


MHSN060025302023 	<u>ORDER BELOW EXH.22 RCS NO.302/2023</u> [Mumtaj Ajij Inamdar Vs. Aapasu Babu Kalawant] (Passed on 28 th August, 2025)
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Perused application and say (Exh.25). Heard learned Advocate for counter plaintiffs and counter defendants. Hence, considering application, say and arguments advanced by counter plaintiff, following points arise for determination with my reasons ensued thereon :

Sr.No.	Points	Findings
1.	Whether counter plaintiffs proves the <i>prima-facie</i> case ?	Affirmative
2.	Whether balance of convenience tilts in favour of counter plaintiff ?	Affirmative
3.	Who will suffer irreparable loss if injunction is granted ?	Counter Plaintiff
4.	What order ?	As per final order.

02. To support his contentions, the counter plaintiff has filed the documents such as complaints filed at Police Station, Municipal Corporation and photographs. Per contra, counter 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. It is the contention that, there is no partition of the suit

property. However, there is separate possession of the suit property. over the suit property counter plaintiff have constructed one toilet. But counter defendants have destroyed the same.

04. The Learned Advocate for the Counter defendants 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 counter plaintiffs 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.

05. On perusal of photographs it appears that, counter defendants have damaged the toilet used by the counter plaintiff. There is no document on behalf of the counter defendant to show there is alternative toilet. The suit is for partition and separate possession. The learned Advocate for counter plaintiff fairly submitted that if the portion of toilet went in favour of counter defendant, then he is ready to hand over the share. The counter plaintiffs have no other alternative than to repair the toilet. The photographs filed by both parties it appears that it is photographs of the same toilet. The photographs shows there is damage to the toilet. According to counter defendants, after partition and after construction of separate toilet, it was agreed to destroy the old

toilet. However, there is no partition and separate possession. Therefore, the present toilet cannot be destroyed by counter defendants. *Prima-facie*, it appears that there is no alternative toilet for counter plaintiff. Hence, I answer point No.1 in the affirmative.

As to Point No.2 & 3 :-

06. The counter defendant have failed to show the documents. Therefore, balance of convenience tilts in favour of counter plaintiff. If injunction is not granted counter plaintiff will suffer irreparable loss. The balance of convenience also tilts in favour of the counter plaintiffs. No irreparable loss would be caused to the counter-defendants if the toilet is repaired. Hence, I answer Point No.2 and 3 in the affirmative.

As to Point No.4 :-

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

ORDER

1. Application is allowed.
2. Counter defendants are restrained from causing obstructions and interference from repairing the toilet situated over the suit property till the conclusion of the suit.
3. 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.