


MHSN060025302023 	<b><u>ORDER BELOW EXH.05 RCS NO.302/2023</u></b> [Mumtaj Ajij Inamdar Vs. Aapaso Babu Kalawant]  (Passed on 29 <sup>th</sup> August, 2025)
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Perused application and say (Exh.28). Heard learned Advocate for plaintiffs and defendants. Hence, considering application, say and arguments, following points arise for determination with my reasons ensued thereon :

Sr.No.	Points	Findings
1.	Whether plaintiffs proves the <i>prima-facie</i> case ?	No
2.	Whether balance of convenience tilts in favour of plaintiffs ?	No
3.	Whether plaintiff will suffer irreparable loss if injunction is not granted ?	No
4.	What order ?	As per final order.

02. To support his contentions, the plaintiffs have filed the documents such as complaints filed at Police Station, Municipal Corporation and photographs. Per contra, defendants filed the copy of extract city survey No.2488, complaint at police station, photographs. Today counter defendants have filed photographs, copy of application filed at police station under Right to Information Act.

### **REASONS**

**As to Point No.1 :**

03. The Learned Advocate for the plaintiffs submitted that,

it was agreed between plaintiffs and defendants that there was oral partition and after construction new toilet old will be demolished. However, defendants have created obstruction and interference in the suit property. Today the photographs have filed which shows there is damage to the toilets. Therefore it is proper to demolish the same. Per contra, the Learned Advocate for the defendants have submitted that there is no proper identification of the suit property. The suit property is in common use. There is Ganesh Temple near the suit property. Due to the acts of plaintiffs, defendants are using the common toilet. They are old age persons. Hence prayed to reject the same.

**04.** It is the contention that, in 2013, plaintiffs have given the temporary toilet and it was orally agreed that another toilet will be construct and the temporary toilet would destroy. According to defendants, it was agreed that, plaintiffs shall construct new toilet over the suit property. Accordingly, plaintiffs have constructed but destroyed the toilet of defendants. Therefore, defendants are using the public toilet.

**05.** *Prima-facie*, plaintiffs have to show there was temporary toilet. Today also plaintiffs have filed photographs on record. On perusal of photographs it appears that, there was one toilet in the suit property. This is the suit for partition and plaintiffs and defendants have equal rights in the suit property. Plaintiffs failed to show that photographs of the toilet are the photographs of the temporary toilet. Plaintiffs also failed to show that defendant No.2 has using the land for animal without consent.

From the photographs it cannot be gathered that it was temporary toilet. Plaintiffs have to show that there is another toilet in the suit property. Therefore, there is no document on record to corroborate the plaintiffs case. *Prima-facie*, it appears that there is no alternative toilet for defendants. Hence, I answer point No.1 in the affirmative.

**As to Point No.2 & 3 :-**

06. Having answer Point No.1 in the negative, the balance of convenience and irreparable loss also in favor of defendants. If the injunction is granted then defendant would suffer more hardship than plaintiffs. Plaintiffs have to prove the *prima-facie* case which they failed. In such circumstances, the other two factor need not to considered in detail. The Hon'ble Bombay High Court in the case of **Bhavna Vs. Navneet, 2015(3 ) MHLJ 472** assumes importance. In para No.08 therein, his Lordships has observed that;

*“Once the prima-facie case is not established, the further aspects as to balance convenience and irreparable loss are immaterial and they need not be considered.”*

In this view of the matter, Point Nos.2 and 3 does not survive and are answered accordingly.

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

07. Having answers to Point No.1 to 3 in the negative, I proceed to pass the following order :-

**ORDER**

1. Application is rejected.
2. Costs in main cause.

(Dictated and pronounced in the open Court).

Miraj.  
Date : 29/08/2025

**(Pravin U. Kulkarni)**  
Jt. Civil Judge Jr. Dn., Miraj.