

MHST130006722023 	R.C.S. No. 258/2023 Sharadabai Pandurang Shedge & others Vs Vishwas Tanaji Shedge & Others
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ORDER BELOW EXH.47

The Defendants No. 1 and 6 have filed this application (Exh. 47) under Order 39 Rule 1 and 2 of the Code of Civil Procedure, praying for a temporary injunction to restrain the Plaintiffs from obstructing the Defendants' peaceful possession, specifically regarding the storage of manure (Shen Khat) and the use of a Gobar Gas plant. The Defendants further seek to restrain the Plaintiffs from carrying out any construction on the disputed site until the final disposal of the suit.

2. It is the contention of the Defendants that the Plaintiffs' suit is entirely based on false, fabricated, and imaginary facts which are denied in toto. The Defendants have filed their written statement denying the adverse allegations. Specifically, regarding the present application for temporary injunction, the Defendants contend that the description of the suit property is misleading. They assert that while Gat No. 906 comprises a total area of 61 R held by multiple owners, the Plaintiff's specific share does not legally amount to 12 R, rendering the description of "Suit Property 1B" factually incorrect and exaggerated. The Defendants further assert that they are the lawful owners and in possession of Gat No. 885 and 888, situated directly to the southern side of the Plaintiff's property, a material fact allegedly suppressed by the Plaintiff. Within the Defendants' property, there exists a specific

triangular-shaped piece of land which has been in their exclusive possession since the time of their ancestors, traditionally used for storing manure (Shen Khat) and housing a functional Gobar Gas plant. The Defendants point to a previous dispute where the Plaintiff falsely complained to the Dispute Free Village Committee on 15/01/2022. Upon the Committee's advice, a joint measurement was conducted via M.R. No. 3583/2022 on 06/12/2022, which the Defendants allege conclusively proved that it was actually the Plaintiff who had encroached upon the neighboring Gat Nos. 865, 866, 885, 888, and 889. Despite this, and while the present suit was pending, the Plaintiffs allegedly took the law into their own hands on 23/10/2025 (sic). Accompanied by a JCB machine, they illegally entered the Defendants' Gat No. 885, erroneously treating it as part of their Gat No. 906, and began digging pits for construction. The Defendants immediately lodged complaints but apprehend that the Plaintiffs intend to forcibly dispossess them of their traditional manure pit and Gobar Gas site to carry out illegal construction, thus necessitating the present injunction.

3. The Plaintiffs filed their reply resisting the application, vehemently denying the contentions raised by the Defendants as false, frivolous, and vexatious. They assert that they are the absolute owners and in peaceful possession of Gat No. 906, specifically the portion described as suit property 1B. They contend that a residential house bearing Gram Panchayat Property No. 92 was constructed on this land by the Plaintiff No. 1 and her husband

as far back as 1980-81, and they have been paying taxes for the same, which is duly recorded in the revenue records. The Plaintiffs categorically contend that the Defendants' properties, specifically Gat Nos. 885 and 888, do not share a common boundary with the site of the Plaintiffs' construction. To substantiate this, the Plaintiffs submit that their ancestors, specifically the late Pandurang, Hanmant, and Tukaram, had gifted a portion of land measuring 0.05 R to the "Mahanubhav Math/Trust" in the year 1996. This Trust land, which houses a temple, is situated directly to the north of the Defendants' property and effectively separates the Plaintiffs' property from that of the Defendants, thereby negating the possibility of encroachment or the existence of a shared boundary where the manure pit is claimed to be. The Plaintiffs clarify that the ongoing activity is merely the reconstruction of their old, dilapidated House No. 92 under the government's "Gharkul Yojana" (Housing Scheme) to provide legitimate shelter for their family, which is economically weaker. Furthermore, the Plaintiffs strongly dispute the veracity of the measurement report relied upon by the Defendants. They allege that when the surveyor visited the site, the Defendants used criminal force and threats to stop the lawful measurement, preventing a true demarcation. Consequently, the report produced by the Defendants is characterized as collusive and misleading, not reflecting the actual factual position on the ground. The Plaintiffs argue that the Defendants, relying on money and muscle power, have filed this application with the sole mala fide intention of harassing the Plaintiffs and depriving them of the

benefit of the government housing scheme, and thus, the application deserves to be rejected.

4. In view of the pleadings and the documents placed on record, the following points arise for determination:

Sr. No	Points	Findings
1.	Whether the plaintiffs make out a prima facie case for the grant of a temporary injunction?	No.
2.	Whether the balance of convenience lie in favour of the plaintiffs?	No
3.	Whether the plaintiffs will suffer irreparable loss and injury if the injunction is refused?	No
4.	What order?	As per the Final order.

REASONS

As to point No.1:-

5. I have carefully perused the pleadings, documents, and maps filed by both parties to determine if the Defendants have established a prima facie case. To succeed in an application for a temporary injunction, the applicant must demonstrate a clear legal right and existing possession over the disputed property. Upon examining the ownership records, it is evident that the Plaintiff has produced the 7/12 extract of Gat No. 906, which reflects the

names of Shardabai Pandurang Shedge and others as owners. While the Defendants rely on their ownership of the adjacent Gat Nos. 885 and 888, the core controversy revolves around the specific boundary line separating these properties. Crucially, the Plaintiff has placed on record the Gram Panchayat Extract 8-A for Property No. 92, a document which was notably also filed by the Defendants themselves. This record confirms that Pandurang and Shardabai Shedge are the lawful holders of House No. 92. The Plaintiff's contention that the ongoing construction is merely a reconstruction under the 'Gharkul' scheme on the site of this existing House No. 92 carries significant weight when viewed against these records.

