

ORDER BELOW EXH 5

Perused the application at Exh.5, say filed by the defendants at Exh.15, documents placed on record by both sides and the authorities relied upon by the learned Advocates. Heard Shri. P.J. Raorane learned Advocate for the plaintiffs and Shri. M. M. Sawant, learned Advocate for the defendants, at length.

2. The plaintiffs have instituted the present suit seeking declaration that the suit well situated in Survey No.397, Hissa No.6 of Village Harkul Khurd is their private well and that the defendants have no manner of right to interfere with the same by installing electric pumps therein. The plaintiffs have further sought perpetual and mandatory injunctions against the defendants. Pending the suit, the present application at Exh.5 has been preferred under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure praying for temporary mandatory injunction directing the defendants to remove the electric motors installed by them in the suit well and restraining them from reinstalling or using such motors during the pendency of the suit.

3. The case of the plaintiffs, in substance, is that Survey No.397, Hissa No.6 is the ancestral property of the plaintiffs and the suit well situated therein exclusively belongs to them. According to the plaintiffs, though the defendants are not prevented from taking water manually from the well, they have, without obtaining consent of the plaintiffs, installed electric pumps in the suit well and are continuously extracting water therefrom. It is their contention that installation of electric pumps has substantially increased the quantity of water drawn from the well, thereby adversely affecting the plaintiffs' agricultural operations and causing

continuous interference with their peaceful enjoyment of the suit property. The plaintiffs have pleaded that several complaints were made before the Tanta Mukti Committee, Gram Panchayat and revenue authorities requesting removal of the electric pumps, however, the dispute could not be amicably resolved, compelling them to institute the present suit.

4. The plaintiffs have further contended that the dispute is not regarding the defendants drawing water from the well as such, but is specifically confined to the illegal installation and operation of electric motors by the defendants. It is submitted that unless the electric pumps are immediately removed, the plaintiffs would continue to suffer irreparable loss during the pendency of the suit and, therefore, a temporary mandatory injunction is necessary to preserve their rights till final adjudication.

5. In support of the application, the plaintiffs have produced copies of the revenue record, Gram Panchayat correspondence, complaints made before various authorities. The learned Advocate for the plaintiffs has invited attention to the communication issued by Gram Panchayat, Harkul Khurd dated 03.06.2024, wherein it is observed that though the old 7/12 extract contained an entry of public well, the present revenue record does not disclose such an entry and further that no corresponding entry regarding the alleged public well is available in the Gram Panchayat records. The communication further records that unless appropriate transfer or dedication documents are produced, the well cannot be entered as public property in the Gram Panchayat register. The plaintiffs have also relied upon the complaints made before the authorities alleging unauthorized installation of electric pumps by the defendants in the suit well and requesting their removal. Proceedings before the Tanta Mukti Committee

have also been relied upon to show that the dispute between the parties pertains to installation and operation of electric motors over the suit well.

6. The learned Advocate for the plaintiffs has further relied upon the judgment of Hon'ble Madhya Pradesh High Court in the case of ***Ganikhan and others Vs. Amanabai and other reported in AIR 1982 MP 190***, submitting that the purpose of granting temporary injunction is to preserve the existing rights of the parties and to prevent irreparable injury during pendency of the litigation. It is argued that the relief sought by the plaintiffs is confined only to removal of the electric motors and not to restraining the defendants from drawing water manually from the well. According to him, unless the electric pumps are removed immediately, the plaintiffs would continue to suffer irreparable injury which cannot be adequately compensated by damages.

7. The defendants have opposed the application by filing their detailed say at Exh.15. The defendants have denied all the material allegations made in the application and have contended that the plaintiffs have deliberately suppressed material facts while approaching the Court. According to the defendants, the suit well is not the exclusive private property of the plaintiffs but is a common/public well which has been used by the villagers since several decades. It is their specific contention that the villagers had collectively contributed for construction of the well and the defendants, along with other villagers, have been drawing water therefrom since long. The defendants have further contended that electric pumps have been in use for considerable time and that the plaintiffs themselves had earlier objected to such installation before different authorities.

8. The defendants have placed strong reliance upon the revenue record, particularly the old 7/12 extract, wherein an entry describing the well as "सार्वजनिक विहीर" is reflected. According to the learned Advocate for the defendants, the plaintiffs have not sought any declaratory relief for cancellation or correction of the said revenue entry. Therefore, so long as the said entry continues to exist, the plaintiffs cannot claim an exclusive prima facie right over the well or seek removal of the electric pumps at the interlocutory stage.

