

ORDER BELOW EXH – 61 IN RCS NO. 112/2018

The plaintiffs have filed the present application under Order 39 Rule 1 and 2 and under Section 151 of the Code of Civil Procedure, 1908 for removing encroachment in the suit property.

02. It is the contention of the plaintiffs that originally the suit property was allotted to the husband of plaintiff no. 1/1 by Government. After the death of original plaintiff, the plaintiff no. 1/1 to 1/3 are in possession of suit property. The original plaintiff has filed the suit for perpetual injunction. The application for temporary injunction was rejected by this Court. The plaintiff has preferred an appeal bearing its Misc. Civil Appeal No. 97/2019 in the Honorable District Court, Sangli. Such appeal was allowed by the Honorable District Court on -18/09/2024 and defendant no. 1 to 6 were directed not to disturb the possession of the plaintiff over C. S. No. 1006 till final disposal of the suit. The defendants, in spite of these facts, have applied for measurement of C.S. No.1007. The plaintiffs have received the notice of measurement scheduled on 11/03/2025. The plaintiffs have taken the objection for such measurement on 11/03/2025. The plaintiffs have tin shed, kitchen stove (चूल) and cattle shed over the suit property since 40 years. In spite of these facts, the defendants by joining hands with the Officer of Land Records, removed the tin shed and broke the kitchen stove. In this way, the defendants have breached the order of temporary injunction. The plaintiffs went to the police station for lodging a complaint against the defendants. However, the police has not taken cognizance.

03. Later on, again on 22/03/2025, the defendant no. 1, 2, 5 and 6 have encroached upon the suit property and erected the wooden poles therein. At that time also, the police has not taken cognizance of the above incidence. Afterwards, on 28/03/2025, the defendant no. 1 to 6 along with the member of Grampanchayat, forcibly fenced wire compound by erecting wooden pole therein and breached the order of the Court. The defendant no. 1 to 6 ought to have seek the possession of encroached area, if any, in the C.S.No. 1007. However, the defendants are in attempt to take forcible possession of such area. Therefore, the plaintiffs are constrained to file the present application. Hence, present application may be allowed and defendant no. 1 to 6 be directed to remove the encroachment upon the suit property.

04. The defendant no. 1 to 6 have filed their reply vide Exh – 63 and contested the application. It is the contention of the defendants that the plaintiff has no right, interest and share in C. S. No. 1007. Therefore, the contentions of the plaintiffs that the defendants have breached the order of Honorable District Court, is not true and correct. In Regular Civil Appeal No. 132/2014, the Honorable District has held the possession of the defendants over the C.S. No. 1007. The plaintiffs, by taking undue advantage of the decision of Honorable District Court, are in attempt to grab the C. S. No. 1007. The C.S.No. 1006 and C.S.No. 1007 are adjacent to each other. The defendants are using the C.S.No. 1007 for ingress and egress purpose to C.S. No. 1005 since beginning. The plaintiffs are causing harassment to the defendants by filing multiple proceedings against them. The defendants with intent to fix the boundary marks of C.S. No. 1007,

have applied to the Deputy Inspector of Land Records, Kavathe Mahankal. Accordingly, on 11.03.2025, C. S. No. 1007 was measured and boundary marks were fixed. The plaintiffs have no right to raise objection to such measurement. The defendants have not encroached upon the C.S.No. 1006 and not removed the tin shed and kitchen stove over it. The defendants have not breached the order of the Honorable District Court. Therefore, the present application deserves to be rejected. If it is allowed, then the defendants will suffer from irreparable loss which can not be compensated in terms of money.

05. On the basis of the facts alleged, documents filed on record and submissions made by parties, following points arise for my determination to which I recorded my findings along with reasons thereto which are as under-

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Does plaintiffs proves that the relief of temporary mandatory injunction is necessary to restore the previous position of the suit property ?	YES
2.	What Order ?	Application is Allowed.

R E A S O N S

06. The application is duly supported with affidavit.

07. In support of contentions, the plaintiffs have produced certain documents vide Exh – 60 and 75.

08. As against this, the defendants have produced documents vide Exh – 65 and 72.

09. The plaintiffs have relied on the following cited rulings in their support of contentions.

(a) Dorab Cawasji Warden Vs. Coomi Sorab Warden & Ors reported in 1990 AIR 867 and

(b) Edit II Productions Versus Standard Chartered Bank and Others reported in 2019 0 Supreme (Bom) 1642.

10. Heard the Ld. Advocates for both parties at length. Perused the application, reply, documents and citations produced on record.

POINT NO. 1 :-

11. After perusal of record, it appears that the plaintiffs have filed the present suit for perpetual injunction. The plaintiffs appears to have preferred an appeal bearing Civil Misc. Appeal No. 97/2019 in Honorable District Sangli against the order passed below Exh – 5 on 19/03/2019 in the present suit. Such appeal appears to be allowed by the Honorable District Sangli and the present defendants appears to be temporarily restrained from causing obstruction to the possession and construction over the suit property in any manner till the decision of the suit or till any further orders.

