

ORDER BELOW EXH.5 IN R.C.S NO.38/2016

The present application has been filed by the plaintiff for granting an interim relief against defendant. In order to avoid the repetition, I have not discussed the facts of the present application. The property situated at mouje Pen at Nandimal naka having its city survey no.956 B + 957/B having area 130.4 Sq. meter. Henceforth it is known as suit property.

The suit property is having boundary as follows :-

Towards East :- property of plaintiff and City Survey no.951.

Towards West :- property of Rajan Mokashi.

Towards South :- property of defendant no.1.

Towards North :- lane,

In order to avoid the repetition, I have not discussed the facts of the present application. Accordingly, the defendant appeared and filed their say below Exh-17 and thereby denied the contents of the present application. Further submitted that, the adjacent properties of the suit property i.e city survey no.958, 961, 956A + 957A are purchased by the defendant and he has carried out the measurements of the same and that, time plaintiffs was present there. After taking the due permission from defendant no.2, upon sanctioning the plan the defendant no.1 has started the construction in his property. Therefore there is no question to do the encroachment over the suit property. Further submitted that, the plaintiffs have filed the present suit without carrying out the measurement of the suit properties. If during the measurement it revealed that, the defendant has done the encroachment over the suit property, he will remove the same immediately. Lastly mentioned that, as there is no merit, application is liable to be

dismissed.

In view of the contents of the application, following point are arose in my mind to which, I have given it's finding along with it's reasons.

Sr.No.	Points for determination	Findings
1	Whether the plaintiff has made out his prima facie case ?	... In the affirmative.
2	Whether balance of convenience lies in favour of plaintiff ?	...In the affirmative.
3	Whether plaintiff will suffer great hardship and irreparable loss if injunction is refused ?	... In the affirmative.
4	What order ?	Application is allowed.

: R E A S O N S :-

In support of the present application, Mr.P.D.Mokal Ld. advocate for the plaintiffs argued and submitted that, the suit property is owned and possessed by the plaintiffs. The defendant no.1 has purchased the city survey no.958, 956A + 957A and 961 from its original owner Rachana Mokashi. To carry out the construction the defendant no.1 has obtained the permission from the defendant no.2. This fact has been came to know the plaintiffs upon obtaining the certain documents from the defendant no.2. On 20-02-2016 the plaintiffs have started the construction over the city survey no.958, 956 A + 957 A and 961 and for that, he has started digging the pitholes and also constructed the foundation. For the purpose of digging without the prior permission of plaintiffs as well as defendant no.2, defendant no.1 has cut the trees and also done the encroachment towards the norther side of the suit property of approximately 3X15 Sq.ft. when the plaintiffs tried to convince the defendant no.1 not to do so, he did not pay any attention for the

same. Though the defendant no.2 has given the permission to construct, but it has not given any permission for the encroachment. Thus by way of encroachment the defendant no.1 has committed the breach of condition no.6 of the sanction plain. Further submitted that, because of said encroachment there is danger to the suit property. In order to support this submission he has also filed the documentary evidence. Lastly submitted that, if the present application is not allowed plaintiff will suffer irreparable loss so also submitted that, balance of convenience in favour of the plaintiffs and therefore, prayed to grant the present application.

Mr.Deshmukh ld. Adv for defendant no.1 argued submitted that, the adjacent properties of the suit property i.e city survey no.958, 961, 956A + 957A are purchased by the defendant and he has carried out the measurements of the same and that, time plaintiffs was present there. After taking the due permission from defendant no.2 upon sanctioning the plan the defendant no.1 has started the construction in his property. Therefore there is no question to do the encroachment over the suit property. Further submitted that, the plaintiffs have filed the present suit without carrying out the measurement of the suit properties. If during the measurement it revealed that, the defendant has done the encroachment over the suit property, he will remove the same immediate. Lastly submitted that, the balance of convenience is not in favour of plaintiffs and defendant no.1 will suffer and irreparable loss if the construction is stop, therefore, prayed for rejection of the present application.

For point nos.1 to 3 :-

Upon hearing both the sides, I have perused the entire

suit filed along with its documents. The plaintiffs and defendant nowhere denied the ownership of the plaintiffs over the suit property. In order to bring it on record that, the defendant no.1 has started illegal construction over the suit property, plaintiffs have relied upon the correspondence made to the defendant no.2, on 22-2-2016. A notice issued to them on 01-03-2016, the photographs filed at Sr.no.7. Accordingly, I have perused each and every documents. At this juncture, I would like to relied upon the photographs filed by the plaintiffs. The photographs reflects that, the construction work is going on. At this juncture exact measurement are not before the court the photographs can reflect the construction is very adjacent to the suit property. The plaintiffs have taken the immediate action against the defendant no.1 when he came to know about the said fact, here it is difficult to belive upon the submission of the Adv. of the defendant no.1 that, plaintiffs have encroached over the property of defendant no.1. To this I would like to say that, if it is so, the said fact can be came in to picture when the measurements were carried out by the defendant no.1. That time the defendant no.1 has not raised any objection so also has not issued any notice to the plaintiffs. At this juncture in order to show that, the defendant no.1 has not doing any construction by way of encroachment, noting is on record to belive the same. Further, I would like to mentioned here that, though the defendant no.1 has submitted that, he will suffer and irreparable loss if the present application is allowed, I would like to mentioned here that, at this juncture the suit has been filed on the basis of alleged encroachment done by the defendant no.1. The defendant. no.1 has just started the construction it will be difficult if

the construction is completed and if it will be revealed that, there is encroachment over the suit property by defendant no. 1 that would be great harm to the defendant. Therefore, at this juncture even though the interim injunction granted in favour of plaintiffs the defendant no.1 will not suffer great loss.

Considering the contents of the plaint, documents, I would like to mention that, the plaintiffs have made out his prima facie case and interim injunction in his favour. Therefore, considering the above observations I answer the point no.1 to 3 in the affirmative and for point no.4, I proceed to pass the following order.

ORDER

1. The present application is allowed.
2. The defendant his agents, servants or anybody claiming through him are hereby temporarily restrained to carry out the construction over the suit property or to create any obstruction for the possession of the plaintiffs over the suit property.
3. Costs of the application will be cost in main cause.

Pen,
Date: 29/04/2016.

(Sau.Meghana Ashish Deshmukh)
Civil Judge, J.D., Pen.