

MHST130016932018 	RCS No. 155/2019 Tanaji Jadhav v/s Krushnat Jadhav
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ORDER BELOW EXH. 75

The present application has been filed by Defendant No.9 seeking a temporary injunction restraining the plaintiff from carrying out further construction, excavation or alteration over the suit property during the pendency of the suit. The applicant has further prayed for maintenance of the status quo and appointment of a Court Commissioner under Order XXXIX Rule 7 of the Code of Civil Procedure for recording the existing condition of the property and the nature of construction allegedly being carried out by the plaintiff.

Brief facts of Defendant No.9 :-

02. According to him, no lawful partition has taken place in respect of the suit properties and, therefore, every portion thereof is required to be preserved in its existing condition pending adjudication of the dispute.

03. The grievance of Defendant No.9 is that during the pendency of the suit, the plaintiff has demolished an existing structure and commenced permanent construction over the suit property without obtaining the consent of the remaining co-sharers. It is alleged that the construction is not confined to the area previously occupied by the old structure but is being extended over adjoining portions of the property. According to Defendant No.9, the plaintiff is thereby appropriating a larger and more advantageous portion of the joint

property and is attempting to secure exclusive benefits to the detriment of the other co-sharers.

04. It is further contended that the location selected for the construction is such that it may adversely affect future partition of the property. The defendant submits that if permanent structures are allowed to be raised during the pendency of the proceedings, equitable division of the property may become difficult and the rights of the remaining co-sharers may suffer prejudice. The defendant also asserts that the ongoing construction is changing the nature and character of the property and is likely to create irreversible complications in the execution of any decree that may ultimately be passed in the suit.

05. According to Defendant No.9, the construction activity is being undertaken without requisite permission from the competent local authority and, therefore, cannot be permitted to continue. On these premises, it is contended that a prima facie case exists in favour of preserving the property in its present condition and that the balance of convenience and likelihood of irreparable injury justify the grant of a temporary injunction restraining further construction.

06. Reliance has been placed upon the decision in *Maharwal Khewaki Trust (Regd.), Faridkot Vs. Baldev Dass*, Civil Appeal No.6792 of 2004, decided on 15.10.2004.

Brief facts of the Plaintiff :-

07. The plaintiff opposes the application and contends that the allegations made by Defendant No.9 are vague, incorrect and unsupported by material particulars. According to the plaintiff, the

application does not clearly identify the exact portion of property where construction is alleged to be taking place, nor does it establish how the alleged activity has caused any legal injury to the defendant.

08. The plaintiff's case is that he is not raising any new construction over a vacant or previously unused portion of land. It is contended that a residential house has existed on the property for several decades and that a shed situated adjacent to the residential structure was also in existence for a considerable period of time. According to the plaintiff, the said shed had become old and unsafe, and, therefore, it was removed, and reconstruction work was undertaken at the same location.

09. In support of this contention, the plaintiff relies upon entries contained in the Gram Panchayat records, which, according to him, demonstrate the existence of the residential house and adjoining shed since the year 1998-99. The plaintiff submits that the present activity is merely a reconstruction of an existing structure and does not amount to encroachment upon any open land or appropriation of any additional portion of the property.

10. The plaintiff further contends that Defendant No.9 has never been in possession of the disputed site and has filed the present application only to obstruct the plaintiff's use and enjoyment of the property. According to the plaintiff, no case of waste, damage, alteration of the property or infringement of the defendant's rights has been made out. It is therefore submitted that the essential requirements for the grant of a temporary injunction are absent and that the application deserves to be rejected.

11. The plaintiff has relied upon the judgment of *Nanasaheb S/o Sakharam Bhalekar Vs. Dattu Dhondiba Bhalekar*, 1991 Mh.L.J. 685.

12. Considering the pleadings of both party following points arise for determination, and I have given a finding thereto as follows.

