



Order Below Exh.06 in Regular Civil Suit No. 07-2021

CNR NO.MHRT08-000049-2021

**Shrikant Atmaram Shinde vs Rajan Parsharam Shinde
and ors.**

01. This is an application filed by plaintiff for temporary injunction against defendant no. 1 to 3 restraining them from causing obstruction to plaintiff's peaceful possession, from creating any third party interest in suit property or changing its structure permanently during the pendency of the suit.

02. perused application. Perused record. It appears that vide order passed below Exh. 20 dated 25-01-2021, my learned predecessor had granted status quo relief to plaintiff. However, since then, the said order or directions are being extended on each date.

03. It is the contention of plaintiff that suit is filed for partition and separate possession of suit properties. Suit property are as follows;

Sr. No.	Survey and hissa number	Area	Value
1.	29/2	0.10.20 0.00.90	0.30
2.	30/2A/1A/2	1.54.50	0.97
3.	30/3/4/2	0.39.00 0.02.00	0.22

04. Father of plaintiff Atmaram had 3 sons namely deceased Parsharam, plaintiff and defendant no. 10 and 3 daughters namely defendant no. 11 to 13. Defendant no. 1 to 4 are sons of deceased Parsharam. Defendant no. 5, 8, 9 and mother of defendant no. 6 and 7 are daughters of deceased Parsharam.

05 Suit property at Sr. no. 1 to 3 were owned and occupied by ancestor of plaintiff and defendant no. 1 to 13. Hence, plaintiff claims $1/6^{\text{th}}$ share. Property at Sr. no. 2 is tenancy land occupied by and owned by plaintiff, deceased Parsharam and defendant no. 10. During the tenancy matters, Parsharam was deceased. Defendant no.11 to 13 were residing at their marital home prior to filling this tenancy application. They were never cultivating this property. Hence, defendant no. 11 to 13 have no concern with property at Sr. no. 2. Hence, plaintiff and defendant no. 10 claims each $1/3^{\text{rd}}$ share in suit property no. 2.

06. Recently on 20-12-2020, defendant no. 1 started digging a line for construing his new house in property at Sr. no.2. when plaintiff objected the same, he asked him to get the property partitioned. However, defendant no. 1 again started digging on 16-01-2021. Defendant no. 10 to 13 were never consenting for the same. Defendant no. 1 had not taken prior consents from authorities. The continuation of such alleged construction may seriously prejudice plaintiff as structure of property may get changed permanently. Hence, the suit is filed.

07. It is pleaded that if the injunction is not granted, plaintiff may not enjoy peaceful possession of suit property. Since the partition isn't yet done, continuation of such construction may hamper rights of parties. If injunction is not granted in favour of plaintiff, irreparable loss may be caused to plaintiff. The balance of convenience lies in favour of plaintiff. Hence, Ld. Adv. Shri. C. M. Mangle for the plaintiff argued that injunction may be granted. On this application, say of defendants no. 1 to 3 was called. However, it appears that the suit has proceeded without any say since 07-10-2021.

08. Perused both the applications. Perused the documents produced on record. Heard arguments of the Ld. Advocate Shri. C. M. Mangle for plaintiff. The suit has proceeded without arguments of other side.

09. In view of these rival pleadings of both parties and argument advanced on their behalf, following points arise for determination and I have recorded my findings against each of them for the reasons stated below : -

Sr. No.	Points For Determination	Findings
1	In whose favor, plaintiff or defendant, the <i>prima facie</i> case is?	In favor of plaintiff.
2	In whose favor, plaintiff or defendant, the <i>balance of convenience</i> case is ?	In favor of plaintiff.
3	Who, the plaintiff or the defendant, will suffer irreparable loss, in case of refusal of injunction ?	Plaintiff.
4	What order ?	As per Final Order

REASONS

10. It is settled principle of law that while deciding application for temporary injunction mini trial should not be conducted. Three cardinal principles to be assessed while deciding this application are prima-facie case, balance of convenience and irreparable loss.

