

**Regular Civil Suit No. 380/2022**  
**Vaishali Patole vs. Prabhawati Khilare & ors.**  
**CNR No. MHSO07-000494-2022**

**ORDER BELOW EXH.05**  
(Passed on 25.07.2024)

Plaintiff has filed this application vide order XXXIX rule 1(c) of The Code of Civil Procedure, 1908 (hereinafter referred as 'the C.P.C.', for the sake of brevity) for the grant of relief of temporary injunction against the defendant no.1 to restrain him from causing obstruction to their possession over the suit property.

2. **Description of the suit property:**

a. Block no.2/A, ad-measuring about 0 H. 81 R. with the boundaries as mentioned in the plaint and more particularly described in plaint para no. 1(A).

b. Property no. 514/5 ad-measuring 400 sq.ft. with the boundaries as mentioned in the plaint and more particularly described in plaint para no. 1(B).

3. The plaintiff has submitted that, the suit properties are Hindu undivided family properties of plaintiff and defendant no.1. Defendant no.1 is step mother of plaintiff. Father of plaintiff Shri.Govardhan was died on 20.07.2010. After his death, plaintiff and defendant no.1 are heirs to the suit property. Suit property mentioned in para 1A was owned and possessed by Goverdhan. Said property was his separate property. During the lifetime of Goverdhan he gave suit property mentioned in para 1A to his first

wife Bhagubai and mutation entry no.3175 was made to that effect. On 29.08.1987 Bhagubai was died. According to plaintiff, the said property belongs to Bhagubai which was devolved upon Goverdhan and plaintiff. On 20.07.2010 Govardhan was died and plaintiff get 3/4th share in the suit property mentioned in para 1A and defendant no.1 get 1/4th share. According to plaintiff, she had 3/4th share in the suit property mentioned in para 1A. In such situation defendant no.1 executed sale deed with defendant no.2 and transferred 1/2 share to the defendant no.2. According to plaintiff, defendant no.1 have only 1/4th share in suit property mentioned in para 1A but she has transferred 1/2 share to the defendant no.2. Said sale deed was executed on 10.05.2022. The sale deed is sham and bogus and it is not binding upon plaintiff. It is her further submission that, till the final disposal of the suit, defendant no.2 be restrained for causing obstruction to her possession in suit property mentioned in para 1A to 1C.

4. The application is strongly resisted by defendant no.1 and 2 vide say at Exh. 19. They denied all the contentions in the application in toto. They specifically submitted that, plaintiff has no possession over the suit property. Defendant no.1 also have 1/2 share in the suit property and accordingly she disposed the suit property mentioned in para 1A vide sale deed dated 10.05.2022. Accordingly, defendants prayed to reject the application.

5. The points for determination along with the findings and the reasons thereon are as under.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether plaintiff has prima facie case in her favour?	No.
2.	Whether plaintiff would suffer irreparable injury, in case, temporary injunction is rejected?	No.
3.	Whether the balance of convenience lies in favour of the plaintiff?	No.
4.	What Order ?	The application is rejected.

### REASONS

6. Heard Learned advocate for plaintiff and defendant no.1 and 2. They reiterated their contentions as per the pleadings. In view of O. XXXIX R. 1(c), when defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may grant temporary injunction. Now, in this case, as plaintiff prayed for the relief of interim injunction against the defendant no.2, it has to be examined that, whether the defendant no.2 threatens to dispossess the plaintiff or otherwise cause injury. Accordingly, I would lead to discuss these facts in following points.

#### As To Point No.01:-

7. In order to prove the prima facie case in favour of plaintiff, the plaintiff should prove that she is in possession of the suit property and prima facie she had 3/4 share in the suit

