

**ORDER BELOW EXH.05**

Plaintiff has prayed for ex-parte ad-interim injunction against defendants for stay of notice dated 02/12/2022 issued by the defendants to him and thereby restraining them from carrying out removal of construction over suit property.

02 I have perused the application and heard Ld. Advocate for the plaintiff. The present suit is filed by the plaintiff for declaration and perpetual injunction. It is averred in the present application that suit property mentioned in paragraph No.1 of the plaint is ancestral property of him and he constructed new house over suit property by obtaining proper permissions from the Ghoti Grampanchayat on 15/03/2017. Afterwards, he also paid taxes of said property to the Grampanchayat from time to time. However, defendants, without inquiring about any encroachment carried out over suit property, sent notices to the plaintiff for removal of alleged encroachment and illegal construction. As per the contention of the plaintiff, he has constructed new two-storied structure over suit property after obtaining "No Objection Certificate" dated 15/03/2017 which is filed on record by the plaintiff. However, defendants, relying on complaints filed by owner of property which is adjacent to the suit property, issued notice to the plaintiff and warned him to remove encroachment over suit property or otherwise threatened him of removal of such encroachment by applying police force. Hence, the plaintiff is constrained to file present application for ad-interim relief seeking stay to said notice dated 02/12/2022 and thereby restrain the defendants

from carrying out any adverse proceeding against plaintiff over suit property.

03 I have perused documents filed with Exh.3 and other material on record. This is a suit for declaration and perpetual injunction. Order XXXIX Rule 3 of the Code of Civil Procedure (in short 'the CPC') empowers the Court to grant ex-parte ad-interim injunction. The perusal of documents filed with Exh.3 show that there is name of plaintiff on 7/12 extract of suit property and assessment extracts show that the plaintiff has paid required tax on suit property till filing of suit. Further, notices of Ghoti Grampanchayat dated 16/03/2021, 14/06/2022, 19/09/2022, 11/10/2022 and 02/12/2022 reveal that the defendants sent said notices to the plaintiff from time to time regarding removal of illegal construction over suit property. The plaintiff replied to the said notices vide letter dated 23/03/2021, 01/09/2022 and 31/10/2022 and contended that there is no illegal construction carried out over suit property and no encroachment of any kind was done by the plaintiff. It is also stated in said reply that the construction carried out over suit property was as per valid permission of Ghoti Grampanchayat and the "No Objection Certificate" to that effect is also filed on record.

04 Now, the extreme urgency of the plaintiff for such ad-interim relief has to be analyzed through settled principles of law. Hon'ble Supreme Court in *Morgan Stanley Mutual Funds Vs. Kartick Das: Securities and Exchange Board of India 1994 (4) SCC 225* has laid principles for consideration while granting ex-parte ad-interim injunction. Hon'ble Supreme Court has held that "*ex-parte ad-interim injunction could be granted in exceptional circumstances (a) where*

irreparable or serious mischief will cause to the plaintiff (b) where refusal of ex-parte injunction would involve greater injustice than the grant of it (c) the time at which the plaintiff first had notice of the act complained.” As far as present application is concerned, from the cause of action clause in the plaint, it clearly shows that plaintiff has approached the Court at the earliest possible opportunity. If defendants are not restrained from carrying out adverse proceedings against plaintiff regarding removal of construction over suit property, it will cause greater hardship to the plaintiff. Ad-interim relief seems to be appropriate in the present case as there is question of removal of construction over suit property which is subject matter of present suit. The grievance of the defendants can be considered at later stage after their appearance in the present suit. Hence, following order is passed :-

ORDER

- 1) The notice and further proceeding as per notice dated 02/12/2022 be stayed till further order.
- 2) Defendants are restrained from carrying out removal of construction over suit property till further order.
- 3) Plaintiff to comply Order XXXIX Rule 3 of the Code of Civil Procedure, 1908.
- 3) Issue show cause notice returnable on 10/01/2023 to defendants as to why ex-parte ad-interim injunction issued against them should not be confirmed.

Date :- 19/12/2022

(S. G. Kuvalekar)
Jt. Civil Judge Junior Division,
Igatpuri