


<p>CNR NO. MHRT090001182025</p> 	<p><u>IN THE COURT OF CIVIL JUDGE</u> <u>JUNIOR DIVISION LANJA, AT</u> <u>LANJA</u></p> <p>REGULAR CIVIL SUIT NO. 12/2025 (Harishchandra Gurudas Tambe Vs. Suresh Punaji Tambe)</p>
---	---

ORDER BELOW EXH. 08

Perused the application. This is an application for temporary injunction.

02. The plaintiff's case in nutshell is that Gat No. 166 admeasuring 1.48.00 H. R. and West side of Gat No. 157 admeasuring 00.55.10 H. R. of Mouje Nioshi, Tal. Lanja, Dist. Ratnagiri are the suit properties. As per plaintiff's contentions, father of the plaintiff has purchased the suit properties in the year 1994 from his own income and some monetary help from brother Ramesh by registered sale-deed. Plaintiff's father and after his demise his wife and children have possession in the suit properties. It is further contended that, defendant has no vahivat (वहीवाट) in the suit properties.

03. Father of plaintiff filed R.C.S. No. 45/2012 against defendant for perpetual injunction. However, said suit was dismissed for default in 2018. According to plaintiff, he could not remain present in that suit because of domestic issues. The defendant has not obstructed to plaintiff's possession till 18/03/2025. However, on 19/03/2025, defendant has made obstruction to plaintiff's possession in the suit properties and threatened him by saying 'भडव्या इथ परत पाय टाकलास तर गोळी घालीन चालायला लाग. तुझा बाप दावे करून वर गेला. आता तुला पाठवतो. मला कोर्टात खेचलात त्या दोन्ही जमिनी माझ्या आहेत.'.

Hence, plaintiff filed this application for temporary injunction.

04. On the other hand, defendant filed his say at Exh. 14 and opposed the application. He denied all contentions in the application. He further contended that, he has paid purchase amount of suit properties to original seller Parvati Shankar Mandave and Gopal Antu Mandave from his own salary income. Father of plaintiff filed false suit i.e. R.C.S. No. 45/2012 against the defendant. The suit properties are not self-acquired properties of plaintiff and he has no any legal right to sue in respect of these properties. Making these contentions, he prayed for rejection of the application.

05. Heard Ld. Advocates of both parties at length. Perused the record minutely.

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

NO.	POINTS	FINDINGS
1	Whether plaintiff proves a <i>prima-facie</i> case?	No.
2	Whether the balance of convenience is in favour of plaintiff?	No.
3	Whether plaintiff will suffer irreparable loss if injunction is not granted?	No.
4	What Order?	As per final order.

REASONS

07. Both plaintiff and defendant have produced many documents on record in present suit. Perused all these

documents minutely. I discuss those documents at necessary instances.

AS TO POINTS NO. 1 TO 3 :-

08. These all three points are inter-linked with each other. Hence, in order to avoid repetition of facts and evidence, I discuss all these points together.

09. The plaintiff has produced 7X12 Extracts of suit properties, i.e. Gat No. 166 and 157 at Exh. 6 and 7 respectively.

10. Perusal of record shows that the defendant has filed some documents along with Ferist at Exh.17. The document at Exh.17/1 is copy of Judgment in R.C.S No. 45/2012. Perused this document minutely. The properties mentioned in this suit, i.e. Gat no. 166 and Gat no.157 of Mauje Nioshi, Tal. Lanja, Dist. Ratnagiri are the same properties in present suit. Said suit, R.C.S No. 45/2012 was dismissed in default as per Order IX, Rule 8 of the Code of Civil Procedure, by an Order below 49, dated 20.10.2018, because of absence of plaintiffs No.1(a) to 1(d) in that matter. Ld. Advocate of defendant has argued that no fresh suit can be filed if previous suit was dismissed under above mentioned Order of Code of Civil Procedure. Now, in this context, provision of Order IX, Rule 8 should be considered.

8. Procedure where defendant only appears.— Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

11. Ld. Advocate of defendant has filed two citations on this legal point.

a. **Mayandi Vs. Pandarachamy, decided on 19/08/2019**, in which

“9. Decree against plaintiff by default bars fresh suit (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

.....7. In view of the aforesaid, High Court erred in law in holding that the subsequent suit was based on different cause of action, as such it was maintainable. The impugned judgment and order is patently illegal. Thus, it is set aside and the suit is ordered to be dismissed as it was not maintainable. The purchaser is sailing in the same boat as that of the original plaintiffs, he cannot be said to be having better rights than the original plaintiffs.

b. **Amruddin Ansari (Dead) through LRS Vs. Afajal Ali, decided on 22/04/2025**, in which

14 Order IX Rule 9 of the C.P.C. reads thus:

“9. Decree against plaintiff by default bars fresh suit— (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies

the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. and shall appoint a day for proceeding with suit.

..16....Whereas if the suit is dismissed under Rule 8 of Order IX of the C.P.C., the plaintiff cannot bring a fresh suit on the same cause of action. The only remedy available to the plaintiff is to move an application for setting aside the order of dismissal and for restoration of suit.

12. Minute perusal of both these citations clearly shows that the plaintiff shall be precluded from bringing a fresh suit in respect of same cause of action, if previous suit was dismissed under above mentioned Order of Code of Civil Procedure. The only remedy available to him is Restoration application. Such Restoration proceeding between present parties is also on record. Ld. Advocate of defendant filed copy of order in Restoration proceeding, i.e. Civil M.A. 3/2019 along with documents at Exh.21. This is condonation of delay proceeding for restoration of dismissed suit R.C.S. No. 45/2012. Said application was dismissed by an Order, dated 01.02.2024. The plaintiff could seek legal remedy in respect of such dismissal order in restoration proceeding. However, he has not done so. There is no any other record in present suit proceeding. Now, in view of above legal conditions in present suit, the question is whether plaintiff has to get remedy by filing this suit against same defendant, for same suit-properties and for same cause of action?

13. The record shows that the previous suit, i.e. R.C.S

No. 45/2012 is for perpetual injunction and the present suit is also for perpetual injunction. Parties and suit properties are same in both suits. If this is so, then in light of above legal discussion, plaintiff cannot seek for same remedy again by filing this fresh suit, when previous suit was dismissed under Order 1, Rule 8 of Code of Civil Procedure.

14. Thus, at this interim stage, taking into consideration all above discussion, it is observed that the plaintiff failed to prove points of *prima-facie* case, balance of convenience and irreparable loss in his favour. Hence, I answer points No. 1 to 3 in negative.

AS TO POINT NO. 4 :-

15. Taking into consideration above all discussion, in answer to point No. 4, I pass following order:-

ORDER

1. The application is rejected.
2. Both parties shall bear their own costs.

Date:15/04/2026
Place: Lanja.

(S. R. Joshi)
Civil Judge Junior Division.
Lanja.

CERTIFICATE

I affirm that the contents of this pdf file Order are same words as per original Order,

Name of the Stenographer: S. D. Chavan

*Court Name: Civil & Criminal Court, Lanja,
Dist.Ratnagiri,*

Date of decision : 15/04/2026.

Judgment/Order signed by P.O.on : 15/04/2026.

Judgment/Order uploaded on : 15/04/2026.