

ORDER BELOW EXH. 5 IN REG.CIVIL SUIT NO.45/2012
(CNR NO.MHRG14-000059-2012)

Vitthal Damodar Thali & Ors.

... Plaintiffs

Vs.

Karanja Machhimar Society through
Chairman

... Defendants

The present application is filed for grant of temporary injunction under Order 39 Rule 1 of the Civil Procedure Code restraining the Plaintiff No. 1/5 and 2/3, their agents, servants, family members or any person claiming through them from carrying out unauthorized and illegal construction work in the suit property till final disposal of the suit.

2. The Ld. Advocate on behalf of the Defendant submitted that the present suit has been filed by the Plaintiffs for cancellation of Agreement to Sell, dated 06/05/1985. It is contended that in the year 1985, the father of the Plaintiffs Late Damodar Narayan Thali executed the Agreement to Sell of the suit property in favour of the Defendant, for the consideration amount of Rs.1,20,000/-. By paying the complete amount in the year 1987, the Defendant has taken the possession of the suit property and constructed hospital in the suit property. Since 2003 to 2017, the said hospital was functioning properly.

3. It is further contended that the Plaintiffs has adduced almost his complete evidence in the suit. It is further contended that at this stage the Plaintiff No. 1/5 and 2/3 without any permission of planning authority under M.R.T.P. Act is making construction in the

suit property by making forceful encroachment. If the temporary injunction is not granted the nature of the suit property will be changed which will effect to multiplicity of proceedings and delaying the matter. Hence, the present application be allowed.

4. In support of their contentions, the Defendant relied upon the photographs of the suit property, the letter given to Group Grampanchayat, Chanje and the following citations.

1. Shri. Hanumantharayappa R. Rangaiah Vs. Shri. Lakshmipathi Annayappa.
2. Ramalah Vs Gowdappa
3. Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, 2005(1) Mh.LJ, 1043.

5. The Plaintiffs filed their say vide Exh.118. The Plaintiffs has submitted that in 7/12 extract of the suit property and the revenue record the Plaintiffs are the legal owners of the suit property. The consideration amount has been not received from the Defendant. The CIDCO had earlier refused for the construction of the hospital in the suit property. The said hospital is closed prior to 2017. The construction of the hospital and itself is illegal and unauthorized. The Plaintiffs are carrying out the construction in the suit property with the deemed permission of Grampanchayat. The construction is completed. Therefore, the present application cannot be allowed.

6. In support of their contentions the Plaintiffs produced the photographs of the suit property. Hence, prayed to reject the present application.

7. Perused application and say. Heard learned advocates for both the sides. Following points arose for the determination and findings thereon along with reasons are as under :

Sr. No.	Points		Findings
1.	Whether the Defendant has made out prima facie case?	..	In Positive
2.	In whose favour the balance of convenience is?	..	In the favour of the Defendant.
3.	Who will suffer irreparable loss and hardship ?	..	Defendant, if the injunction is granted
4.	What order?	..	The application is allowed

REASONS
AS TO POINT NO. 1

8. It is apparent in the case of the record that the suit has been filed for cancellation of Agreement to Sell dated 06/05/1985. The issues has been framed on 06/01/2011. From the perusal of record it can be seen that four witnesses of the Plaintiffs has been examined. The present matter is part-heard. It is nowhere denied that the possession of the suit property is with the Defendant. The construction of the hospital in the suit property prior to the filing of the suit is also the admitted fact. It is also admitted by the Plaintiffs that the Plaintiffs are making construction in the suit property.

9. From perusal of the photographs produced by the both the parties it can be seen that the base of the construction is

permanent in nature. But the said base has been covered with the metal sheets from all sides. The Plaintiffs have admitted the construction therefore, further construction cannot be denied. Considering the arguments urged by both the parties it appears that during the pendency of the present suit, the Plaintiffs have entered the suit property which is in possession of the Defendant and carried out the construction. Hence, I answer point No. 1 in positive.

AS TO POINTS NO. 2 AND 3

10. So far as factors of balance of convenience and irreparable loss are concerned than from the documents on record, prima-facie it appears that the suit property is in possession of the Defendant. The suit is part-heard. The Plaintiffs making construction at this stage of the suit is definitely going to change the nature of the suit property which will lead to multiplicity of proceedings.

11. Hence, comparatively, the factors of balance of convenience and irreparable loss lies in favour of the Defendant. Hence, I answer points No. 2 and 3 in favour of Defendant.

AS TO POINT NO. 4

12. In the light of above discussion, it is concluded that the Plaintiffs have failed to prove the prima-facie case. The factors of balance of convenience and irreparable loss lies in favour of the

Defendant. Hence, the application is liable to be allowed. In the result, I pass the following order.

ORDER

1.	The application is hereby allowed.
2.	The Plaintiff No. 1/5 and 2/3, their agents, servants, family members or any person claiming through them are restrained from carrying out unauthorized and illegal construction work in the suit property till final disposal of the suit.
3.	No order as to costs.

Place: Uran
Date : 14/01/2021

(Fiza F. Irani)
Civil Judge, J.D.,Uran