

MHSN020014652025

**ORDER BELOW EXHIBIT NO. 5 IN R.C.S. NO. 187/2025**

Ashok Bapuso Kamble
Vs.
Vimal Subhash Budhale & Ors.

The present application is filed by the plaintiff to restrain the defendants from making any construction and disturbing the possession over the suit property till decision of the suit.

2] It is the contention of the plaintiff that the suit property mentioned in para no. 1 of the suit is ancestral property of the father of the plaintiff i.e. Bapuso Atmaram Kamble and accordingly his name is mutated on it. The suit property is not partitioned yet among the legal heirs of the Bapuso Kamble. The father of the plaintiff died on 30.03.2009. Since then, the plaintiff and his brothers are in the possession of the suit property. Recently, the plaintiff came to know that these defendants are making construction over the suit property without any authority and permission from the competent authority, by disturbing the possession of the plaintiff. Therefore on 24.06.2024 the plaintiff filed a complainant before Municipal Corporation Sangli, Miraj and Kupwad, and it has given notice to the defendants to stop the illegal construction over the suit property. However, the defendants did not stop. Therefore on 05.07.2025, the plaintiff went to them to make them understand, however they not only did not listen but also threatened him not to enter here otherwise you will be beaten up. The defendants need to be restrained from making any construction

on the suit property by disturbing the possession of the plaintiff. Therefore, he filed present suit for injunction and by this application the plaintiff prayed for temporary injunction against the defendants as above.

3] The defendants appeared in result of suit summons. The Defendant no. 1 strongly objected of the plaintiff by filing Written Statement cum say at Exh. 18. It is the contention of the defendant no. 1 that the the plaintiff has not mentioned his share in the suit property. There is no correct description of the suit property and therefore he can not claim relief against the third party. The name of the father of the plaintiff and other defendants is mutated on the suit property. It shows that the suit property is not exclusively owned by the father of the plaintiff. The boundaries of the suit property are also not correctly described. In fact, the deceased Ramchandra Kamble converted the said property into non agricultural one by the orders of the District Collector, Sangli. Thereafter the plotting of the said property is done and as per the Government rules. The said property is allotted to husband of the defendant no.1 in the year 1987. There is no evidence to show that the plaintiff is possessor of the suit property. The suit therefore is not maintainable. The name of the defendant no. 1 is mutated over the property bearing description as property no. 126/10/0 plot no. 14 and property no. 33, after the death of her husband, in the year 2009. The plaintiff has no relief against the property no. 126/10/0 having plot no. 14, which is in possession of the defendant no.1. The defendant no.1 has produced

on record the documents which show her possession over the property no. 126/10/0 having plot no. 14. The plaintiff has no connection with the said property. Therefore, this application be rejected.

4] The defendant no. 2 appeared and filed his say below Exh. 21 by stating that there is no whisper against the defendant no. 2 in the suit. The plaintiff filed present suit against the wrong person as he has no connection with the suit property. The defendant no. 2 is labour and no injunction can be sought against the labour who is making construction. Therefore, this application be rejected.

5] Perused the application and say filed at Exh. 18 and 21. Heard both sides. Perused the documents on record. After considering rival contention of the both parties following points arose for my determination and I am answering them with reasons as under:

Sr. No.	Point for determination	Findings
1.	Whether the plaintiff made out prima facie case?	No
2.	Whether the plaintiff proves balance of convenience in his favor ?	No
3.	Whether plaintiff proves that he will suffer irreparable loss and hardship if temporary injunction is not granted in his favor?	No
4.	What order?	As per final order.

-: REASONS :-

6] It is argued for the plaintiff that the defendants is trying to obstruct the possession of the plaintiff over the suit property with ill intention to grab the entire suit property under the pretext of so-called allotment by the property by the Government. The defendants did not produce any document on record to that effect. Therefore, the plaintiff has prima facie case and balance of convenience in his favor and if Temporary injunction is not granted in his favor then he will suffer irreparable loss. Therefore, plaintiff prays that temporary injunction be granted in his favour.