9. The learned Advocate Shri. M. M. Sawant appearing for the defendants has vehemently argued that the relief sought in Exh.5 is in the nature of a temporary mandatory injunction, which is an extraordinary and discretionary relief. It is submitted that such relief can be granted only in rare and exceptional cases where the Court is satisfied about the existence of a very strong prima facie case, overwhelming balance of convenience and imminent irreparable injury. According to him, the present case involves seriously disputed questions regarding the nature and ownership of the suit well, which can be decided only after recording evidence during trial. It is further submitted that directing removal of the electric pumps at the interlocutory stage would virtually amount to granting the principal relief claimed in the suit itself and would alter the existing state of affairs instead of preserving it. Therefore, according to the defendants, no exceptional circumstance has been made out warranting grant of temporary mandatory injunction.

10. After considering the pleadings and rival submissions, the following points arise for my determination of which findings are recorded for the reasons to follow.

Sr. No.	Points for Determination	Findings
1.	Whether plaintiffs have made out a prima facie case for grant of temporary injunction?	No
2.	Whether the balance of convenience lies in favour of plaintiffs?	No
3.	Whether plaintiffs will suffer irreparable loss and injury if temporary injunction is refused?	No
4.	What order?	The application is rejected with costs.

REASONS

AS TO POINT NOS. 1 TO 4

11. Since all the above points are interconnected and arise out of the same set of facts and evidence, they are being dealt with together for the sake of convenience and to avoid repetition.

12. At the outset, it is necessary to bear in mind that the present application is not one seeking an ordinary prohibitory injunction. The plaintiffs have prayed for issuance of a temporary mandatory injunction directing the defendants to remove the electric motors installed in the suit well during pendency of the suit. A mandatory injunction, even at an interlocutory stage, compels a party to perform a positive act and ordinarily alters the existing state of affairs. Such a relief is fundamentally different from a prohibitory injunction, the object of which is merely to preserve the status quo pending adjudication of the rights of the parties.

13. It is well settled that grant of a temporary mandatory injunction is governed by principles more stringent than those applicable to an ordinary temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. Though the Court undoubtedly possesses jurisdiction to grant such relief in an appropriate case, the same is required to be exercised with great caution and only in exceptional circumstances. Before granting such relief, it must be satisfied that the plaintiff has established a strong prima facie case of a higher degree than what is ordinarily required for grant of a prohibitory injunction; that the balance of convenience overwhelmingly tilts in favour of the plaintiff; that refusal of interim relief would result in irreparable or serious injury incapable of being adequately compensated; and that withholding such relief would perpetuate injustice. Equally well settled is the principle that ordinarily the Court should refrain from granting, at an interlocutory stage, a relief which substantially amounts to granting the final relief claimed in the suit itself.

14. The learned Advocate for the plaintiffs has relied upon the judgment of Hon'ble Madhya Pradesh High Court in the case of ***Ganikhan and others Vs. Amanabai and other reported in AIR 1982 MP 190*** and has contended that the purpose of interim injunction is to preserve the rights of the parties pending adjudication and to prevent irreparable injury. There cannot be any dispute with the proposition of law laid down therein. However, every precedent has to be applied in the backdrop of the facts of the case before the Court. The ratio of the said judgment cannot be construed to mean that a temporary mandatory injunction should invariably follow merely because some interference is alleged by the plaintiff. On the contrary, it is still required to examine whether the facts of the particular

case satisfy the higher threshold necessary for grant of such extraordinary relief.

15. On the other hand, the learned Advocate for the defendants has rightly contended that a temporary mandatory injunction can be granted only in rare and exceptional cases. According to him, the plaintiffs have failed to establish any such exceptional circumstances warranting exercise of such extraordinary jurisdiction. This submission requires careful consideration in the light of the pleadings and the documentary material placed before the Court.

16. The primary controversy between the parties is not merely regarding installation of electric motors but relates to the very nature and character of the suit well. According to the plaintiffs, the well exclusively belongs to them and the defendants have no authority to install electric pumps therein. The defendants, on the contrary, contend that the well is a common/public well which has been used by villagers for several decades and, therefore, installation and use of electric pumps cannot be treated as unauthorized. Thus, the very foundation of the rival claims is seriously disputed.

17. The plaintiffs have placed reliance upon the communication issued by Gram Panchayat dated 03.06.2024 to contend that the present revenue record does not contain any entry of public well and that no corresponding entry is available in the Gram Panchayat register. At the same time, the said communication itself records that the earlier revenue record contained an entry describing the well as a public well. The old revenue record produced on record also reflects such entry. Whether the said entry was correctly made, whether the well is in fact public or private,

whether the subsequent omission of such entry has any legal consequence and what rights, if any, accrue to either party are all disputed questions requiring appreciation of oral and documentary evidence during trial. Such questions cannot be conclusively adjudicated while deciding an interlocutory application.