property. In order to prove this fact, it is necessary to take into consideration the documents filed by plaintiff and defendants on record. Plaintiff has filed on record 7/12 extract of suit property the name of plaintiff and defendant no.2 is recorded in possession column and name of defendant no.1 is deleted vide mutation entry no.27453. From the 7/12 extract it reveals that defendant no.2 is in possession of the suit property. Plaintiff also filed on record sale deed executed between defendant no.1 and 2 where the possession of property was transferred to the defendant in the year 2022 and now, plaintiff had filed this suit and claimed that, defendant no.2 be restrained from taking possession of the suit property mentioned in para 1A. Plaintiff further prays that, defendant no.2 be restrained from disturbing possession of plaintiff from suit property 'C'. But plaintiff had not described about property no.'C' in plaint. It is further contention of plaintiff that, defendant no.2 be restrained from disturbing her possession in suit property 'B' but she had not explained in what manner defendant no.2 disturbed the possession of plaintiff. It is submitted by plaintiff that, the possession of suit property bearing no.2/A is with plaintiff but, the sale deed on record shows that defendant no.2 is in possession of suit property. Once the possession is transferred to the defendant no.2, the court cannot restrain him from possession. It is for the plaintiff to prove that she had 3/4 share in the suit property. From the above discussion, it shows that plaintiff failed to prove prima facie case in her favour. Hence, I answer point no.1 in negative.

**As To Point No. 2:-**

8. In this suit, dispute is in respect of immovable property. Hence, the adjudication has to be made in consonance with the irreparable injury. For that perspective, it is necessary to consider the fact of obstruction as alleged to be caused by the defendant No.2 to the possession of the plaintiff. However, plaintiff herself failed to establish prima facie case.

9. Now, in respect of alleged obstruction by the defendant no.2 in this aspect, plaintiff has to establish that, there is a reasonable apprehension that, the defendant no.2 is causing obstruction to her possession for property 'B'. From the contentions of plaintiff, prima facie appears that, it is a mere imaginary apprehension of plaintiff. The mere prospect or apprehension of injury or mere belief that the act complained, may or will be done, is not sufficient. It is well settled principle of law that, injunction can be issued only on prima facie proof of actual interference or threat of interference and not in the absence of it. In the present case, it is not the case of plaintiff that, there is such a reasonable apprehension that, defendant no.2 is causing such obstruction.

10. Then there is no such fact to assume even the prima facie that, the defendant no.2 is causing reasonable apprehension as to obstruction and thus thereby he might suffer to any irreparable loss. Thus, plaintiff needs for such protection does not weigh more against corresponding need of the defendant no.2 to

be protected against injury resulting from his rights for which they could be adequately compensated. There is no need to protect him from the consequences of apprehension and injury which cannot be compensated in terms of money. For these reasons, answer to point no. 2 is in the **negative**.

**As To Point No.3:-**

11. In this aspect of comparative mischief and inconvenience which is likely to be caused to the plaintiff by refusing to grant injunction will not be greater than that which is likely to be caused to the defendant by granting it. Considering the alleged threatening of the defendant no.2 as to obstruction, it can be said that, plaintiff would not suffer greater hardship if interim relief is refused, as she herself failed to bring on record such material even to assume prima facie and the reasonable apprehension as to obstruction and thus thereby she might suffer to any irreparable loss. Thus, plaintiff needs for such protection does not weigh more against corresponding need of the defendant no.2 to be protected against injury resulting from his rights for which they could be adequately compensated. Hence, it is appropriate to say that, the balance of convenience not lies in favour of plaintiff. Resultantly, answer to point no. 3 is in the **negative**.

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

12. In view of above discussion and considering the nature of suit, it will be going to decide differing rights of parties finally. In the result, as per O. XXXIX R. 1(c), it would not be just and

proper to grant interim relief of injunction to restrain the defendant no.2 from causing any said obstruction over the suit property. Consequently, in answer to point no. 4, the prayer of plaintiffs being devoid of merits and thus, liable to be rejected. In the result, following is the order.

**ORDER**

1. The application at (Exh.05) is rejected.
2. Parties to bear their own costs.

(Dictated and pronounced in open court).

Date:- 25.07.2024

(P.N. Pathade)  
6<sup>th</sup> Jt. Civil Judge, J. D., Pandharpur.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer :- S. M. Gaddam

Court :- 6<sup>th</sup> Jt. C.J.J.D. & J.M.F.C.,  
Pandharpur

Date :- 25.07.2024

Judgment/Order signed by :- 26.07.2024  
the Presiding Officer

Judgment/Order uploaded on :- 26.07.2024