

**ORDER BELOW EXH.307 IN RCS.139/2019**

(OLD RCS.33/2007)

(Passed on 12/11/2024)

This is application for grant of temporary injunction against plaintiff restraining him from making obstruction and interference in possession of defendants over the suit property and restrain him from making obstruction to the repair work of the suit property.

2. In short it is application that the plaintiff has submitted suit for recovery of encroached portion and perpetual injunction. The plaintiff as per his case delivered possession of the suit property to the defendants as a permissive possession. As per case of plaintiff the plaintiff canceled the permission and claimed possession of suit property. Thereafter, the plaintiff has claimed measurement of suit property and claimed a contrary relief of encroachment. The plaintiff has examined witnesses and closed his evidence. Now, the plaintiff has claimed again a measurement of suit property of encroached portion. The defendant has not committed encroachment on 30R land which is of ownership of defendants. The plaintiff has submitted application for measurement of suit property that application allowed. The writ is send to T.I.L.R. Malshiras. This application of measurement is submitted to prolong the matter. Originally the matter is pending from last 17 years. By taking disadvantage of pendency of matter, the plaintiff and his family members trying to obstruct possession of defendants over the suit property and to obstruct a repair work of defendant to the suit property. For disposal of suit again some

## **2 RCS No.139/2019(EXH.307)**

years are necessary. Hence, the application may be allowed.

3. To this application the plaintiff has submitted say below Exh.310. Plaintiff has denied all allegations. The suit property was delivered to defendants on permission for residence along with his family members. The court has granted status quo order not to change the position of the suit property. The defendant is not owner of the suit property. They have not pleaded that they are owner of the suit property in his written statement. On the other that, the plaintiff is the owner of suit property therefore, the application is not tenable. Defendants have committed encroachment over the suit property. Therefore, defendants have no right to claim a temporary injunction against true owner. Furthermore, the defendants have not submitted a counter claim to claim a relief of temporary injunction. Therefore, the application is not tenable. Hence, be rejected.

4. The points for my determination along with my findings thereon as under :-

<b><u>SR.NO.</u></b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1.	Whether in favour defendants prima-facie case is lies?	No.
2.	Whether defendants will suffer irreparable loss?	No.
3.	Whether in favour defendants balance of	No.

### **3 RCS No.139/2019(EXH.307)**

	convenience lies?	
4.	What order?	Application is rejected.

#### **REASONS**

##### **As to Points No.1 to 4:-**

5. I have heard learned advocate of both sides. The learned advocate of defendants submits that defendants are in possession over the suit property. Their possession is long standing possession. Possession of defendants over the suit property is admitted to plaintiff. Therefore, the plaintiff has submitted the suit for recovery of possession, but plaintiff is making obstruction to the possession of defendants. Defendants are making a repair work to the suit property at that time the plaintiff and his family members obstructed to the possession of defendants. The learned advocate of defendants has submitted that defendants have submitted a photographs of the suit property to show possession of the suit property.

6. On the other hand, learned advocate of plaintiff submits that, defendants are claiming recovery of possession of suit property was given on permissive possession as a licensee. Licensee is canceled therefore, the possession of defendants over the suit property is illegal possession. Defendants have no right to claim a injunction against true owner. For which the learned advocate of plaintiff brought my attention towards written statement of defendant Exh.25 in para No.6 and submitted that defendants are claiming right to

#### **4 RCS No.139/2019(EXH.307)**

prescription to the suit property and extinguished ownership of the plaintiff. Therefore, the application may be rejected.

7. Learned advocate of defendant relied on photographs which are along with list of documents Exh.309. In this suit, photos of suit property are immaterial. Because the plaintiff has admitted possession of defendants over the suit property. Therefore, he has claimed a recovery of possession. It is case of plaintiff that defendants have no right to claim a temporary injunction against true owner. It is case of the plaintiff that plaintiff has delivered a possession of suit property to defendants as a permissive possession. Therefore, the possession of defendants over the suit property was as licensee but the licensee terminated therefore a possession of defendant over the suit property is without title. Hence, it is unlawful possession. A unlawful possession will not be protected by way of temporary injunction. For which he relied on **Mulji Umershi Shah & Etc. v. Paradisia Builders Pvt. Ltd. Mumbai & Ors. The Bombay Law Reporter 1998, 616**, in which the Hon'ble Bombay High Court laid down a ratio that "a suit for perpetual injunction the court may be called upon to hold inquiry in title, right, interest or status, as the case may be, of the plaintiff to find out whether plaintiff is entitled to protection of his possession by decree of injunction. The same consideration, prima facie, is required to be seen while considering an application for temporary injunction. The question of possession presupposes lawful possession and for adjudication of that question whether finally or at interlocutory stage, the inquiry into title, right, interest or status of plaintiff is not foreign to the subject

matter.”

8. This is ratio applicable to this application. The defendants have not submitted prima facie a document to show that they are having a title, right or interest to the suit property.

9. The defendants have submitted this application under Order 39, Rule 1 and 2 of CPC. As per submission of learned advocate of plaintiffs that this application does not come within the ambit of Order 39, Rule 1 (b)&(c) of CPC, therefore, be rejected. On the other hand, learned advocate of defendant submitted that status quo is granted in favour of both parties. Therefore, it is not necessary to claim a temporary injunction by filing a counter claim. But the learned advocate of plaintiff relied on **Nanahasaeb v. Dattu & Ors. 1991 (2) Civil L.J. 267**, in which the Hon'ble Bombay High court laid down a ratio that “Mischief to be prevented by the temporary injunction in respect of situations under clauses (b) and (c) of Rule 1 and under Rule 2 should be that of the defendant. However, mischief to be prevented by the temporary injunction and situations under clause (a) of Rule 1 can be from either of the parties. A clear distinction appears to have been deliberately made in framing this rule by authorizing in respect of the situations listed in clause (a) of Rule 1 on one hand and clauses (b) and (c) of Rule 1 and Rule 2 on the other hand. In respect of situations covered by the first clause, injunction can be granted in favour of either of the parties whereas in respect of situations covered by

**6 RCS No.139/2019(EXH.307)**

other clauses injunction can be granted only in favour of the plaintiff and not in favour of defendant.”

10. In the present suit, defendants are claiming a relief of temporary injunction for protection of their possession of their suit property. Therefore, Order 39, Rule 1(c) of CPC is applicable. The ratio laid down by the Hon’ble Bombay High Court is applicable to the present application. Therefore, the present application is not tenable.

11. In this case, as per Order below Exh.306 a writ to T.I.L.R., Malshiras is issued for measurement of suit property. The writ is issued on application of plaintiff and if the application is allowed then the writ of measurement of suit property will not be executed. In such circumstances, plaintiff will be suffer irreparable loss. Therefore, I pass the following order:-

**ORDER**

1. Application is rejected
2. Costs in cause.

Date-12/11/2024.

Sd/-  
(U.V.Joshi)  
Civil Judge Senior Division,  
Malshiras.