

MHPU090019992021 	RCS. No. /26/2021 Mangal Natha Kelkar Vs Nandkumar Damodar Satav
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ORDER PASSED BELOW EXH. NO.54

(Passed on 24th February of, 2025)

The plaintiff has moved the court for relief of interim injunction relief by moving present application on the ground that defendant No. 2 and 3 have demolished half compound wall and deterred to demolish the house of the plaintiff. The plaintiff in her application also submitted that the defendant No. 2 came along with 4, 5 persons and JCB machine on 28/11/2024 and demolished half compound wall of the plaintiffs property and deterred her that they would kill her crushing her below said JCB and there after would set in fire her house. It is further submitted that she had approached the police on 07/12/2024 but police informed her to approach the court as the dispute being of civil nature. The defendants have obstructed her easementary right of way and thereby prayed for interim relief by way of injunction by restraining the defendants to not to demolish remaining compound wall and her house property.

02. The defendants were directed file say to the present application. The defendants were absent on 24/01/2025 to file say to the present application. Today also the defendants remained absent and did not file say to the present application. Accordingly, the present application is order to proceed without say of the

defendants.

03. The Ld advocate Shri. Wakale has argued in the light of submission made in present application. As the defendants are absent and they have not filed their say and thereby the application has proceeded without their say. Regarding that order is passed on first page of the present application itself. Though, the defendants are absent, the record of the matter is considered for deciding the present application for interim relief.

04. I have perused the record including the present application. The suit is filed for permanent injunction for restraining the defendants so as not to cause obstruction to the easementary right of plaintiff as well as for restraining the defendants not to transfer the said way while pendency of present lis. Further, on perusal of record, it is seen that, in the preset matter the earlier interim application moved by the plaintiff came to rejected by this court vide order dated 20/11/2023. Further it is seen that, therein also the relief of temporary injunction restraining the defendants from demolishing compound wall and the plaintiff house was prayed. The said previous application has been decided by this court after hearing both sides on 20/11/2023 .

05. Ld advocate Shri. Wakale has not disputed before this court that he has assailed said rejection order of interim relief by this court before the appropriate Apex authority by way of available legal remedy. Now, the Ld. advocate has been seeking the same relief against the defendants by submitting that now the defendants have

partly demolished the compound wall and thereby the defendants be restrained from doing an act of demolishing compound wall and restraining the defendants not to deter the plaintiff.

06. So following points arise for my determination and I have recorded the findings with reasons as below-

Sr. No	POINT'	FINDING
1	Whether the plaintiff has prima-facie case ?	Negative
2	Whether the balance of convenience lies in favour of the plaintiff ?	Negative
3	Whether the plaintiff would suffer the irreparable loss ?	Negative
4	What order ?	Application is rejected.

REASONS AS TO POINT NO. 1 TO 3

07. Ld advocate Shri. Wakale for the plaintiff has not disputed that this court has rejected earlier application for interim relief by this court on 20/11/2023 for the reasons mentioned therein. Further, it is seen that, the plaintiff has not assailed said Exh. 5 rejection order passed by this court on 20/11/2023 after giving fair opportunity to both the sides. On perusal of said order, it is seen that, this court in para No. 7 has observed that the to claim any relief either final or temporary injunction, it is necessary that, it must be pleaded by the party. But, in the present case the subsequent cause of action dated 04/08/2023 that defendant No. 2 and 3 tried to demolish her house and compound wall is not pleaded by way of

amendment. The plaintiffs entire case is based upon obstruction caused by defendants on her northern side right of way. So it is seen that, this court thereafter has also recorded that in absence of pleading regarding act of defendant No. 2 and 3 so as to demolish the plaintiffs house and compound wall, the plaintiff is not entitled for relief of temporary injunction by restraining the defendants from causing alleged act. Before moving the present application also there is no any such amendment as to alleged acts of the defendants dated 28/11/2024 it means in the present suit there is no any such pleading regarding present cause of action which has arisen as pleaded in present application by way of amendment of suit. So, this court of view of that, as the suit is filed for the relief of restraining the defendants from not to cause obstruction to the easementary right of the plaintiff, the present application is also not tenable for want of pleading. Hence, this court does not find prima facie case lies in favor of the plaintiff as well as no irreparable loss and balance of convenience also not lies in favor of the plaintiff. For the said reasons I record findings to the point No. 1, 2, 3 in the negative for the said reasons recorded as above and proceed pass following order for the point No.4 -

ORDER

The application stands rejected.

Place : Pimpri,
Date : 24/02/2025.

(M. G. More)
Jt. C.J.J.D., Pimpri, Pune.