

ORDER BELOW EXH.5 IN REG.CIVIL SUIT NO.5/2010

This is an application filed by the plaintiff for grant of temporary injunction against the defendants.

2. The facts of the plaintiff's case in brief are that, the land bearing Gat No.172/3A+B, admeasuring 0 H 46 Ares, situated at mouje Tarale, Tal.Patan belonged to the original owner Banu Ko.Gunya Bongale. The plaintiff had purchased the suit property by registered sale deed on 11-1-1984. Since then the plaintiff is in possession of the said property. The suit land is used for the benefit of students and the institution. The plaintiff is also ready to make construction on it. One another land bearing Gat No.172/5 to the extent of 1/2 share is situated towards southern side of the suit land which has been purchased by the plaintiff. The defendants are having no concern with the suit land. The government had sanctioned a room for Anganwadi at Grampanchayat, Tarale. The defendant Nos.3 & 4 have granted permission & funds for it. The defendant Nos.1 & 2 have started the construction of the said room admeasuring 26 ft. east west & 22 ft. north south since 16-1-2010 by making encroachment. The construction is being raised in the south-west corner of the suit land illegally. The said construction is causing obstruction to the

plaintiff. The plaintiff had requested the defendants to abstain themselves from it but in vain. As such, on 21-1-2010 the plaintiffs have issued legal notice to the defendants but they have not paid any heed. Hence this suit for issue of mandatory injunction against the defendants. If the defendants would succeed in completing the construction work of the said room, then plaintiff would sustain huge loss. Hence prayed for grant of temporary injunction against the defendants. The application is supported with affidavit at Exh.6.

3. The defendant Nos.1 & 2 have filed their written statement at Exh.25 and the defendant No.3 has filed his written statement at Exh.29. The defendants have denied the entire contentions raised by the plaintiff. According to the defendants, the plaintiff has not mentioned the boundaries of the suit property. The plaintiff has also not mentioned the area of the encroachment. It is denied that the construction has been commenced since long on 16-1-2010. The plaintiff had not carried out any authentic measurement process. The defendants have started construction of the room in the year 2009 in their open space bearing Grampanchayat No.601 admeasuring 30 ft. X 40 ft. Also they have completed the entire construction work. The plaintiff had not raised any objection while making construction. The construction has been almost

completed. The suit property does not belong to the plaintiff. As such, the plaintiff is not having any locus standi. There is no prima facie case. Balance of convenience also does not lie in favour of the plaintiff. Irreparable loss would not be caused to the plaintiff. Hence prayed to reject the application.

4. I have framed points for determination and my findings to them with reasons thereon are as follows.

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the plaintiffs are having prima facie case ?	In the negative.
2) Whether balance of convenience lies in favour of the plaintiffs ?	In the negative.
3) Whether irreparable loss would be caused to the plaintiffs ?	In the negative.
4) What order ?	As per final order.

R E A S O N S

AS TO THE POINT NOS.1 TO 3:

5. Perused the application & say. It appears that it is the point raised by the plaintiff that, defendants are making construction of room for Anganwadi admeasuring 26 ft. east west & 22 ft.

north south in land Gat No.172/3A+B,admeasuring 46 Ares,situated at village Tarale,Tal.Patan. Accordingly the defendants are making construction of the said room in their own land by making encroachment. There will cause inconvenience if the defendants are not restrained from doing so. On the contrary, it appears from the defendants' side that, theyare making construction on their own land. For that they have incurred huge expenses of the State. It is for the welfare of the villagers. The construction was started long back in the year 2009. However, the plaintiff has not raised any objection till date. The construction is almost completed. In such a situation the plaintiff is not having prima facie case. Balance of convenience is also not in its favour and irreparable loss would not be caused to the plaintiff.

6. In view of the facts on record it appears that, the copy of 7x12 extract at Exh.7 which reveals that,the name of plaintiff appears in the ownership column and in other rights column it has been mentioned that, 'tehu ekyd fo/kok'. Therefore the ownership has to be determined at very initial level. However, the copy of mutation bearing No.8061 is on record. It transpires that the plaintiff had purchased the suit land from Banu Ko.Gunya Bongale on 11-1-1984. As such, prima facie the dispute of ownership would not prevail at this

stage. Further it appears that, the plaintiff is contending that the construction is being made on his land to which the defendants have denied. However, there is nothing on record which could authentically show that the construction is made on the land of plaintiff. There is no prima facie record which could reveal this fact. Moreover, it is also to be considered that the present suit is for mandatory injunction. It is also to be considered that, according to the defendants they have incurred huge expenses and the funds of State have been utilised & exhausted for making the construction. The construction is almost completed. In such a situation, where the suit is for mandatory injunction, it will not cause much more difference to the plaintiff upto the conclusion of trial. If it would be made out by the plaintiff in future that, the defendants have caused encroachment on his land, then the plaintiff would be entitled for the relief to which he would be found entitled. In such a situation at this stage where there is no prima facie record to show that the construction is in the land of plaintiff, I am of the view that the plaintiff is not having prima facie case. Balance of convenience also does not lie in favour of the plaintiff and irreparable loss would not be caused to the plaintiff. On the contrary, considering the contentions of the defendants, they would sustain

huge loss if order of temporary injunction is passed in favour of plaintiff. Accordingly I answer to the point Nos.1 to 3 in the negative and proceed to pass the following order.

O R D E R

1. The application Exh.5 is hereby rejected.
2. Cost in cause.

(Dictated & pronounced in open court).

Karad.

(S.K.CHOUDANTE)
Civil Judge, Senior Division,
Karad.

Dated: 18-6-2011.