

**ORDER PASSED BELOW EXH.5**

1. The plaintiffs have filed present application for grant of temporary injunction as per order 39 rule 1 & 2 r/w sec.151 of C.P.C.
2. The plaintiffs have filed suit for permanent injunction. It is pleaded by the plaintiffs that they having small scale business in Mangrulpir since last 25 years. Initially they did business all the encroached land but, later on the defendant took note of the same and allotted the encroach portion to the plaintiffs near Karanja Washim road, Bus Stand, Mangrulpir. The suit property is shop no.1 & 2 admeasuring 8 x 10 sq.ft. Having four boundaries toward East-Karanja Washim Road, West-Wall of Bus stand, North- Payal Hotel and towards South- enterence of the bus stand. Herein referred as a “suit property” for brevity. The defendants gave said suit property to the plaintiffs by demarcating the areas thereafter, fixed the rent and also got executed in agreement. The plaintiffs obeyed the terms and condition of the agreements. Meanwhile the period of the agreement expired but after expiry of the period defendant accepted the rent from the plaintiffs till today. The plaintiffs paid regularly rent amount fixed by the defendant till July,2017. The conduct of the defendant itself shows that, they legalize the status of plaintiffs as of lessee even after the expiry period of agreement. The defendant legally estopped for issuing notice to vacate. The plaintiffs are in legal and permissive possession over the suit property. The plaintiffs also make temporary construction over the suit properties. Family of the plaintiffs are depend from the earnings of the business if they are thrown away from the suit property their family will suffer hardship and will cause starvation.
3. The defendant on 4/10/2017 issued notice to the plaintiffs and terming the suit property as encroached property and called the plaintiffs

to remove the encroachment within 15 days. The act and conduct of the defendant is against the law. The defendant any time remove the suit sites of the plaintiffs. The plaintiffs are also ready to pay the rent amount regularly. If the defendant is not restrained then, the plaintiffs may cause irreparable loss and hence prayed to allow temporary injunction by restraining the defendants, their servant, agents etc. from vacating the plaintiffs on the suit property.

4. The defendant appeared and filed their written statement and reply to the present application vide Exh.14. The defendant denied that, they given the suit property 8 x 10 open space to the plaintiffs on rented lease. But the defendant admitted that the notice has been given to the plaintiffs on 4/10/2017. Per contra the defendant also given previously notice to the plaintiffs on 7/12/2013 and 18/7/2017. The defendant specifically denied the application on the ground that, the plaintiffs only filed suit for simpliciter injunction. Per contra the plaintiffs would have been also sought the relief claiming notice dtd.4/10/2017 is illegal and void. Hence, the suit of the plaintiffs is not maintainable. The plaintiffs also not filed the alleged rent agreement, its renewal agreements and any documents to show that they followed the rules as per the Municipal Council Act. Sec.92. As per section 303 of the M.C.Act and the Town Planning Act sec.147. The plaintiffs are bared for filing the suit. The suit is also not within the limitation as per section 304(i)(c) of the Municipal Council Act. Due to encroachment made by the plaintiffs the Karanja Washim road in front of the bus stand is came under the zone of accident and pedestrian's life came in danger. The plaintiffs filed the false suit only with the malafied intention hence, prayed to reject the application.

5. I have heard the learned advocate for the respective parties at length.

6. Considering the rival contention between the parties, the

following points arise for my determination and I have recorded my findings thereon with the reason as stated below.

S.No.	Points	Findings
1	Whether the plaintiff has made out prima facie case.?	<u>Yes</u>
2	Whether the balance of convenience lies in favour of the plaintiff.?	<u>Yes</u>
3	Whether irreparable loss to be caused to the plaintiff if the injunction has prayed will not be granted.?	<u>Yes</u>
4	What order.?	<b>As per final order</b>

### Reasons

#### AS TO POINTS NO.1 & 2 :-

7. In order to support their respective claim and defence both the parties have place reliance on various documentary evidence the reference to the said document will be made in my discussion at relevant place.