Sr. No.	Points	Findings
1.	Does the plaintiff prove that they have a prima facie case for the grant of a temporary injunction?	Yes
2.	Whether the plaintiff proves that the balance of convenience lies in their favour?	Yes
3.	Whether the plaintiff would suffer irreparable loss if a temporary injunction is not granted?	Yes
4.	What order?	As per the final order.

REASONS

As to point Nos. 1 to 3 :-

13. All these points being interconnected are taken up together for consideration.

14. The principal allegation of Defendant No.9 is that the plaintiff has demolished an existing structure and commenced permanent RCC construction upon the suit property and is extending such construction beyond the area previously occupied by the old structure. According to Defendant No.9, such activity is likely to

adversely affect the rights of the other parties and alter the nature of the property.

15. The plaintiff has denied the said allegations and has specifically contended that no new construction is being raised upon any open or vacant land. According to the plaintiff, a shed made of bricks, mud and tin sheets existed adjacent to his residential house for several years, and after the said shed became dilapidated and unsafe, reconstruction thereof was undertaken at the same location. The plaintiff has relied upon the Gram Panchayat records in support of such contention.

16. The first question that arises for consideration is whether the material available on record prima facie indicates the existence of a prior structure at the place where construction activity is presently being undertaken.

17. For that purpose, the Court has carefully perused the extracts of Gram Panchayat Form No.8 produced by the plaintiff. The said documents pertain to Property Nos. 785, 900 and 904 situated at Village Tarale. The entries relating to Property Nos. 785 and 900 describe a residential structure together with a rear shed made of bricks, mud and tin sheets. The said entries relate to a period much prior to the institution of the present proceedings. Though such entries are not conclusive proof of title or possession, they are relevant material for the limited purpose of considering whether a structure existed at the concerned site.

18. The photographs produced by Defendant No.9 have also been perused. The photographs disclose that construction activity is in

progress. They further show excavation work and the erection of reinforcement bars. Simultaneously, remnants of old masonry and portions of old walls are also visible adjoining the construction site.

19. Therefore, the documentary material produced by the plaintiff and the photographs relied upon by Defendant No.9 prima facie indicate that some structure existed at the location where the present activity is being undertaken. Consequently, at this stage, the Court is unable to accept the contention that the plaintiff has for the first time occupied a completely vacant and open portion of land and commenced construction thereon.

20. However, the aforesaid finding does not conclude the controversy.

21. Defendant No.9 contends that the plaintiff is extending the construction beyond the limits of the old structure, whereas the plaintiff asserts that the present work is confined to the reconstruction of the pre-existing shed. Neither side has produced any survey map, measurement record, sanctioned plan, commissioner's report or other objective material from which the Court can ascertain the exact dimensions of the previous structure or compare the same with the dimensions of the ongoing construction.

22. Significantly, Defendant No.9 has not precisely identified the exact extent of land allegedly encroached upon by the plaintiff. Equally, the plaintiff has not produced any technical material demonstrating that the present construction is strictly confined to the footprint of the old shed. Thus, the precise nature and extent of the

ongoing construction remains a disputed question of fact which cannot be conclusively adjudicated at this interlocutory stage.

23. The Court also finds substance in the plaintiff's contention that the Gram Panchayat records prima facie support the existence of an old shed. Therefore, the case cannot be viewed as one where the defendant has conclusively established fresh encroachment over a vacant property.

24. At the same time, the photographs unmistakably reveal that construction activity is presently in progress and that structural work involving excavation and erection of RCC pillars has already commenced. Therefore, the physical condition of the property is undergoing change during the pendency of the litigation.

25. In such circumstances, the Court is required to consider not whether the defendant has conclusively proved encroachment, but whether continuation of the construction pending adjudication of the suit is likely to affect the subject matter of the litigation.

26. Order XXXIX, Rules 1 and 2 CPC confer power upon the Court to preserve the property in dispute and to prevent acts which may render the final adjudication ineffective. The object of temporary injunction is not to determine rights finally but to maintain conditions in which those rights can be effectively adjudicated.

