

**Order Below Exh. 6****Dt. 26.02.2025**

This application is filed to stay operation and execution of order passed by learned Trial Court below exh. 5 dt. 25.02.2025 in suit RCS No. 04/2025 under Order 41 Rule 4 of CPC.

Perused application, impugned order and all releavent documents filed with Paper-book. Heard Adv. Shri S.P. Raut for appellent.

This Misc. Civil Appeal is filed under Order 43 Rule 1(r) of C.P.C. by unsuccessul defendent challenging the grant of Temporary Injunction order against him. Parties to the proceeding are called by nomenclature before Trial Court.

Plaintiff filed Civil Suit for declaration of ownership with anciliary relief of permanent injunction restraining defendent from distrubing his possession over land surevy no. 3 situated at mouza Eklaspur, Tq. Deoli, Dist. Wardha. In said suit plaintiff moved application exh. 5 under Order 39 of C.P.C. for Temporary Injunction. This Temparary Injunction application was allowed by Trial Court and being aggrived and dissatisfied by said order present appeal is field.

Adv. Shri S.P. Raut submitted that the order of Trial Court is incorrect not only on factual side but also legally. He would submit that Panchdhara Shiv Mandir exists from immemorial time and defendend is Trustee of said Temple Trust. He further submitted that today is significant festival of Hindus i.e. 'Mahashivratri' and it is connected to Lord Shiva. He submitted that defendent and trustees have made grand preparations to celebrate festival of 'Mahashivratri' with all grandeur. However, the impugned order of Trial Court is likely to create chaotic situation and it may affect celebration of festival. So he insisted to take up the matter for hearing and pass suitable order on Holiday. Considering exigency made out by the counsel of defendent, matter is taken up on holiday for passing necessary orders.

It is Plaintiff's case that he became owner of property survey no. 3 on the basis of registered Gift deed dt. 13.02.2024. Accoring to Plaintiff property

was gifted to him by Ivan Singh Kunwar Samshersingh. Plaintiff further claims to be in possession of said property. His temporary injunction application exh. 5 is allowed by Trial Court and defendant is restricted from obstructing or disturbing peaceful possession of plaintiff over suit property. If we go by the order of learned Trial Court, it is manifest that Temporary Injunction order was granted in favour of Plaintiff, holding that the copy of Bombay Public Trust register entry no. A-525 shows that the Pachadhara Shiv Temple of Trust situates in Land Survey no. 1, whereas suit is filed by plaintiff pertains to land survey no. 3.

It is pertinent to mention that plaintiff does not deny existence of Panchadhara Shiv Mandir and Trust of which defendant is president. It is also worthy to consider that the matter was taken up before Sub-divisional Magistrate under section 145 of Cr. P.C. On the basis of order dt. 14.01.2025, Sub-divisional Magistrate, Wardha passed an order holding that plaintiff is owner of Land Survey No. 3. Being aggrieved and dissatisfied with said order, defendant preferred Revision Application under section 438 of Bhartiya Nagrik Suraksha Sahinta 2025 bearing no. 03/2025. Said revision of defendant was allowed vide Judgment and order dt. 20.02.2025. In said Judgment and order, learned Session Judge clearly held that defendant is in possession of land survey no.3. By virtue of said order plaintiff and other respondents were forbidden to disturb plaintiff's possession over disputed property, unless due process of law is followed. It is worthy to consider that learned Sessions Judge has passed a very detail Judgement and order keeping in mind every angle of the case.

The case of plaintiff is based upon gift deed. Whether gift deed is valid or not can be decided only during trial on the basis of oral and documentary evidence of both sides. So at this juncture, there is no propriety to consider the point of ownership. At this movement, what matters is, who is in possession of property. If we carefully go through order of trial court it is evident that the point of possession is considered and discussed superficially. Trial Court granted Temporary Injunction relief in favour of plaintiff only on the basis of fact that suit of plaintiff is in respect of land survey no. 3, whereas according to Bombay Public trust register entry temple is situated in land survey no. 3.

Adv. Shri S.P Raut for defendant submitted that the mistake in respect of survey number occurred at the time of registration of Trust. He fervidly submitted that in village Ekhaspur or in surrounding area there is only one

temple by name Pachadhara Shiv Mandir. This temple is ancient and worshipped by public with all zeal and vigour. He further submitted that the temple and land survey no. 1 and 3 are situated in the bed of Wardha River. Therefore it can not be a private property and actually it is Government property.

In order to buttress said proposition, he adverted my attention to survey map and it indeed shows that land survey no. 1 and 3 are situated in bed of Wadha river. He further placed reliance upon a document titled as, "Information in respect of Religious Places." In said document it is mentioned that Pachadhara Shiv Mandir is situated at village Ekhaspur from year 1960. It is not a case of plaintiff that two different lord Shiva temples exist, one in land survey no. 3 and other in land survey no. 1. So I am left with no doubt that the Panchdhara shiv Mandir to which defendent referring to, is situated in land survey no. 3 but in trust record it is wrongly shown as situated in land survey no. 1.

In Revision Appln. No. 03/2025, the learned Sessions Judge, in para number 20, 21, 22, 23 discussed in detail about the Temple being situated in land survey no. 3. In said Judgment it is categorically observed that defendent is in possession of Pachadhara Shiv Mandir and Dharmshala. It is aptly observed by learned Trial Court that order of Criminal Court is not binding upon Civil Court. So much so that learned Sessions Judge showed wisdom by making an observation that his order is subject to decision taken by Civil Court. Regradless to this aspect in Revision Judgement categorical finding is given that defendent is in possion of property in question.

Any Civil dispute is adjudged on the basis of preponderance of probability. Moreover, prima facie case, balance of convenience and irreparable loss are of paramount consideration to decide application for temporary injuction. The finding, reasioning and observations relating to point of possession in Judgment of Trial Court are sparse and scarce. Although there is no cogent evidence of possession of plaintiff, Temporary Injuction order is passed ignoring principles of primafacie case, balance of convenience and irreparable loss.

It is clear from above discussion that the impunged order needs deliberation. Hence it is necessary to stay the order. Accordingly following order is passed.

**Order**

1. Application is allowed.
2. Pending hearing and decision of this appeal, the execution and operation of order dt. 25.02.2025 below exh. 5 in RCS. No. 4/2025 is stayed.
3. Inform Trial Court accordingly.

Date: 26.02.2025

(V. P. Adone)  
District Judge-4, Wardha