6. Regarding the allegations of encroachment, the Defendants have placed heavy reliance on the measurement map (M.R. No. 3583/2022) prepared by the TILR, Patan. A close examination of this map reveals that it clearly demarcates Gat No. 906, distinguishing between 'New Boundary Marks' and 'Old Fixed Marks'. Although the map indicates some deviation between the possession line and the record boundary near Gat Nos. 865 and 104, it specifically delineates the area of the Plaintiff's Gat No. 906. The Defendants' specific grievance is that the Plaintiff is encroaching on *their* land, Gat No. 885. However, this claim is contested by the Plaintiffs, who argue that the 'Mahanubhav Math' land—a property gifted by their ancestors—lies between Gat No. 906 and the Defendants' Gat Nos. 885/888 at the specific location of the house. The Plaintiff's sketch map supports this assertion,

showing the Trust land separating the two properties. The Defendants have failed to produce a measurement map of *their own* Gat No. 885 to conclusively demonstrate that the specific spot where the JCB was operating falls within their boundary.

7. Furthermore, a significant legal impediment to the Defendants' application is the absence of a Counter-Claim. It is a matter of record that the Defendants have not filed a Counter-Claim seeking a declaration of boundary or possession of the alleged encroached portion. Instead, they seek an injunction to restrain the Plaintiff from enjoying property (Gat No. 906) that stands in the Plaintiff's name in the revenue records. The law is well-settled that a Plaintiff cannot be restrained from enjoying their own property based solely on a vague allegation of encroachment by a Defendant, particularly when the Defendant has not sought substantive relief via a counter-claim to fix the boundary or recover possession.

8. Additionally, regarding the nature of usage, while the Defendants claim the land is used for a manure pit, the Plaintiff asserts it is for a residential house. The Gram Panchayat Tax receipts for House No. 92 dating back to 2007-08 substantiate the Plaintiff's case that a structure existed there previously. The reconstruction of a dilapidated house on the same site cannot prima facie be termed as a new encroachment without concrete evidence from the Defendants showing that House No. 92 is geographically located within Gat No. 885. Consequently, the Defendants have failed to establish that the construction site

clearly falls within Gat No. 885, whereas the Plaintiff is prima facie the owner of Gat No. 906 and House No. 92. Therefore, Point No. 1 is answered in the Negative.

As to points Nos. 2 and 3:-

9. With respect to the balance of convenience, the court must weigh the comparative hardship that would be caused to either party by granting or refusing the injunction. The Plaintiff has categorically stated on oath that the subject construction is being undertaken pursuant to the "Gharkul Yojana" (Government Housing Scheme). This is a time-bound beneficiary scheme aimed at providing shelter to the economically weaker sections of society. If a temporary injunction is granted at this stage, preventing the construction, there is a strong probability that the funds allocated under the scheme will lapse, and the Plaintiff will lose the benefit of the government aid entirely. Such an outcome would deprive the Plaintiff of their basic need for shelter, causing them significant prejudice and hardship that cannot be easily compensated.

10. On the contrary, the Defendants' claim rests on the allegation that they will lose space used for a manure pit (Shen Khat) and a Gobar Gas plant. When weighing the right to shelter against the right to store manure, the scales of justice tilt heavily in favor of shelter. The loss or displacement of a manure pit is not an irreparable injury; it is a loss that can be quantified in monetary terms or rectified by relocating the pit to another portion of their land. Losing a residential home and the opportunity for

government funding, however, constitutes irreparable loss. Furthermore, the Defendants are not without legal remedy. Should they succeed in proving at the trial stage that the Plaintiff has indeed encroached upon their land, they have the statutory remedy to seek a mandatory injunction for the demolition of the illegal structure and the restoration of their possession.

11. The balance of convenience, therefore, clearly lies in favor of the Plaintiff. The Plaintiff is constructing on land that is prima facie recorded in their name (Gat No. 906) and corresponds to an existing house property (House No. 92). It would be inequitable to restrain a lawful owner from enjoying and developing their property based merely on a boundary dispute raised by a neighbor, especially when that neighbor has not filed a counter-claim to legally fix the boundary. Stopping a legitimate construction project based on apprehension alone would cause greater harm to the Plaintiff than the harm caused to the Defendant by allowing it to proceed.

12. However, while refusing the injunction, the Court must also ensure that the interest of justice is served and the Defendants' rights are ultimately protected. Therefore, it is necessary to clarify that the construction permitted herein is not absolute but conditional. Any construction carried out by the Plaintiff during the pendency of this suit shall be strictly subject to the final result of the litigation. The Plaintiff proceeds with the construction at their own risk. If, after a full trial and proper measurement, the Court concludes that the Plaintiff has encroached upon the Defendants'

Gat No. 885, the Plaintiff shall be liable to demolish the encroachment at their own cost and shall not be entitled to claim any equity or compensation for the structure so removed.

As to point No.4:-

13. The Defendants have failed to make out a prima facie case. The documents, specifically Extract 8-A and the TILR map, do not conclusively prove that the construction site is within the Defendants' Gat No. 885. The Plaintiff is entitled to construct within the boundaries of Gat No. 906. Hence, the application deserves to be rejected. In view of that, I pass the following order.

ORDER

1. The Application is hereby rejected.
2. It is clarified that any construction carried out by the Plaintiffs on the suit property shall be strictly subject to the final decision of this Regular Civil Suit. The Plaintiffs shall not claim any equity regarding such construction if the decision goes against them.
3. Costs to be costs in the cause.

Patan.
Date : 12/12/2025

(R. M. Lolge)
Civil Judge, Junior Division,
Patan.