

**Order below Exh. 5**

The present application is filed by the plaintiff for grant of temporary injunction against defendants under Order 39 Rule 1 and 2 of the Code of Civil Procedure to restrain them from constructing fencing house over the suit property.

2. Facts of case of plaintiffs in brief are as follows :-

This suit is filed for declaration and injunction. The plaintiff became owner of the suit property by register sale deed executed in year 1996. Mutation entry bearing no. 272 was taken to place to that effect. Since then the plaintiff is in possession of suit property. Though plaintiff is owner of the suit property still defendant started digging in order to construct the house. The plaintiff tried to stop them but, they continue with said work. The plaintiff also approach to the Khopoli police station, but they did not taken any action against defendant being civil nature dispute. Plaintiff is in possession of suit property. If said construction of house taken place then irreparable loss would cause to the plaintiff.

3. Plaintiff has made out the prima facie case in his favour. Balance of convenience lies in favour of plaintiff. If defendants are not restricted then irreparable loss would be cause to the plaintiff. Hence temporary injunction please be granted against defendants.

4. Defendants appeared and filed their say at exh. 22. It is contended that, false application moved by the plaintiff. Moreover, wrong boundaries of suit property are mentioned. As per law 7/12 extract of 3.5 R cannot be separated. Plaintiff adopted illegal practice to do so. The sale deed dated 03/06/1996 is illegal. Defendants belongs to Adiwasi-Katkari community. They are in possession of suit property since their four-fathers. State Government allotted land to defendants in year

1974. House bearing number 1A on survey no. 11/3/र belongs to defendants. Its entry taken place in 7/12 extract of Nausha Bapu Katkari @ Waghmare. Defendants carried out construction over the land in their possession. Defendants not cause encroachment. If temporary injunction granted then, irreparable loss would be cause to defendants. Hence, prayed to reject the application with cost.

5. Perused an application and say. Perused all the documents filed by parties. Heard learned advocates for plaintiffs and far defendants. Following point arose for the determination, I have recorded my findings thereon along with reasons are as under :

Sr. No.	Points		Findings
1.	Whether the Plaintiff has made out prima facie case?	..	Yes
2.	In whose favour the balance of convenience lies?	..	In the favour of plaintiffs
3.	Who will suffer irreparable loss and hardship ?	..	Plaintiffs, if the injunction not granted.
4.	What order?	..	The application is allowed.

### REASONS

#### Point no. 1 :-

6. The learned advocate Mr. Rathi on behalf of the plaintiff argued that, suit is filed for declaration and injunction. The plaintiff became owner of the suit property by execution of register sale deed in his favour. Mutation entry bearing no. 272 was taken place to that effect. 7/12 extract of suit property is in the name of plaintiff. Defendants never taken objection to said sale deed prior filing of this suit. Defendants in their say did not mentioned the fact about who is the

owner of the suit property ? In whose possession suit property lies ? Hence say of defendants cannot be taken in to account. Moreover, plaintiff have title over suit property. As per principle of natural justice “Title follows the possession”. The plaintiff also file complaint to local authority in respect of said construction. The group grampanchayat Mankiwali, issued letter to defendants in respect of said construction till defendants did not stop the construction. It shows that suit property is in danger due to conduct of defendants. The Plaintiff have prima facie case. Balance of convenience lies with the plaintiff. If injunction not granted then irreparable loss would cause to the plaintiff. Hence he prayed to allow the application in the interest of justice.

7. On the other hand Id. Advocate Smt. Devda argued that, sale deed of in 3.5 R area cannot be said to be legal. Intentionally plaintiff did not filed sale deed by which he is claiming ownership over suit property. The plaintiff made negative prayer in prayer clause of the suit. Proper boundaries of suit property are not mentioned. Defendants are constructing new house by demolishing hutlet of Nausha Waghmare. No loss would cause to plaintiff if construction stop but irreparable loss would cause to defendants if injunction granted. 8A extract of house property does not bears survey number of land on which said house is constructed. Defendants are in possession of suit land. Hence she prayed to reject the application with cost.

8. I have gone through all case papers and submissions. Before deciding this application it is necessary to go through the relevant provision of the law. Hence I have gone through the provisions of Order XXXIX Rule 1 of the Code of Civil Procedure which runs as follows -

**Order XXXIX Rule 1. Cases in which temporary injunction may be granted.**—Where in any suit it is proved by affidavit or otherwise— (a) that any

*property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*

*(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,*

*(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,*

*the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 1[or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.*

9. After going through above mentioned provision it is clear that the temporary injunction may be granted to secure property in danger.

10. Considering submission and documents on record, it seems that plaintiff is claiming temporary injunction against defendants restraining them from carrying out construction of house over suit property. Defendants claiming that, hutlet of Nausha Waghmare was there over the suit property. But, defendants failed to file any document supporting to this contention. The title of the plaintiff over suit property is very much clear. In the 7/12 extract of suit property there is nothing mentioned in respect of such kind of hutlet of Nausha Waghmare.

After filing of suit defendants refused to take delivery of notice issued as per Order 39 Rule 3 of Code of Civil Procedure. Moreover, in photographs filed by plaintiff showing construction it can be seen that construction of only foundation was completed, but in say filed by defendants it is mentioned that, construction up to pillar of house was taken place. It shows that, suit property is in danger due to conduct of defendants. Considering all the submissions and document filed on record, the plaintiff is succeeded to establish prima facie case in his favour. Hence, I answer to point no. 1 in affirmative.

**Point no. 2 and 3 :-**

11. So far as factors of balance of convenience and irreparable loss are concerned, from the facts of the case it seems that defendants carried out construction work over suit property. Initially construction up to foundation was completed, now in say defendants stated that construction up to pillar of house was taken place. It seems that defendants are in hurry to complete work of construction. Defendants even not waited for decision of this Court on this application. This act of defendants needs to be taken into account. In such situation if said construction work not stopped by temporary injunction, irreparable loss would be caused to the plaintiff. If temporary injunction granted then it will not cause any prejudice to the rights of defendants. On the other hand if injunction not granted then plaintiff may face more difficulties than defendants. Hence balance of convenience and irreparable loss lies with the plaintiff. Hence, I answer point nos. 2 and 3 in favour of the plaintiff.

**Point no. 4 :-**

12. In the light of above discussion, it is concluded that plaintiff succeeded to prove the prima facie case. The factors of balance

of convenience and irreparable loss lie in favour of the plaintiff. Hence the application needs to be allowed. For the above mentioned reasons while answering to point no. 4, I pass the following order -

**ORDER**

I.	The application below Exh. 5 is allowed with cost.
II.	Defendants, their agents, servants or any person claiming through them, are hereby temporarily restrain from carrying out construction over suit property.

Place: Khalapur  
Date : 06.05.2021

(Vishal Shravan Dhondage)  
2<sup>nd</sup> Jt. Civil Judge, Junior Divison