18. It is also significant that the plaintiffs have specifically submitted that they are not objecting to the defendants drawing water from the well but have objected only to installation of electric motors. However, the relief sought in the present application is a direction to remove the electric motors already installed. Such a direction, if granted at this stage, would necessarily disturb the existing state of affairs and substantially grant one of the principal reliefs claimed in the suit. If ultimately the suit is dismissed, restoration of the position existing today may not be free from complications. Therefore, it is required to exercise greater restraint while considering such a prayer.

19. The complaints made before the Tanta Mukti Committee and other authorities undoubtedly indicate that disputes exist between the parties regarding installation of the electric motors. However, those complaints by themselves do not conclusively establish the exclusive proprietary right of the plaintiffs over the suit well nor do they establish circumstances so exceptional as to justify grant of a temporary mandatory injunction before recording evidence.

20. The plaintiffs have produced copies of the revenue record pertaining to Survey No.397, Hissa No.6. The old 7/12 extract relied upon by the parties reveals an entry of "सार्वजनिक विहीर" in respect of the suit property. The defendants have placed considerable reliance upon this entry

to contend that the well has always been a common/public well and, therefore, every villager, including the defendants, is entitled to use the same. On the other hand, the plaintiffs contend that the said entry does not correctly represent the true nature of the well and that the well is situated in their private property. They have further relied upon the subsequent revenue record wherein such specific entry of "सार्वजनिक विहीर" is no longer reflected.

21. It is also pertinent to note that the plaintiffs themselves have consistently asserted that they do not object to the defendants drawing water from the well and that their grievance is confined only to installation of electric motors. This very contention demonstrates that the parties have been using the well and that the dispute essentially concerns the manner in which the well is being utilised. Whether the defendants possess any legal right to install electric motors over the suit well necessarily depends upon adjudication of the larger issue as to the nature of the well itself, namely, whether it is a private well exclusively belonging to the plaintiffs or a common/public well available for common use. That foundational issue cannot be conclusively decided merely on the basis of the documents presently produced.

22. Another important aspect which cannot be lost sight of is that the relief sought in Exh.5 is not merely prohibitory in nature. The plaintiffs seek a direction compelling the defendants to remove the electric motors already installed in the suit well. Such a direction would amount to altering the existing factual position prevailing on the date of filing of the suit. The Hon'ble Courts have consistently held that where the grant of interim relief substantially grants the final relief claimed in the suit, the Court should

exercise extreme caution and ordinarily decline such relief unless exceptionally strong circumstances are established. In the present case, having regard to the serious dispute regarding the character of the well and the rival documentary material available on record, this Court does not find such exceptional circumstances to exist.

23. The judgment relied upon by the learned Advocate for the plaintiffs lays down the general principles governing grant of interim injunction. However, the facts of the present case stand on a different footing. Here, the dispute regarding ownership and nature of the well itself remains unresolved. Therefore, the ratio relied upon by the plaintiffs does not persuade this Court to grant a temporary mandatory injunction which would virtually amount to granting one of the principal reliefs sought in the suit before the evidence is recorded.

24. Having regard to the material presently available on record, I am of the considered opinion that the plaintiffs have not succeeded in establishing a strong prima facie case of the nature required for grant of a temporary mandatory injunction. Since the fundamental dispute regarding the character and user of the suit well itself remains to be adjudicated after parties lead evidence, the balance of convenience also does not favour altering the existing state of affairs by directing removal of the electric motors at this interlocutory stage.

25. The plaintiffs have also failed to demonstrate that refusal of the present relief would result in such irreparable injury as cannot be compensated or appropriately remedied after final adjudication. On the contrary, if the mandatory relief sought is granted at this stage and the defendants ultimately succeed in the suit, irretrievable prejudice may be

caused by altering the existing position before determination of the rights of the parties.

26. Accordingly, the plaintiffs have failed to establish the essential requirements for grant of a temporary mandatory injunction. Hence, Point Nos.1, 2 and 3 are answered in the Negative and in answer to point number 4, the following order is passed.

ORDER

1. The application at Exh.5 is rejected with costs.
2. It is clarified that the observations and findings recorded in this order are only for the purpose of deciding the present application at Exh.5 and are purely prima facie in nature. The same shall not influence the adjudication of the suit on merits after recording of evidence.

Kankavli
Date: 24/07/2026

(Shubham G. Laturiya)
Civil Judge J.D., Kankavali
JO Code: - MH03297