



**CNR No. MHSI070001412020
Order passed below Exh. No. 112
in R.C.S.No. 20/2020**

The present application is filed by the plaintiffs under Order XXXIX Rule 1 of the Code of Civil Procedure. The plaintiffs seek a direction to defendant No. 15 to remove the vehicle and to restrain him from causing any obstruction to the wedding arrangements in the open space in front of House No. 2223 and to the access to the said house.

2. The plaintiffs state that they have filed a suit for partition, separate possession, and injunction in respect of the suit properties. They had earlier filed an application for seeking interim order restraining defendant No. 15 from carrying out construction vide application Exh.80. Defendant No. 15 has temporarily stopped the same. The daughter of plaintiff No. 2 is to be married on 26.04.2026 and preparations are in progress. During this period, defendant No. 15 has deliberately parked his Swift Dzire in the open space in front of House No. 2223 to create obstruction. Plaintiff No. 2 intends to erect a marriage mandap in the open space in front of House No. 2223. Defendant No. 15 has sufficient alternative space for parking. Hence, this application for the reliefs stated above.

3. The application is resisted by defendant no.15 by filing a reply at Exh.118. It is contented that the

description of the suit property in paragraph No. 1 of the application is incorrect. Therefore, the plaintiff's claim for partition is not maintainable. Unless this ambiguity is removed, no relief can be granted. The plaintiff has not approached the Court with clean hands. The plaintiff is trying to obtain an order to put up a structure in the suit property and to disturb the possession of the defendants. The plaintiff cannot change the nature or possession of the suit property during the pendency of the suit.

4. Even if the plaintiff and the defendants are co-sharers, the plaintiff cannot claim exclusive possession of any specific portion. The possession of the parties was earlier settled by family arrangement. Each party constructed their house with consent. The open space in question has been in the possession of defendant No. 15 since long. The plaintiff is now trying to encroach upon it. The application is filed under the pretext of marriage. Defendant No. 15 has never parked any vehicle in a manner that causes obstruction. No prima facie case is made out. The balance of convenience is in favour of defendant No. 15. No irreparable loss will be caused to the plaintiffs if relief is refused. However, if relief is granted, it will cause serious prejudice to defendant no.15. Hence, he prayed to reject the application.

5. Heard the learned advocates for both the parties at length. Perused the record. Points for my determination along with findings and reasons thereon are as under :

Sr.No.	Points	Findings
1	Whether the plaintiffs have made out a prima facie case?	...No
2	Whether the plaintiffs show that balance of convenience lies in their favour ?	...No
3	Whether the plaintiffs will suffer irreparable loss if injunction as prayed for is not granted ?	...No
4	What order ?	Application is rejected.

REASONS

AS TO POINT NO. 1 to 4

6. These points are interconnected. Therefore, they are taken up together for consideration to avoid repetition.

7. I have given anxious consideration to the pleadings, documents and rival submissions advanced by both parties. The present application is filed by the plaintiffs seeking a temporary injunction restraining defendants No.15 from parking his vehicle in open space in front of House No.2223 and also to restrain him from causing any

obstruction to the wedding arrangements or access to the house.

8. At the outset, it is necessary to state that the relief claimed in the present application is not prayed for in the main suit. The Hon'ble Supreme Court in the case of ***Cotton Corporation of India Vs. United Industrial Bank, AIR 1983 SC 1272*** has held :

*".... It is undisputable that temporary injunction is granted during the pendency of the proceeding so that while granting relief the Court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. **If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted.***

(Emphasis Supplied)

In light of the aforesaid parameters and settled principles, the relief sought in the present application cannot be granted to the plaintiffs, as it has not been claimed as a final relief in the suit.

9. Be that as it may, it is admitted that the open space in front of house No. 2223 in respect of which the plaintiffs seek to restrain defendant No. 15 from parking his

vehicle and from erecting a marriage mandap is common ancestral property. All co-sharers have equal rights, title, and interest in common ancestral property. The plaintiffs cannot seek to restrain any co-sharer, including defendant No. 15, from using and enjoying the common ancestral property unless they establish exclusive possession over a specific portion, namely the open space in front of House No. 2223. Admittedly, the plaintiffs have not claimed exclusive possession over the said open space.

10. It is a settled principle that an injunction cannot be granted against a co-sharer unless the person claiming such relief is in exclusive possession or unless he shows that the act of other co-share amounts to damage or diminishing the value of the suit property. No such case is made out by the plaintiffs. Therefore, the plaintiffs have failed to establish a prima facie case. The balance of convenience is also not in favour of the plaintiffs.

11. From the photographs placed on record by the plaintiffs vide list Exh.114, it does not depict that defendant No. 15 has parked his vehicle in such a manner that the plaintiffs ingress and egress to House No. 2223 is obstructed. The plaintiffs can make alternative arrangements for the marriage, such as using a wedding hall or any other suitable place. If the application is rejected, no irreparable loss will be caused to the plaintiffs.

On the other hand if defendant No. 15 is restrained, it would amount to curtailing his lawful right to use and enjoy the common ancestral property. The same will cause irreparable loss to him, as it would interfere with his lawful right to enjoy common ancestral property.

12. From the above discussion, the plaintiffs have failed to make out a prima facie case. The balance of convenience is not in their favour. Refusal of the injunction will not cause irreparable loss to the plaintiffs. Hence, Point Nos. 1 to 3 are answered in the negative. In answer to point No.4 following order is passed,

<u>ORDER</u>	
1.	Application Exh. 112 is rejected.
2.	Costs in cause.
	(Pronounced and dictated in open Court.)

Sd/-

Place : Malvan
Date : 22/04/2026

M.K.Fakih
Civil Judge J.D. Malvan.