiff. Para 09 of the plaint shows that the cause of action accrued to the plaintiff for the first time on 29.01.2021 when the defendant attempted to raise construction. Thereafter, on 05.02.2021, the plaintiff gave a police complaint to Ghoti Police Station. Therefore, it is clear that the suit is instituted near about 26 days after the accrual of cause of action. The Hon'ble Supreme Court in **Morgan Stanley Mutual Fund V/s. Kartic Das (1994)4 SCC 225** has observed that if the suit is instituted after some delay of accrual of cause of action, ex-parte temporary injunction should be refused. Thus, in this view of the matter this is not a case wherein the plaintiffs' prayer has to be considered ex-parte. The defendant is residing within the jurisdiction of this court. Therefore, in all facts and circumstances the plaintiffs' prayer can be considered on merits upon appearance of defendant. Hence, issue notice to defendant as to why the temporary injunction as claimed by the plaintiff should not be allowed in its favour. E.P and S.B. is allowed if the plaintiff wishes so. Hamdast is also allowed.

Date: 24.02.2021

(P .P .Giri)
Civil Judge(J.D.),
Igatpuri