EVIDENCE

AS TO POINT NO. 1 (PRIMA FACIE CASE):

11. A term “*prima facie case*” means a case, which involves a fair and substantial question to be tried. If there is no defect in the plaintiffs' case, leading to its failure at this stage, it is in the ambit of the expression *prima facie case*. A *prima facie case* does not mean a case proved in its entirety. But, a case, which can be said to establish if the evidence, which is led in support of the same were believed. A triable issue is a crux of the expression *prima facie case*

12. It is a settled preposition of law that while deciding an application **under Order 39, Rule 1 & 2 of the Code of Civil Procedure, 1908**, for the grant of temporary injunction, the Court must be satisfied that the applicant has a *prima facie case* in support of the right claimed by him, the balance of convenience lies in favour of the applicant and the applicant (the plaintiff) must show that he will suffer irreparable loss if the injunction has prayed is not granted. All the three aspects should go exists.

13. A *prima facie case* is a substantial question raised bonafide, are needs investigation and a decision on merits. It is a settled law for the purposes of forming a *prima facie view*, a Court is required to see the evidence available on the report and mere pleading does not make a strong *prima facie case*. The case must be established by sufficient material or proved by affidavit.

14. The necessary reference can be made in the case of ***State of Assam and another Vs M.s M.S. Associations, New Delhi (1994 (3) Civil LJ 281)***, wherein it has been held that,

“Further, the suit itself was permanent injunction and in such suit of temporary injunction must be granted in a cautious manner

because by granting temporary injunction relief in the suit is being granted. That should not be done by the Court. No doubt, in specific case temporary injunction may be granted. The procedure of granting temporary injunction should not be adopted as a general and normal course.”

15. According to ratio laid down in the above cited case the temporary injunction may be granted considering the facts and circumstance of the case though it is needless to mention here that, the application for temporary injunction cannot be allowed where the main prayer is of perpetual injunction. The application for temporary injunction can be granted after considering the facts and circumstance of the case

16. In order to substantiate his case, the defendant as well as plaintiff has filed oral as well as documentary evidence. The same is mentioned in following discussion as per their reference.

Points No.1 to 4

17. All the points are interconnected hence in order to avoid repetition; they are discussed together. At the outset, it may be mentioned here that suit property is ancestral property of plaintiff and defendant which is not yet partitioned. The said fact remains unchallenged.

18. Prima facie, perusal of documentary evidence on record, it appears that defendant no. 1 is trying to construct a permanent structure without any prior consent of co-sharer. The prayer of suit is partition. Hence, it appears that partition isn't yet effected. Rejecting the apparition may cause irreparable loss to plaintiff if any permanent structure is built in suit property. The plaintiff has made out prima facie case show that he is in possession and **according to Order 39 Rule 1 of C.P.C.**, if it is proved on affidavit or otherwise that defendant is obstructing peaceful possession of plaintiff upon the property, Court after

considering the basic principle like Prima facie case, balance of convenience and irreparable loss, grant injunction.

19. In the case in hand rejection of application may cause inconvenience to possession of plaintiff. On the other hand, no serious prejudice will be caused to defendant if injunction is granted. In the circumstance, it is the plaintiff in whose favor balance of convenience tilts. Plaintiff will suffer irreparable loss in case adverse order passed against him. No prejudice will be caused to defendant if they are temporarily injected from disturbing the peaceful possession of plaintiff. Hence, in the circumstances, both points balance of convenience as well as irreparable loss will have also to be answered in favor of plaintiff. Hence, point no. 2 and 3 are accordingly answered and for point no. 4, I pass following order -

ORDER

1)	Application for interim injunction(Exh.6) is allowed.
2)	Issue injunction against defendant no. 1 to 3 in terms of prayer clause-1 of the application for interim injunction(Exh.6) till final decision in this suit.
3)	Parties to note that the findings of the order are purely from the point of view of deciding temporary injunction and are made only on the basis of prima facie case on record.
4)	Costs in the main cause.

(Typed and pronounced in open court)

Sd/-

(Shruti H. Patil)

Jt. Civil Judge, J.D., Deorukh.

Date:- 18.11.2024.