

Order below Ex.5 in RCS 156/2023  
Sunil and Ors 3 Vs Digambar and Ors 4  
(CNR MHSN080006812023)

The interim injunction application restraining the defendants from making further encroachment in the suit property 1A than made etc.,

2 Perused the application, and the record.

3 Heard Ld. Adv.for the plaintiffs. None present for the defendants. The application is proceeded without their say/arguments.

4 The Plaintiff's case may be summarised as under:- The suit property more particularly mentioned in para 1 is owned by the plaintiffs. The total area of the suit property is 4 H 06 R. The defendants have encroached upon by the defendants from the northern side, the details of which are more particularly mentioned as and by way of suit property 1A. The suit property 1A is the part and parcel of the suit property. The nature of the suit property is ancestral. The same was partitioned vide the order of the Tahsildar, Jath Dt.14/08/2018. The same was measured by the plaintiffs through a private measurer. It transpired that the defendants have encroached upon the plaintiff's suit property from the northern side. The area under encroachment is 0 H 13.31 R land. A plaint map has been annexed specifying the suit property, and the encroachment by the defendants. Therefore, it would be prayed that the defendants be temporarily restrained from making further encroachment.

5 The defendants failed to attend or file their ws cum say and contest the proceedings.

6 Heard.

7 The following points arose for my determination to which I record my findings with the reasons thereof.

Sr.No	Points for determination	Findings
1	Do the Plaintiffs prove prima-facie	

	case?	Yes
2	Do they further prove that balance of convenience tilts in their favor?	Yes
3	Do they further prove that they would suffer irreparable loss, if interim injunction is refused?	Yes
4	What order?	As per the final order.

### Points 1 to 3

8 To avoid repetition and for the sake of brevity, the points for determination are taken up hearing together.

9 It is settled law that for grant of interim injunction, the applicant(s) has/have to prove prima-facie the above points for determination and that prima-facie case does not mean, prima-facie title or case proved to the hilt.

10 From the plaint map, it is clear that defendant's agricultural land is shown adjoining to plaintiff 1's land and between the plaintiff 1's and defendant 1's land the encroachment has been shown. The extent of the encroachment has been specified therein to be 13.31 R. The partition order of Tahsildar is below Ex.3/3. This when considered with the Village Form No.7 and 12 of the suit property, it may be said that the plaintiffs claim through the deceased Bharat, who is the deceased father of the plaintiffs. The names of the plaintiffs is shown in the Village Form No.7 to be the owners of the said property i.e., Gat No.731. While describing the suit property the lands of defendants 1 to 3 have been shown towards the northern side. Further, while defining the suit property 1A the land of the plaintiffs has been shown towards the southern side. The map showing the factual position has been produced below Ex.3/Sr.No.2. The affidavit of the measurer i.e., Babasaheb Bhosale has been produced below Ex.29.

11 A question fell for consideration, when the plaintiffs came with a case that the defendants have encroached upon the plaintiffs' some land, what injunction may be granted. The nature of relief sought for by the plaintiffs is that the defendants should not cause further encroachment. In any case, the suit is for removal of encroachment i.e., decree for possession of the encroached land. The defendants failed to appear or contest despite sufficient and reasonable opportunities. The material on the record prima-facie justifies

that the defendants be restrained from making further encroachment. The Village From No.7 and 12 and the partition order are prima-facie suggestive of the ownership of the plaintiffs. Therefore, the plaintiffs proves prima-facie case in their favor. The balance of convenience tilts in their favor. The plaintiffs would suffer irreparable loss/harm/prejudice, if interim injunction is refused. In short, the comparative mischief that may be caused to the plaintiffs would be more if the interim injunction is withheld. Accordingly, all the points for determination are answered. Costs follows the event. Hence, the following

**Order**

The application is allowed costs.

2 The defendants themselves, agents, servants, attorneys or any body claiming through them or otherwise are hereby temporarily restrained by an order of interim injunction from encroaching upon the suit property more than the area shown in suit property 1A i.e., 0 H 13.31 R land, more particularly mentioned in para 1 of the plaint (Ex.1), in any manner what so ever, till further order.

3 The parties to expedite the disposal of the suit

Jath  
Date:-26/08/2024

( Sanjay P.Bunde)  
Jt C.J.J.D, Jath