

Order Below Exh. 05  
(Passed on this 15<sup>th</sup> day of March, 2018)

This is the application under Order 39, Rule 1 & 2 of Code of Civil Procedure for grant of temporary injunction.

2. The story of the plaintiff is as under-

That plaintiff is having House No. 83 of village Khapari. In short called as "suit land". There is Wada on the said suit land. Some of the people started encroached around the Wada therefore the plaintiff had got fence his Wada by constructing compound wall. Therefore, the plaintiff had not encroached over any land of Gram Panchayat. In spite of this fact the Gram Panchayat with ill intention dated 16.03.2014 had issued illegal notice to remove the compound wall of the plaintiff. The suit land come to possession of the plaintiff by way of partition. The defendant having no right to remove compound wall without any authority. Therefore, he has filed present application for grant of temporary injunction.

3. The defendant filed his say at Exh.16 and denied each every submission raised by the plaintiff. He has contended that the plaintiff has encroached over 1626 sq.ft land of Gram Panchayat and tried to encroach over the land of Gram Panchayat. Therefore, the legal notice was issued to the plaintiff to remove compound wall and not to encroach upon way of Gram Panchayat.

4. Heard learned counsel for the plaintiff Adv. G. I. Dhattrak and learned counsel for the defendant Adv. V. B. Bhure.

5. Following points are arise for my determination with my findings on each of them with reasons is as under.

<u>Points for my determination</u>	<u>Findings</u>
1 Whether the plaintiff proves prima facie case ?	.... Yes.
2 Whether the plaintiff having balance of convenience in his favour?	.... Yes.
3 Whether the plaintiff will suffer irreparable loss?	.... Yes.
4 What order?	.... Application is allowed.

### REASONS

As to issue No.1 to 4 :

6. In order to prove prima facie case the plaintiff has filed copy of Map, copy of notice given by Gram Panchayat, copy of reply given by the plaintiff, tax receipt, copy of notice and village Form No.8. The defendants have filed on record copy of proceeding register and copy of notice.

7. The learned counsel for the plaintiff argued that without admeasuring there land Gram Panchayat in arbitrary manner issued false notice for removal of compound wall. The Gram Panchayat has not filed any document to show that they had constructed over land of Gram Panchayat. Therefore, the notice issued by Gram Panchayat is illegal. Prima facie case is in favour of the plaintiff and balance of convenience lies in favour of the plaintiff. Therefore, temporary injunction may kindly be granted.

8. The learned counsel for the defendant argued that the plaintiff has not come with clean hand. The defendant had issued legal notice for removal of compound wall. Therefore, no prima facie case made out in favour of the plaintiff.

9. The plaintiff has filed on record the copy of map, which disclose exact location of the suit land. The plaintiff has filed on record copy of notice issued by Gram Panchayat and thereby called upon the plaintiff to remove and stop the construction of compound wall. The said notice was issued in the year 16.03.2014. Since from then the Gram Panchayat had not taken any effort for removal of compound wall. On perusal of said notice it reveals that in the said notice it is no where discloses that on how much area of Gram Panchayat the plaintiff had committed encroachment. There is blank notice issued by the defendant that the compound wall is on the land of Gram Panchayat. In support of their claim the Gram Panchayat has not measured the suit land and not filed any map of T.I.L.R. or any measurer to show that how much portion has been encroached by the plaintiff. Therefore, in absence of said fact it could not reveal that how much of portion has been acquired by the plaintiff. It is also doubtful that whether there is encroachment by the side of the plaintiff over the area of the Gram Panchayat in absence of any report of measurer on the side of the Gram Panchayat.

10. As there is no description of exact encroachment given in the notice. At this stage prima facie case found in favour of the plaintiff. The defendant failed to show that how much of encroach portion acquired by the plaintiff. Notice is also silent on this point. Therefore, the prima facie case is made out in favour of the plaintiff. So far as balance of convenience is concerned it lies in the favour of the plaintiff rather than the defendant. So far as irreparable loss is concerned if the Gram Panchayat is order to proceed with his notice then there is every possibility that they may remove the land belonging to the plaintiff without having any report of surveyor. Therefore, irreparable loss is cause to the plaintiff rather than the defendant. On the other hand if the temporary injunction has been granted then no loss will be caused to the defendant. Hence, I answer point No.1 , 2, 3 in the affirmative and proceed to pass the following order.

ORDER

1. Application Exh.5 is hereby allowed.
2. The defendant are temporarily restrained from dispossessing the plaintiff and removing the compound wall till disposal of the suit.
3. Cost shall be the cause.

Date: 15/03/2018  
Place: Ghatanji

( M. M. Varma )  
Civil Judge Jr.Dn., Ghatanji.