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| MHSN060006692025<br> | <b>R.C.S. 52/2025</b><br>Balasaheb Dhumal Vs. Prakash Jujare & ors. |
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**ORDER BELOW EXH.5**

1. This is an application filed by plaintiff for temporary injunction under Order 39, Rule 1 and 2 r/w 151 of the Civil Procedure Code, 1908 (hereinafter referred as C.P.C.) praying for the defendant no.1 and 2 their servants, agents and persons claiming through them be restrained by an order of injunction from making illegal construction over the suit property.

**Plaintiff's case in brief is as under :**

2. The plaintiffs stated that the suit property is owned by plaintiff having hotel business in the name and style as “ Vaibhav Permit Room Beer Bar” from last twenty five years. Towards eastern side of the same, there is construction of kitchen, drainage and toilet. The plaintiff fixed windows to the same and the light and air comes from adjacent government lane. Towards western side of the said property, there is government lane and towards eastern side of the road, there is house property bearing C.S.No.670 of defendant nos.1 and 2. The said property is owned by Maharashtra Government and defendants are residing as tenants. Previously, defendant no.1 and 2 was having house of tile roof. Prior to one month, they dilapidated the same and started construction in R.C.C. without taking permissions of

Grampanchayat. Defendants are trying to make construction in common lane road as well as dug borewell therein. They also installed septic tank in the said lane road. Defendants also build R.C.C. parapit. Therefore, the light coming from the lane road is stopped. If defendants succeeded in construction over the lane road, plaintiff will deprive from right of access of light and air. Plaintiff made complaint with defendant no.3 Grampanchayat, but they did not take any action against defendant no.1 and 2. Plaintiff tried to convince defendant no.1 and 2, but they did not gave attention. There requires considerable time to decide the suit on merit. If defendants succeed to construct building in government lane road, plaintiff will deprive from his legal rights, which will not be compensated in terms of money. Therefore, plaintiff prayed that, defendant no.1 and 2 their servants, agents and persons claiming through them be restrain by an order of injunction from making illegal construction over the suit property.

3. Defendant no.1 and 2 filed their say at Exh.11 and denied the contents of the application. They submitted that, there is government lane road towards western side of plaintiff's property and adjacent to same, there is house property of defendant no.1 and 2 bearing C.S.No.670 and they are making construction therein. They did not make any sort of construction in south-north lane road towards eastern side of C.S.No.670. Plaintiff wrongly submitted that, they dug borewell as well as installed septic tank in the said lane road. Defendants are only having said lane road for access to C.S.No.670, therefore, if defendants made

encroachment, it will become difficult for them for access in C.S.No.670. Also the defendants removed RCC parapets in the government lane. Therefore the contention of plaintiff that, light coming from the porch is blocked is false. In fact, the plaintiff was and is not having occupancy right towards western side of C.S.No.666. After perusal of government lane road and city survey map of property of plaintiff and defendant, it reveals that, the contention of plaintiff regarding obstruction to air and light is false. In order to make obstruction to construction of defendants and in order to make new occupancy from western side, plaintiff filed present suit. Therefore, defendants prayed to reject the application.

4. After considering the application and documents filed on record by both parties and after hearing arguments of Learned Advocates of both sides, the following points arise for my determination. I have given findings on points as below for the reasons recorded there under ;

| <b>Sr. No.</b> | <b>POINTS</b>                                                                                  | <b>FINDINGS</b>     |
|----------------|------------------------------------------------------------------------------------------------|---------------------|
| 1.             | Whether there is a prima-facie case in favour of the plaintiff ?                               | In the affirmative. |
| 2.             | Whether balance of convenience lies in favour of the plaintiff?                                | In the affirmative. |
| 3.             | Whether irreparable loss will be caused to plaintiff, if temporary injunction is not granted ? | In the affirmative. |

4. What order ?

As per final  
order

### **REASONS**

5. In order to support his claim, plaintiff filed on record property extracts of C.S.No.666 and C.S.No.670, joint map of C.S.No.666,667,668,669 and 670, complaint application given by plaintiff to Grampanchayat, Mhaisal, photocopy of letter of Gramvikas Officer dated 29.01.2025 and photographs of suit property at Exh.3/1 to 3/9.

#### **As To Point No.1 :-**

6. While deciding the application for temporary injunction, the Court has to consider the important points of prima-facie case, balance of convenience and irreparable loss.

7. In the present matter, it is the case of the plaintiff that he is running hotel business in the suit property bearing C.S.No.666 and that defendant Nos.1 and 2 are tenants in house property bearing C.S.No.670. According to the plaintiff, there is a government lane between these two properties from which he gets light and air and through which the defendants are now trying to raise construction by putting up R.C.C. work, septic tank and borewell. In the written say, defendant Nos.1 and 2 have denied the allegations of encroachment and obstruction to light and air. They have stated that there is a lane road towards the side of C.S.No.670, that they are using the same for access to their house property and that they have not made any construction in the lane road as alleged. Thus, from the rival pleadings and documents, it prima-facie emerges that there exists a lane/passage between the properties of the

parties, though the exact nature of that lane and the rights of the parties therein are matters to be finally adjudicated at the time of trial.

