

ORDER BELOW EXH.5 IN R.C.S. NO.198/2024
(CNR No.MHSO130002412024)

The present application is filed by the plaintiff under order XXXIX, Rule 1 and 2 of Code of Civil Procedure, 1908 ('CPC') seeking to temporarily restrain the defendants from disturbing lawful possession plaintiff over the suit property and enjoyment of fruits of five tamarind trees, two coconut trees and pipeline on the suit property.

Description of the suit property:-

2. The property described in para no.1 of the plaint i.e. Block No.166 totally admeasuring 04H 44R out of which 00H 55R owned by plaintiff along with five tamarind trees, two coconut trees and independent pipeline of length of 420 meters, situated at Villag Khamgaon, Tal- Barshi, Dist- Solapur shall hereinafter to the extend of said 00H 55R be referred as suit property for the purpose of this application.

3. **Contentions of the plaintiff:-**

The plaintiff has contended that out of Block No.166 admeasuring 04H 44R, 01H 10R is the ancestral property of family of plaintiff, out of which plaintiff has share of 00H 55R. The plaintiff is owner and occupant of the suit property. There are five tamarind trees and two coconut trees in the suit property. Similarly, there is pipeline of length of 420 meters constructed from common well situated in the land of Umesh Ishwara Muthal in which Plaintiff has 1/8 share and from another common well situated at the East-North corner of the suit property in which plaintiff has 1/6 share. The defendants are trying to disturb the

enjoyment of fruits of five tamarind trees, two coconut trees and also use of pipeline on the suit property by the plaintiff. On 15.03.2024 the defendant threatened to cause danger to life of plaintiff if, he enjoys the fruits of tamarind trees. Hence, the plaintiff has prayed for temporary injunction, vide the present application.

4. Notice was issued to the defendants of show cause as to why the present application should not be allowed. Accordingly, the defendants appeared before the court and filed their say at Exh.13 on 21.08.2024.

5. **Contentions of the Defendants:**

The defendants have admitted that the plaintiff is owner and in the possession of suit property. They have also admitted that during the partition, plaintiff got five tamarind trees in his share. However, one out of the said five tamarind trees, one was cut down by father of the plaintiff Pandit Muthal. It is also admitted by the defendants in their say at Exh.13 that, there is pipeline in the suit property which was constructed by Pandit Muthal. The defendants have denied that they are trying to obstruct the possession of plaintiff over the suit property and his enjoyment of fruits of tamarind and coconut trees and use of pipeline. They have further prayed for rejection of the application at Exh.5.

6. I have heard Learned Advocates for the plaintiff as well as the defendants. I have also perused the application and reply thereon. I have also carefully considered the documents put forth on record by the plaintiff and defendants. Following points have arise for my

determination and I have recorded my findings thereon for the reason given hereinbelow:-

Sr.No.	Points for determination	Findings
1.	Whether the plaintiff proves that, there exists prima-facie case in his favor?	Yes
2.	Whether balance of convenience lies in the favor of the plaintiff?	Yes
3.	Whether plaintiff would suffer irreparable loss if injunction is rejected?	Yes
4.	What order?	The application is partly allowed.

REASONS

7. **AS TO POINT No. 1 to 3:-**

As to the points are interlinked and interconnected with each other. In order to, avoid repetition, I am deciding them together. In order to entitled to claim relief under Order XXXIX Rule 1 and 2. The plaintiff has to prove that, there is prima-facie case in his favor. Similarly, he has also to prove that, there exists balance of convenience in his favor and if the relief as sought by him is not granted then irreparable loss will be caused to him.

8. In order to prove all this ingredients the plaintiff has filed on record documents along with list at Exh.4 which includes 7/12 extract of Block No. 166 at Sr.No.1 and receipt of pipes purchased by the father of plaintiff at Sr.No.2.

9. Learned Advocate for the plaintiff has submitted that the 7/12 extract of Gat No. 166 shows that plaintiff is in possession of the suit property. Similarly, he has also pointed out that the defendants in their reply and written statement have admitted the possession and ownership of the plaintiff. He has stated that no inconvenience or injustice would be caused to the defendants if the present application is allowed. However, he has stated that in case of rejection of the present application inconvenience and irreparable loss would be caused to the plaintiff.

10. The careful perusal of the paragraph no. 8 and 9 of the written statement and the reply to Exh.5 filed at Exh.13 show that the defendants have admitted that the plaintiff is owner and occupant of the suit property. Similarly, they have also admitted that the plaintiff had received five tamarind trees at the time of partition in his share. It is also admitted that there exists a pipeline on the suit property which was constructed by father of the plaintiff. The perusal of 7/12 extract filed along with list Exh.4 at Sr.No.1 show that there were all together eight tamarind trees on Block No.166 out of which five were in the land of Pandit Muthal who is father of the present plaintiff. Similarly, the receipts at Sr.No.2 show that father of plaintiff had purchased pipes on 13.03.1995.

11. In view of the above documents and the admissions of the defendant. It is crystal clear that the plaintiff is owner and occupant of the suit property. Similarly, it appears that there are five tamarind trees and a pipeline on the suit property. The defendants have contended that father of plaintiff cut down one of the five tamarind trees on suit property. So, now there are only four

tamarind trees. However, they have not filed anything on record to show that one tamarind trees out of the five is cut down by father of plaintiff as contended by them. Therefore, it prima-facie there still are five tamrind trees on the suit property. So far as the contentions of the plaintiff are concerned as to the two coconut trees, there is nothing mentioned in that regard on the 7/12 extract of the suit property. Similarly, no other evidence is adduced by the plaintiff to show that there are two coconut trees on the suit property. This fact is also not be admitted by the defendant in his written statement or reply to Exh.05.

12. So far as and point of balance of convenience and irreparable loss is concerned. It is important to be considered plaintiff has submitted that if the present application is not allowed, the plaintiff will not be able to enjoy the fruits of his trees and it will cause inconvenience and loss him. Similarly, if the defendants succeed in disturbing the usage of pipeline on the suit property, it will cause damage to the crops on the suit property which in turn will lead to inconvenience and irreparable loss to be plaintiff.

13. Moreover, no injustice or invonvenience will be cause to the defendant by allowing the present application. Thus, this discussion shows that, the balance of convenience lies in the favor of plaintiff and if the present application is not allowed. It will lead to irreparable loss or unnecessary hardships. Hence, in view of the above discussion, I have answerd point no. 1, 2 and 3 in the affirmative.

14. **AS TO POINT No.4:**

As I have answered point no.1, 2 and 3 in the affirmative. I am incline to allow the present application and hence in answer point no.4 I pass the following order:-

ORDER

1. The application at Exh.5 is partly allowed.
2. The defendants are hereby temporary restrained from distrubing the possession of the palintiff over the suit property and his enjoyment of five tamarind trees and pipeline situated over the suit property. Till final disposal of the said herein RCS No. 198/2024.
3. Parties to their own cost.

Sd/-

Date - 26/03/2025.

(Smt. Revati P. Bagade)
5thJt. Civil Judge Junior Division,
Barshi.

CERTIFICATE

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

(a)	Name of the Stenographer	:	Smt. Smita P. Shisale
(b)	Court	:	Smt. Revati P. Bagade 5 th Jt. Civil Judge, J.D.& J.M.F.C.Barshi
(c)	Judgment /Order signed by P.O. on	:	26/03/2025.
(d)	Judgment /Order uploaded on	:	26/03/2025.