8. It is admitted position that defendant issued notice to the plaintiffs dtd. 4/10/2017. Therefore, from this prima facie it can be established that plaintiffs are in possession of the suit property. Plaintiffs also filed the deposit receipt issued by the defendant and agreements of the allotment of the suit land to the plaintiffs by defendant vide list Exh.4. The plaintiffs also filed defendant resolution of allotment of the suit land vide list Exh.17. The defendant also admitted the payment of rent to him by the plaintiffs. So, from all these documents prima facie it seems that the plaintiffs entered on the suit property legally.

9. The learned advocate for the plaintiffs submitted that the defendant after the expiration of the period of agreement accepted rent. In the eviction notice the defendant does not mentioned the amount of deposit which were paid by the plaintiffs. The defendant also not filed any

document to show that the suit land was reserved by the Town Planning Department. Per contra the learned advocate for the defendant submitted that in the agreement, resolution was not mentioned. The Collector in the year 2007 also cancelled the resolution of the suit land. There was no record to show that how much area was allotted to the plaintiffs. Hence, prayed to reject the application.

10. The learned counsel for the defendant also relied on **Municipal Council Pusad Vrs. Kundanlal Mohanlal Jaiswal and others, reported in 2007(3) Mh.L.J.155,** in which the Hon'ble Bombay High Court held to the effect that *“mere plea that he is in possession therefore his encroachment needs to be protected can be no assistance because on the basis of such plea it cannot ultimately succeed in his suit. Thus, apart from long possession such person establish some legal right in his favour to enable him to claim temporary injunction during pendency of the suit.”*

11. In the case of Municipal Council Pusad Vrs. Kundanlal Mohanlal Jaiswal and others, reported in 2007(3)Mh.L.J.155, It has not been pointed any written contract with the municipal council enabling them to occupy the plots for any resolution of the same. Per contra in the present case plaintiffs come up with the case that the entered into suit land by paying deposit rent and after written agreement with the defendant. Therefore, under this back drop of the case the ratio laid down by the Hon'ble High court is not helpful to the defendant.

12. The defendant also relied on **Surya Ramchand Naik Vrs. Suxila Tukaram Naique, 2015 (1) Mh.L.J.310** in which, the Hon'ble Bombay High Court held to the effect that *“ the suit for injunction simpliciter without seeking declarity relief not maintainable.”* But in that case there was a dispute as regard to the respondent/defendant title to the suit property. In the present case there is no dispute as regard the title of the

suit property of the defendant is concerned. Hence, the above ratio is not helpful to the defendant.

13. As discussed above the plaintiffs after depositing deposit amount executed agreement and also paid rent to the defendant till July 2017. The defendant also admitted issuance of notice by them, so from it *prima facie* shows that the plaintiffs are in exclusive possession of the suit property. However, the defendants are causing obstruction and interference to their possession over the suit property by issuing the notice of eviction. If that is so, I find that the balance of convenience lies in favour of the plaintiff. Therefore, I find that, there is a *prima facie* case in favour of the plaintiff for issuance of temporary injunction as prayed for. Therefore, I answer point no.1 & 2 are in affirmative.

**AS TO POINT NO.3:-**

14. As the plaintiff have established that they are in exclusive possession of the suit property and the defendant causing obstruction and interference to their possession. In such circumstances, if the injunction as prayed is refused, the plaintiffs would suffer irreparable loss and there would be multiplicity of the proceedings. I do not think that such situation could be compensated in monetary terms to the plaintiffs. On the other hand, no such irreparable loss would be suffered by the defendant. Hence, I answer point No.3 in the affirmative.

**AS TO POINT NO.4 :-**

14. Thus, in view of my findings to the aforesaid points, the instant application is deserved to be allowed. Hence, in answer to point No.4, I proceed to pass the following order.

**ORDER**

1. The application Exh.5 is allowed.

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2. The defendant, his servant and agents or any other claiming on its behalf is temporary restraining from vacating the plaintiffs over the suit property.
3. Costs in cause.

Sd/-

Dt:-23/5/2018

( R.V.Sapate)  
Jt.Civil Judge Jr.Dn.Mangrulpir.