7] Whereas the learned advocate for the defendants argued that there is dispute in respect of the identification of the suit property and therefore the plaintiff is not entitled for the relief as prayed. The plaintiff neither has prima facie case or balance of convenience in his favor. The construction work of the house of the defendant no.1 is going on. Now if the temporary injunction is granted in favor of the plaintiff, then it is the defendant no.1 who will suffer irreparable loss. Therefore, the plaintiff has no prima facie case nor balance of convenience in his favor. Accordingly, the defendant no.1 prayed for rejection of the application.

Point no.1

8] As per the contention of the plaintiff, he is owner and possessor of the suit property. To substantiate this contention, he filed on record the 7/12 extract of the Gat no. 171/2 plot no. 14, city

survey extract no 4207, extract from inquiry register, complaint application filed by the plaintiff before municipal corporation, photographs of the suit property etc.

9] Whereas it is the contention of the suit property is not correctly described by the plaintiff and the defendant no.1 is making construction over the property which bears the number as property no. 126/10 and property no. 33. The plot no. 14 of the property bearing no. 126/10 is in the possession of the defendant no. 1 since long. The same is not identical to the suit property. To substantiate these contentions, the defendant no.1 filed on record the photocopy of N.A. order, tax receipt bearing the name of deceased Subhas Budhawale, name of the defendant no.1 is mutated after the death of Subhas, tax receipts in the name of the defendant no. 1, residential certificate issued in favour of the deceased Subhas etc.

10] I have gone through the oral submissions and documentary evidence of the both sides. It appears that the suit property bears the description as plot no. 14 out of the gat no. 171/2 of Jakat naka, Madhavnagar, Sangli and the defendants claims to be making construction on the plot no. 14 of property no. 126/10/0 of Jakat naka no. 3, Madhav nagar, Sangli. There is nothing on record shows that the suit property is identical to that the property of the defendant no. 1 is making construction. The evidence as to its identification needs to come on record. At this stage, the documents filed on record prima facie shows that the defendant no. 1 is in possession of the plot no. 14 of property no. 126/10/0 of Jakat naka

no. 3, Madhavnagar, Sangli. Therefore, apart from contentions and the complaint application submitted by the plaintiff to the Municipal Corporation of Sangli Miraj Kupwad, there is nothing on record which shows that the defendant no. 1 is making construction over the suit property. Apart from this, the plaintiff has not disclosed his share in the suit property and information regarding the other legal heirs the deceased Bapurao Kamble. Therefore, I am of the opinion that the evidence also needs to be adduced in that respect. Considering the reasons recorded above, the plaintiff has not *prima facie* made out his case. Accordingly, I answer point no. 1 in negative.

Point no. 2:

11] Now let me see that whether the plaintiff is actually in necessity for affording the protection of his right in the suit property. It is argued for the plaintiff that the defendant no.1 denied the ownership of the suit property and threatened him to beat if he stops her construction. Admittedly the defendant no.1 denied the ownership of the plaintiff over her property bearing the description as above. The identity of the suit property is not established yet. Therefore, I am of the opinion that if the protection as alleged by the plaintiff cannot be given to him in respect of alleged threat of dispossession and plaintiff's right to enjoy his property. Hence the balance of convenience does not lie in favor of plaintiff. Accordingly, I answer point no. 2 in negative.

Point no. 3.

12] It is settled principle that the court must be satisfied that refusal to grant injunction would result in irreparable loss to the party seeking the relief and he needs to be protected from the consequences of the apprehended injury.

13] In the back ground let me see whether the plaintiff made out his case that if temporary injunction not given to him then they will sustain irreparable loss or injury. In the instant matter, unless the identification of property is established it cannot be said that the plaintiff will suffer irreparable loss if temporary injunction is not granted in his favor. Therefore, by rejecting this application, it cannot be said that this Court is allowing illegality to perpetuate. Accordingly, I answer to point no. 3 in the negative.

14] In result of above discussion, I pass the following order:

ORDER

i] The application is rejected.

ii] Cost in cause.

Sangli.
Date:- 12/08/2025.

(Rohini S. Patil)
Jt. Civil Judge, J.D., Sangli.