8. To support his case, the plaintiff has produced on record property extracts of C.S.No.666 and C.S.No.670, joint map of C.S.No.666, 667, 668, 669 and 670, complaint application given by plaintiff to Grampanchayat, Mhaisal, photocopy of letter of Gram Vikas Officer dated 29.01.2025 and photographs of the suit property at Exh.3/1 to 3/9. On perusal of these documents, particularly the joint map and photographs, it prima-facie appears that there is a narrow lane/passage abutting the properties and that some construction activity or alteration is going on near or in that lane. The defendants, while denying encroachment and obstruction, themselves refer to the “lane road” which they are using for access. In these circumstances, there is clearly a serious triable issue as to whether defendant Nos.1 and 2 are creating new construction/encroachment in the lane so as to affect the plaintiff’s alleged right of access, light and air.

9. At this interlocutory stage, the Court is not required to finally decide the nature of rights of the parties in the lane or whether it is government property or otherwise. It is sufficient that the plaintiff has shown an arguable and bona fide claim to enjoy access and free flow of light and air through the said lane/passage and that such claim is under threat on account of continuing construction by defendant Nos.1 and 2. I therefore hold that the plaintiff has made out a prima-facie case for protection, to the extent of restraining the defendants from raising new permanent construction or encroachment in the disputed lane/passage till the suit is decided. Accordingly, Point No. 1 is answered in the affirmative, to the limited extent stated above.

**As To Point Nos. 2 and 3 :-**

10. Once a prima-facie case of threatened construction in the disputed lane/passage is made out, the next question is regarding balance of convenience and irreparable loss. If defendant Nos.1 and 2 are permitted to continue and complete the alleged R.C.C. construction, septic tank, borewell or any other permanent structure in the said lane/passage, the physical situation will be materially altered and it may become difficult, if not impossible, to restore the lane to its original condition even if the plaintiff ultimately succeeds in the suit. Such construction may permanently affect access, light and air to the plaintiff's premises, which cannot be adequately compensated in terms of money.

11. On the other hand, if defendant Nos.1 and 2 are only restrained from raising further new construction or encroachment in the disputed lane/passage and are not prevented from using it for ingress and egress to C.S.No.670 as per existing use, the inconvenience to them would be comparatively lesser. They will continue to enjoy access, and only the disputed new construction will remain stayed till adjudication of rights in the suit. Thus the balance of convenience clearly tilts in favour of maintaining status quo in respect of the disputed lane/passage by restraining further permanent construction therein.

12. If no protection is granted at this stage and defendants continue their construction, the plaintiff is likely to suffer irreparable loss in the form of permanent obstruction in the lane/passage and alleged blocking of light and air, which, once lost, cannot be compensated by damages. Therefore, I hold that the balance of convenience is in favour of the plaintiff and that refusal of temporary injunction is likely to cause

irreparable loss to him. Accordingly, Point Nos. 2 and 3 are answered in the affirmative.

**As To Point No. 4 :-**

13. In view of my findings on Point Nos.1 to 3, the plaintiff has made out a case for grant of temporary injunction to protect the disputed lane/passage from further construction and encroachment till disposal of the suit. However, as the lane/passage is admittedly used by the defendants for access to their house property, it would not be appropriate at this stage to restrain them from using it for ingress and egress. The relief is therefore required to be moulded accordingly. Hence, I proceed to pass the following order.

**ORDER**

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| 1 | The application at Exh. 5 is partly allowed.                                                                                                                                                                                                                                                                                                                                                                                                   |
| 2 | Pending the hearing and final disposal of the suit, defendant Nos.1 and 2, their servants, agents and any persons claiming through them are hereby restrained from raising any new permanent construction, digging borewell, installing septic tank or making any other encroachment or permanent alteration in the disputed lane/passage described in the plaint as lying between C.S.No.666 and C.S.No.670, till final decision of the suit. |
| 3 | It is, however, clarified that nothing in this order shall prevent defendant Nos.1 and 2 from using the said lane/passage for ingress and egress to property bearing C.S.No.670, as per existing use, without making any new permanent construction or encroachment therein.                                                                                                                                                                   |

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| 4 | It is further clarified that the observations made herein are of a prima-facie nature only and shall not affect the merits of the case at the stage of final hearing. |
| 5 | Costs of this application shall be costs in the cause.                                                                                                                |

Place:-Miraj.  
Date :-03.12.2025.

(Smt. P.D.Gaikwad)  
2<sup>nd</sup> Jt.Civil Judge, Jr.Dn., Miraj.