

Common order below Exh.48 and 51 in FD 2/2019
Madhukar Hujara Torane Vs Narayan Hujara Torane
(CNR-MHSN08-001392-2019)

The applications are for staying the constructing of the decree holder.

2 The application Exh.48 is by the JD 7 (d).

3 The application Exh.51 is by the JD 9.

4 Perused the application, say, and the record.

5 Heard, both the sides.

6 This is an final decree proceedings, in respect of the house property more particularly mentioned in para 2 of the application (Exh.1) in the suit bearing No. RCS 194/2015. As per the judgment and decree, the original plaintiffs 1 and 2 have 1/5th share each and plaintiffs 3 to 7 together have 1/5th share. Further, original defendants 1 and 2 have been allotted 1/5th share.

7 The applications are premised on the ground, that the decree has not been properly executed. The Court Commission report, suffers from serious irregularities. The decree holder has demolished the tin shade of JD 7 (d) and further, removed/demolished the house of JD 9. The decree holder, is continueing with the illegal construction. The relevant photographs have been placed on the record Dt.15/03/2025. Therefore, it would be prayed, that the application may kindly be allowed.

8 The applications are vehemently opposed, on the ground that the possession has been taken, as per the Court Commissioner's map and report. Due process has been followed. The JD's intends to delay the proceedings. All the grivences of non receipt of notice etc., have been putforth, the decree has been executed and therefore the applications may kindly be rejected.

9 The following points arose for my determination, to which I record my findings together with the reasons thereof:-

Sr.No	Points for determination	Findings
1	Do the JDs proves prima-facie case in	No

	their favor?	
2	Do the JDs proves balance of convenience tilts in their favor?	No
3	Do the JDs proves they would suffer irreparable loss, if interim injunction is refused?	No
4	What order?	As per the final order.

Reasons

Points 1 to 3

10 It is settled law that for grant of interim injunction, prima-facie, case involving the triable issues has to be made out.

11 Though, the applications are styled as the stay application, the fact remains, it has to be considered as the interim injunction application, for the technicality should not obstruct the way of substantial justice. Further, the wrong mentioning of section or nomenclature may not negate the rights for the procedural law is a handmaid of justice.

12 It is settled law, that there is a difference between stay and interim injunction order. While, a stay is granted by the higher Courts, to the order of the trial Court etc., interim injunction, is to operate against the otherside or the parties.

13 On prima-facie, perusal of the applications, there are various contentions challenging the earlier Court Commission report etc., Admittedly, no appeal against the original decree, has been preferred. No share has been allowed to JD 9.

14 If the facts are considered from the another angle of Section 47 of the CPC, this Court has allowed the second Court Commission application to ascertain the factual position vis-a-vis Order 26 Rule 18 A of the CPC. Prima-facie, from the record, the possession appears to have been taken on or about 04/01/2025. The photographs appears to be taken on 15/03/2025. Prima-facie, from the photographs, their appears substantial construction by the decree holder. The possession as to date has not been brought on the record. The possession appears to have

been taken as per the possession warrant. Prima-facie, the material is not sufficient and the application suffers from delay and laches.

15 It is settled law, that grant of an equitable relief is a matter of judicial discretion and it is expected that the applicants should approach this Court at the earliest. The delay of about 2 months has not been prima-facie, or satisfactorily explained.

16 If the facts are considered from the another angle, that the Court Commission, has been appointed to, to stop the decree holder from making any construction, pending the Court commission work or without ascertaining the factual position, may cause serious prejudice to the decree holder. In short, the position or the status is uncertain.

17 For the above reasons, the JDs fails to prove prima-facie case in their favor. Therefore, the balance of convenience does not tilt in their favor. Therefore, no irreparable loss/harm/prejudice would ensue to the JDs, if interim injunction is refused. The comparative mischief that would be caused to the DH would be more, if interim injunction is allowed. Accordingly, the points for determination are answered. Costs follows the event. Hence, the following **Order**

The application stands rejected.

2 Costs in the cause.

Jath
Date:02/05/2025

(Sanjay P.Bunde)
Jt.CJJD, Jath