12. After passing of above order, the defendants appears to have applied for measurement of C.S. No. 1007. The suit property appears to be the C. S. No. 1006. It is not disputed that the C. S. No. 1007 and 1006 are adjacent to each other. The record reveals that notices were issued by the Office of Deputy Inspector of Land Records, Kavathe Mahankal on 19/02/2025 to the adjacent land owners of C. S. No. 1007 and accordingly, measurement of C.S. No. 1007 appears to be carried out on 11/03/2025. The defendants have not disputed the above facts. The dispute is with regard to in whose City Survey Number, the marking of boundaries of C. S. No. 1007 were shown. In this respect, the Ld. Advocate for defendants has argued that after measurement, the boundaries of C.S. No. 1007 are shown in that City Survey number itself. The defendants have not encroached upon the C.S.No.1006 i.e. suit property nor caused obstruction to the possession of the plaintiffs over it. However, the defendants have admitted that they have erected the wire compound between C.S.No.1007 and C.S. No.1006 which was not present before the measurement.

13. As against above, the plaintiffs have contended that the defendants have erected such wire compound in and over the suit property by removing the cattle shed and breaking the kitchen stove situated in the suit property. From the above assertion of both parties, it can be ascertain that there exists a dispute as to marking of measurement between plaintiffs and defendants. The erection of wire compound by the defendants appears to be a new change or development after passing of order in Civil Misc. Appeal No. 97/2019. Therefore, in view of above facts, the previous position of the suit property before measurement of C.S. No. 1007 and that

of the position exists at the time of passing of order in Civil Misc. Appeal No. 97/2019 needs to be restored.

14. I carefully gone through the principle laid down in ***Dorab Cawasji's case (Supra)*** wherein the Honorable Supreme Court at page no. 3 it has been held that “HELD (1) *The courts can grant interlocutory mandatory injunction in certain special circumstances. (2) The relief of interlocutory mandatory injunction is granted generally to preserve or restore the status quo of the last non- contested status which preceded the pending controversy until the final hearing when full relief may be granted. But since the granting or non-granting of such an injunction may cause great injustice or irreparable harm to one of the parties, the Courts have evolved certain guide-lines. [343F-H] (3) Generally stated, the guidelines are: (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction; (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money; (3) The balance of convenience is in favour of the one seeking such relief.*”

15. In ***Edit II Productions's case (Supra)***, the Honorable Supreme Court relied on the principle laid down in ***Satyabrata Biswas & Ors Vs Kalyan Kumar Kisku & Ors reported in AIR 1994 SC 1837*** wherein in para no. 26 it has been held that “26. *It has been held in the above decision that an act done in the teeth of the order of status quo is clearly illegal. This has also been held by the Supreme Court in Surjit Singh (supra). This decision has held that when the Court intends a particular state of affairs to exist while it is in seizin of a lis, that state of affairs is not only required to be*

maintained, but it is presumed to exist till the Court orders otherwise. The Court has the duty as also right to treat the alienation as having not taken place at all for its purpose, when such alienation is in defiance of a restraint order.”

16. Taking into consideration the facts of the case and the ratio laid down in above cited rulings, it can be said that the defendants have got measured the C. S. No.1007 after passing order in Civil Misc. Appeal No. 97/2019. At present there exists a dispute as to the markings of such measurement between parties. The map of measurement produced by the defendants vide Exh – 72/1 does not disclose the boundary marks of C.S. No.1007 and 1006 nor it discloses the area of encroachment, if any. Already, the defendants were temporarily restrained from causing obstruction to the possession of the plaintiffs as well from construction over and in the suit property by an order in Civil Misc. Appeal No. 97/2019. After passing of such order, the defendants have got measured the C.S. No.1007 and erected the wire compound between C.S.No.1007 and 1006. Therefore, the present facts necessitate to grant the temporary mandatory injunction to restore the previous position of the suit property. Further, the present facts satisfy the criteria laid down in ***Dorab Cawasji's case (Supra)***. Therefore, I hold that granting of temporary mandatory injunction is necessary for restoring the previous position of the suit property. In result, I answer point no. 1 in affirmative.

POINT NO. 2 :-

17. In view of discussion as to point no.1, I pass the following order.

ORDER

1. The present application is hereby allowed.
2. The defendant no. 1 to 6 are hereby directed to restore the previous position of the C.S.No.1006 i.e suit property exists before the measurement of C.S.No.1007 and at the time of passing of order in Civil Misc. Appeal No. 97/2019 within 1 month from the date of this order.
3. Costs shall follow the event.
4. Both parties to take the note of same.

Date :- 15/05/2025

Place :- Kavathe Mahankal

(P. J. Ligade)
Jt. Civil Judge Junior Division,
Kavathe Mahankal