

ORDER BELOW EXH.110
(Dated 22/07/2022)

This is an application filed by defendants for temporary injunction under Order 39, Rule 1 & 2 of the Code of Civil Procedure against the plaintiff.

2] Plaintiff has resisted the application by filing reply at Exh.113.

3] Considering the above pleadings of the parties and documents produced in support of, the following points arise for my determination to which, I record my findings thereon for the reasons to follows:

<u>Sr. No</u>	<u>Points</u>	<u>Findings</u>
01	Whether the defendants prove that prima facie case lies in their favour ?	In the negative.
02	Whether the defendants prove that balance of convenience lies in their favour ?	In the negative.
03	Whether the defendants will suffer irreparable loss, if injunction is refused ?	In the negative.
04	What Order?	Application is rejected.

REASONS

4] I have heard Ld.Counsels of both the parties. Adv.Khan for the defendant argued that there is prima-facie case. Balance of convenience lies in favour of the defendants. If temporary injunction is not granted defendants will suffer irreparable. Hence, he prayed the to

allow the temporarily injunction application. Per contra, Adv.Kothari for the plaintiff argued that defendants have no right to file temporary injunction. The defendants not came with clean hands before the Court. Not a single document filed by the defendants to prove their application. The application is not tenable. Hence, he prayed to reject the application.

AS TO POINT NO.1 to 4:

5] This is the suit for removal of encroachment, possession and mesne profit. The case of the defendants is that the plaintiff has filed the suit on the basis of measurement of survey no.48 of the land situated at Arni, Dist.Yavatmal. The plaintiff has measured the land through Taluka Inspector Land Record, Arni on 17/10/2010. On the basis of the disputed measurement, the plaintiff has filed the suit and it is pending since long.

6] The defendant is owner of sheet survey no.48/2-B, Area 2.02 H.R. The said land has been converted as non-agriculture land by the order of Sub Divisional Officer dated 20/06/2003. According to the plaintiff, the defendants encroached her land at South side. The plaintiff during the pendency of the suit is trying to convert the land of gat no.48 Area 1.61 H.R. adjacent to the North side of defendants land into non-agriculture layout. The plaintiff prepared layout map on the basis of unproved and disputed measurement of the year 2010 and initiated non-agriculture proceeding before the concerning authority ant trying to sell out the proposed plots. Hence, he filed the application for temporary injunction restraining plaintiff not to initiate or convert the land of survey no.48 area 1.61 H.R. situated to the North side of

defendant non-agriculture land gat no.48/2-B Area 2.02 H.R. and not to create third party interest and not to disturb peaceful possession of the defendants till the disposal of the suit.

7] Plaintiff denied the allegation and contended that in order to delay the matter the defendants filed this false application. No counter claim is filed by the defendant. Hence, application for temporary injunction is not tenable. No document is filed by the defendants to prove their statement. The defendants not mentioned the case number, the present stage of the case etc. in the case of conversion of agricultural land into non-agriculture land. There is no prima-facie case. The defendants have encroached on the 13 R land of the plaintiff. The land of plaintiff is surrounded by lay-outs. Therefore, it is difficult for plaintiff to cultivate her agricultural land. Therefore, she applied to the Collector, Yavatmal to convert her agricultural land into non-agriculture land. In the map of layout submitted at the office of the Collector, Yavatmal the encroached land is specifically mentioned. The plaintiff has not applied for conversion of encroached land. Hence, she prayed to reject the application with cost.

8] At the out set, it is imperative to note that the grant of temporary injunction is a purely discretionary and equitable relief in nature. The Court is expected to exercise the said discretion by keeping in mind the principles of justice, equity and good conscious. The discretion is a judicial one and therefore, the defendants are required to show that, they are having right or interest in the suit property, and there is corresponding duty against the plaintiff not to obstruct that

right. Moreover, it is well settled that, to obtain the relief under the equity, the party must approach the Court with clean hands. It is stated that, party who seeks equity must do equity. Keeping in mind the above said principles, I proceed to discuss merits of the application.

9] In the present case in hand, the defendants applied for temporary injunction restraining the plaintiff to convert her agricultural land into non-agriculture land till the decision of the suit. The plaintiff has filed the suit for removal of encroachment and for possession of the land. As per the defendants, the plaintiff has applied for conversion of his agricultural land into non-agriculture land during the pendency of the suit. Alongwith the application the defendants have filed the notice of measurement vide Exh.114 and his objection application at Exh.118 filed before the Deputy Superintendent of Land Record, Arni. From these documents, it shows that the plaintiff has applied for measurement of non-agriculture land and the defendants objected to the said measurement. Apart from these documents nothing is filed on the record to show that the plaintiff applied for conversion of encroached land into non-agriculture land. Therefore, prima-facie case is not made out. Whereas, it is submitted by the plaintiff that her agricultural land is surrounded by the layouts. Therefore, it is difficult for the plaintiff to cultivate the land. It is not disputed that agricultural land of plaintiff will surround by the layouts. Therefore, balance of convenience is lies in favour of the plaintiff. It is also not made clear that how the defendants would suffer irreparable loss which would not be compensated in terms of money. The suit is filed in the year 2011. The evidence of the plaintiff is recorded. The suit is pending for

evidence. It is also not made clear that plaintiff applied for conversion of suit property i.e. encroached land, Area 13 R into non-agriculture land. Hence, point no.1 to 3 are answered in the negative. In order to answer point no.4, I pass the following order.

ORDER

1. The application Exh.5 is rejected.
2. Parties shall bear their own costs.

Date : 22/07/2022

(Sapna M. Patil)
Jt.Civil Judge Jr.Dn., Arni