

ORDER BELOW EXH.5 IN R.C.S NO.238/2022
(CNR NO. MHSO130002832022)

1. This order shall dispose of an application filed under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 (Hereinafter referred to as 'C.P.C.' for the sake of brevity and convenience) for temporary injunction. Two rooms of tin sheds covered with tin sheds on all four sides facing east side and one washroom given under Swachata Abhiyan Scheme towards the west side and an open space in an area admeasuring 0 H 161.2 sq.mtrs. out of 15.26.06 in gat No.138/1/B situated at village Pangaon, Taluka Barshi belonging to the government of Maharashtra is the suit property. (hereinafter called as 'suit property' for the sake of brevity and convenience).

The brief facts of plaintiff's case are as follows:

2. Plaintiff is in possession of the suit property. The entry of the suit property is made in the encroachment entry book at Serial no.66 showing the encroached portion as 161.02 sq.mtrs. alongwith the map of the encroached portion. Plaintiff is in possession of the suit property since the year 1968 for the purpose of cowshed. The entry in that regard is made in the grampanchayat encroachment register on 28/8/1980. Plaintiff is paid the common tax of encroached portion since the year 1981-1982. Defendant is the nephew of plaintiff and he has no relation with the suit property. Defendant is residing with his family at the ancestral *wada* at Pangaon. Defendant is taking advantage of plaintiff being alone and he is threatening the plaintiff to oust and dispossess the plaintiff from the suit property. Defendant is also threatening the plaintiff from trespassing into the suit property and threatening to kill the plaintiff. Plaintiff filed complaint at Rural police station Barshi on

4/1/2022 however police did not take any action against the defendant. If the defendant is allowed to trespass and enter into the suit property, defendant will take the possession of the suit property which would cause irreparable loss to the plaintiff. Hence, plaintiff has filed present application in order to restrain the defendant or anyone on his behalf to not obstruct the possession of plaintiff in the suit property in any manner.

3. Defendant appeared in the present case however, defendant failed to file written statement and say. Hence, no say order was passed below Exh.5 against defendant dated 6/5/2022.

4. Heard Learned advocate for plaintiff. Perused the record and proceeding of the case. The points for determination along with findings and reasons thereon are as under:

Sr.No	Points	Findings
1.	Whether the plaintiff has a prima-facie case?	Yes
2.	Whether the balance of convenience lies in favor of plaintiff?	Yes
3.	Whether plaintiff will suffer irreparable loss if injunction is refused?	Yes
4.	What order?	As per final order.

REASONS

POINT NO.1 TO 3:

5. In order to prove his prima-facie case, plaintiff has relied upon 7/12th extract of gat no.138/1/B at Exh.4/1, certified copy of list of entries regarding encroachment in the encroachment entry register at Exh.4/2, common receipts of the year 1980-81 and 1981-82 at Exh.4/3, summons issued to the plaintiff U/s.20(2) of Maharashtra Land Revenue

Code, 1966 at Exh.4/4, photograph of the suit property at Exh.4/5, copy of complaint given to Rural Police station, Barshi by the plaintiff at Exh.4/6.

6. The suit is filed for perpetual injunction. Through the present application, plaintiff has prayed to restrain the defendant or anyone on his behalf from obstructing his possession over the suit property. The burden to prove the prima-facie case for grant of temporary injunction is upon the plaintiff. A prima-facie case should be such that it should appear on record that there is bona fide contest between the parties. Considering the nature of the injunction claimed at this stage, it is necessary that, plaintiff must be firstly able to prima-facie show that, he is in possession of the suit property. In order to prove his case, plaintiff has relied upon the list of encroachers in the encroachment register of village Pangaon, Taluka Barshi at Exh.4/2. The said document appears to be a certified copy of the list of the encroachment register. In entry no.66 the name of the plaintiff appears to be mentioned in the third column and besides it, the area of the encroached portion appears to be mentioned as 161.2 sq.mtrs. in the fourth column. In the sixth column, it appears to mention that, the encroached portion is given since the year 1968 for the purpose of cowshed. The 7/12th extract of gat no.138/1B prima-facie appears to mention that, it is a *gayran* land. The same has also been contended by the plaintiff. The list of encroachers at Exh.4/2 prima-facie appears to show the possession of plaintiff as an encroacher on that area. It is the case of the plaintiff that, defendant is obstructing him and he is attempting to oust and dispossess the plaintiff. In order to rebut the contentions of the plaintiff and to show the contrary position, defendant has not filed his say within the stipulated period. Hence, no say order was passed against him. Defendant,

therefore, has not contested the present application. However, even if the application is not contested, the burden to prove prima-facie case upon the plaintiff. As stated earlier, plaintiff prima-facie appears to be in possession of the suit property as an encroacher. As per the settled law, even a settled trespasser can be dispossessed only by following the procedure established by law. It is not the case that, some government authority is defendant in the present case. It is only a case of alleged dispute between plaintiff and defendant. Hence, as plaintiff prima-facie appears to be in possession of the suit property considering the material on record and as defendant has not filed his say and has not adduced any documentary material in his support, plaintiff has prima-facie proved his case against the defendant. Hence, I answer point no.1 in the affirmative.

7. In order to decide, who has the balance of convenience, the Court has to decide who will suffer greater hardship or mischief in case injunction is not granted. Prima-facie case and balance of convenience lies in favor of plaintiff as the plaintiff has prima-facie proved his case. The dispossession of plaintiff out of the suit property would cause hardship to the plaintiff because even if he is an encroacher on the suit property, at this stage he has prima-facie proved his possession over the suit property. On the other hand, there is no such explanation on the part of the defendant to show that, the balance of convenience is in his favour and whether any hardship would be caused to him. Accordingly, I answer point no.2 in affirmative.

8. As far irreparable loss is concerned, it appears that, plaintiff is in possession of the suit property. At this stage, the interest of plaintiff need to be protected because, dispossessing him out of the suit property

would lead to cause irreparable loss to the plaintiff because he has prima-facie proved his possession over the suit property. Accordingly, I answer point no.3 in affirmative.

9. In view of above mentioned observations, it is clear that, prima-facie case and balance of convenience at this stage, lies with the plaintiff and rejecting this application would cause irreparable loss to the plaintiff in view of aforesaid reasons. Hence, I answer to point no.4, the following order is passed.

ORDER

1. The application is allowed.
2. Defendant shall not obstruct the plaintiff in the suit property by himself or anyone on his behalf till the final disposal of the suit.

(Pronounced in open Court)

Place: Barshi
Date: 08/07/2022

(N.S. Sabnis)
4th Jt. Civil Judge Junior Division, Barshi.

C E R T I F I C A T E

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	:	Y. V. Sital
(b)	Court	:	Shri. N.S.Sabnis 4 th Jt. Civil Judge, J.D.& J.M.F.C.Barshi
(c)	Judgment /Order signed by P.O. on	:	8/7/2022
(d)	Judgment /Order uploaded on	:	11/7/2022