

MHYA050000142025



ORDER BELOW EXH.5
Dtd. 09/04/2025

1] The plaintiff has filed this application against defendant for grant of temporary injunction as per Order 39 Rule 1 and 2 of the C.P.C. r/w Section 151 of the C.P.C. for preventing to change the nature of the suit property.

The brief facts of the applicant below Exh. 5 are as under:

2] The house property bearing No. 112, admeasuring 24.40 sq.m., nazol plot No. 212 situated at mouja Belora, Tq. Pusad, Dist. Yavatmal and being bounded as towards East : the house of Tukaram Sodgir, towards West : the house of Govind Sodgir, towards North : grampanchayat road, towards South : the house of defendant (for short "the suit property") is the ancestral property of the plaintiff. The plaintiff is the owner of the suit property. The plaintiff and defendants are cousins. On 10/12/2024, the plaintiff had given the possession of suit property to the defendant for the period of five days for storage of the cotton agricultural produce. Thereafter till 15/12/2024, the defendant has not stored any agricultural produce in the suit property and defendant has used the

suit property for his domestic use. On 15/12/2024 at about 09.00 a.m. the plaintiff asked to the defendant regarding use of the suit property. On that time the defendant has threatened and abused the plaintiff. The defendant also beaten the plaintiff. According to plaintiff the defendant is intending to construct new house on the place of suit property by demolishing the suit property. He has prima facie case. The balance of convenience tilts in his favour. He will suffer irreparable loss if injunction not granted as prayed. Hence prayed for allow the application.

3] The defendant has filed his written statement on record below Exh. 11 and pursis below Exh.12 for adoption of the said written statement as say to the application below Exh. 5. The defendant denied the claim of the plaintiff. According to defendant he has purchased the suit property from the brother of the plaintiff namely Shivram Sahebrao Sodgir by agreement dated 30/11/2012 for consideration of Rs. 36,000/-. Since then the defendant is in possession of the suit property. The suit is not within the limitation. The suit is filed on the false contention. Hence the defendant prayed to reject the application.

4] Heard learned advocate S. R. Shaikh for the plaintiff learned advocate R. N. Jadhav for the defendant.

5] Following points arise for my determination. I have given my findings against each of them for the reasons stated below :

Sr. No.	Points	Findings
1]	Whether the plaintiff has a prima-facie case in his favour ?	Yes
2]	Whether the balance of convenience lies in favour of the plaintiff ?	Yes
3]	Whether the plaintiff would suffer irreparable loss, if injunction is not granted in his favour ?	Yes
4]	What Order ?	As per final order.

REASONS

As to point No. 1 to 3 :

6] The plaintiff has filed on record photo copy of his aadhar card and namuna 8 extract of the suit property. It shows that the suit property serial No. 119, property No. 112 the house property made by stone, cement and lime and open space admeasuring 403 sq.ft. (37 sq.m.) and constructed area 205 sq.ft. (24.00 sq.m.). The namuna 8 extract bears the date 18/12/2024 and it also bears seal and signature of Secratory Grampanchayat, Belora, Tq. Pusad, Dist. Yavatmal. It shows that the suit property has been on the name of the plaintiff. On the other hand, the defendant has filed on record verified copy of notorised

agreement dated 30/11/2012. It shows that the defendant has purchased the suit property from the brother of the plaintiff namely Sahebrao Shivram Sodgir on 30/11/2012 for the sum of Rs. 36,000/-. However, at this juncture there is nothing on record to show that said Sahebrao Shivram Sodgir was the owner of the suit property and he had right to sale such suit property to the defendant as stated in the agreement dated 30/11/2012. The documents filed by plaintiff prima facie supports his claim. On the other hand, document filed by defendant is not reliable at this juncture. Therefore I hold that the plaintiff has a prima facie case. The plaintiff has prayed for preventing the defendant from changing the nature of suit property till final decision in the present suit. The plaintiff has filed present suit for recovery of possession of the suit property and for mesne profit. In the view of above discussion prima facie it appears to me that the plaintiff is the owner of the suit property. There is nothing on record to show that the defendant is the owner of suit property. It is not in dispute that the defendant is in possession of the suit property. The balance of convenience lies in favour of the plaintiff. If application is not granted then the plaintiff would face irreparable loss. Hence, I answer point No. 1 to 3 in the affirmative.

As to point No. 4 :

7] In view of affirmative finding as to the point No. 1 to 3 the application is liable to be allowed. Hence, following

order is passed :

ORDER

- 1]** The application is allowed.
- 2]** The defendant is temporarily prevented from demolishing or making any change in the nature of the suit property till final decision in the present suit.
- 3]** Parties to bear their own costs.

Place: Pusad.

Date: 09/04/2025

(D. G. Mhaske)
Jt. Civil Judge Jr. Dn.,
Pusad