27. In this regard, the judgment of the Hon'ble Supreme Court in *Maharwal Khewaki Trust (Regd.), Faridkot Vs. Baldev Dass* assumes significance. The Hon'ble Supreme Court has emphasised that during the pendency of litigation, courts should ordinarily preserve the

property in dispute and prevent changes which may create a fait accompli or frustrate the ultimate decree. The principle flowing from the said judgment is that where the nature of the property is being altered during the pendency of the proceedings, the Court should lean in favour of preservation rather than permitting irreversible changes.

28. The plaintiff has relied upon the decision in ***Nanasaheb S/o Sakharam Bhalekar Vs. Dattu Dhondiba Bhalekar***. The said judgment lays down the principle that an injunction should not ordinarily be granted against a co-owner merely because another co-owner is using or enjoying a portion of the property. The proposition laid down therein is well settled. However, in the present case, Defendant No.9 is not merely objecting to possession or use of the property. The grievance raised relates to ongoing construction activity, which is admittedly altering the physical condition of the property during the pendency of the suit. Therefore, the said decision does not completely govern the controversy involved in the present matter.

29. This Court is conscious that Defendant No.9 has not yet produced any measurement report or commissioner's report conclusively demonstrating that the plaintiff has exceeded the limits of the old structure. Nevertheless, the absence of such material does not justify permitting unrestricted continuation of construction where the exact extent of reconstruction itself remains disputed and is yet to be determined.

30. If the construction is allowed to proceed further and substantial permanent structures come into existence, a situation may arise whereby implementation of the final decree becomes difficult.

Such construction may also give rise to further disputes regarding equities, valuation, adjustments and consequential reliefs. Conversely, if the present condition of the property is preserved until the controversy is properly examined through evidence or other permissible modes, no irreversible prejudice would be caused to either side.

31. Thus, the relief which commends itself to the Court is not one based upon a finding that Defendant No.9 has proved encroachment or established superior rights over the property. The relief is warranted solely for preserving the existing state of affairs and protecting the subject matter of the suit from further alteration until the disputed factual issues are adjudicated in accordance with law.

32. In the considered opinion of this Court, the balance of convenience lies in favour of maintaining the property in its present condition. If further construction is restrained, the existing structure and construction already carried out shall remain intact. However, if construction continues and the property undergoes substantial alteration, the resulting consequences may not be capable of being adequately remedied at a later stage.

33. Likewise, irreparable injury may result if permanent construction is completed during the pendency of the suit and it subsequently transpires that the rights of the parties require a different arrangement of the property. Such injury cannot be adequately compensated in monetary terms.

34. Accordingly, this Court holds that a limited order preserving the existing condition of the property is necessary in the

interests of justice pending final adjudication of the suit. Hence, Point No.1 is answered partly in the affirmative and Points Nos 2 and 3 are answered in the affirmative.

As to point No. 4 :-

35. Upon consideration of the rival pleadings, photographs and Gram Panchayat records, this Court finds that the plaintiff has prima facie shown the existence of an earlier structure at the construction site. However, the exact extent of the ongoing construction remains disputed and cannot be determined at this stage. Since construction activity is in progress and the subject property is the subject matter of the litigation, preservation of its present condition is necessary pending adjudication. Hence, a limited order of status quo regarding further construction deserves to be passed.

ORDER

1. The application is partly allowed.
2. The plaintiff, his agents, servants or any person claiming through him, are hereby restrained from carrying out any further construction or structural alteration at the site where construction activity is presently in progress till the disposal of the suit or until further orders of this Court.
3. Both parties shall maintain the status quo regarding the nature and physical condition of the said construction site as existing on the date of this order.
4. No order as to costs.

(R.M.Lolge)

Date:- 23/06/2026

Civil Court Jr. Division, Patan.