



MHAH100002312018

Presented on : 15/06/2017
Registered on : 21/06/2018
Decided on : 04/10/2023
Duration : Y. M. D.
06 - 03 - 19

**IN THE COURT OF AD-HOC DISTRICT JUDGE-1, AT
KOPARGAON, DIST. AHMEDNAGAR.**

(Presided Over by S. B. Desai)

Regular Civil Appeal No. 46/2018

Exh. No.9.

(1) Sahebrao Gajaram Jawale,
Age - 39 years, Occu. - Agri;
R/o. Sonewadi, Tal. Kopargaon,
Dist. Ahmednagar.

(2) Kantilal Gajaram Jawale,
Age - 43 years, Occu. - Agri;
R/o. Sonewadi, Tal. Kopargaon,
Dist. Ahmednagar.

(3) Pandurang Gajaram Jawale,
Age - 37 years, Occu. - Agri;
R/o. Sonewadi, Tal. Kopargaon,
Dist. Ahmednagar.

... **Appellant
(Ori. Defts.)**

VERSUS

Balasaheb Deoram Jawale,
Age - 55 years, Occu. - Agri;
R/o. Sonewadi, Tal. Kopargaon,
Dist. Ahmednagar.

... **Respondent.
(Ori. Plff.)**

Appeal :- U/Sec. 96 of the Code of Civil Procedure.

Appearance :-

Advocate for the appellants :- Shri. A. S. Agavan

Advocate for the respondent :- Shri. S. P. Khamkar.

JUDGMENT

(Delivered on 04/10/2023)

Original defendants in Regular Civil Suit No.114/2014

preferred this appeal against the judgment and decree dated 18/03/2017 passed by the learned 2nd Joint Civil Judge, Junior Division, *Kopargaon*, whereby the claim of the plaintiff for perpetual injunction was granted. For the sake of convenience the appellants-original defendants and present respondent-original plaintiff are hereinafter referred by their original nomenclatures by which they were referred to in the suit.

2. In brief case of plaintiff is as under :-

Suit properties described in para No. 1 are owned by plaintiff. Dispute is about the erection of poles on the Southern side of suit property described in para No. 1A. On 1/03/2014 and on 01/04/2014 defendant illegally tried to excavate in the Southern side of said suit property for erection of poles to construct the fencing. On the Southern side of said suit property there is East-West road. Further contention is that if defendant erect the compound, plaintiff will not get access to enter in his property and there is no other road to enter in suit property. Thus, he will become land-lock. Hence, plaintiff prays that defendant shall not obstruct his peaceful possession in suit property described in plaint para No. 1A by erecting compound poles and fencing. Further mandatory injunction is sought contending that if during the pendency of suit defendant completed the fencing it may be removed by the order of mandatory injunction.

3. Defendant submitted written statement vide Exh. 39 and denied all the contentions in the plaint. According to defendant he is not at all having any property abutting with suit land and there is no question of causing any obstruction. He is

owner of 2 R land in Survey No. 109/24 which is situated at long distance from the suit property and there is no question of causing any obstruction. In the boundary marks mentioned in the plaint, his property is not at all shown abutting anywhere to the suit properties. Thus, suit is within intent to harass and it be dismissed with costs.

4. The learned lower Court upon considering the pleadings framed issues below Exh. 37. Issue No. 1 was relating to ownership of suit property and issue No. 2 was in respect of obstruction. Both issues were answered in favour of plaintiff. Issue No. 3 was in respect of granting perpetual injunction and mandatory injunction. Prayer for mandatory injunction was rejected, however prayer for perpetual injunction was granted and this issue was answered in affirmative. Thus, the suit was decreed by order of injunction in favour of plaintiff.

5. Heard Advocate Shri. A. S. Agavan for the appellants-defendants and Advocate Shri. S. P. Khamkar for respondent-plaintiff.

6. Upon considering the rival contentions following points arises for determination. The points and findings thereon for the reasons stated thereunder are as follows :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether plaintiff proves that he is in ... possession of suit properties ?	Yes.
2. Whether defendants obstructed plaintiff's ... peaceful possession ?	Yes.

- | | | |
|--|-----|----------------------|
| 3. Whether plaintiff is entitled to perpetual injunction as prayed ? | ... | Yes. |
| 4. Whether plaintiff is entitled to mandatory injunction as prayed ? | ... | No. |
| 5. Whether the impugned judgment and decree needs any interference ? | ... | No. |
| 6. What order ? | ... | Appeal is dismissed. |

REASONS

Point No.1 to 5 :-

7. Upon considering the pleadings and evidence on record it appears that dispute is in respect of obstruction to the suit property described in plaint para No. 1A only. From the pleadings and from the submissions on behalf of both parties it appears that there is no dispute about the possession of plaintiff over the said suit property.

8. During argument advocate for appellants-defendants Shri. A. S. Agavan submitted that property of defendant is not at all abutting to the plaintiff's land and there was no question of filing the suit. In such circumstances suit is only with to intent to harass the defendants. Further submitted that plaintiff has not at all made out the grounds for injunction and suit was with malafide intention.

9. Advocate for respondent-plaintiff Shri. S. P. Khamkar submitted that plaintiff's ownership and possession over suit properties is not in dispute. It is not at all the case of the defendants that they have any right in respect of suit properties. It

is also not the case of defendants that they are abutting to the suit property. In such circumstances defendants have no right to obstruct peaceful possession over it. Further submitted that defendants are illegally erecting the poles and fencing on the Southern portion of suit property described in para No. 1A. If defendants continues their illegal act plaintiff cannot enter in the suit property. Further submitted that on the Southern side there is government road and this is a way to enter in the suit property. If the defendants closed the entrance illegally plaintiff will suffer loss and defendants have no right to obstruct plaintiff from the peaceful enjoyment of suit property.

10. Upon hearing rival submissions perused record. The contention of the plaintiff is that on the Southern side of suit property described in plaint para No. 1A, there is East-West road. The situation at the spot is described in hand sketch map annexed with the plaint. Appellant-defendant during the trial admitted the said hand sketch map and marked as Exh. 41. The situation at the spot shows that plaintiff has no other way to enter in his land except the road situated on Southern side. It is the contention of plaintiff that on 31/03/2014 on the Southern side of suit property described in plaint para No. 1A defendant started excavation of ditch with intent to erect the poles. Plaintiff raised objection and work was stopped. Thereafter on 01/04/2014 again defendant started the work of erection of poles for construction of fencing. During the trial defendant not at all denied the ownership and possession of plaintiff over suit properties described in para No. 1 (total three properties are mentioned in this para).

11. The defence of appellants-defendants is that they are not at all having any property, within the four boundaries of suit property. Further contention is that even the boundaries mentioned in the plaint shows that property of defendant is not at all abutting to the suit properties. Thus, over all contentions of defendant is that if the property of defendants is not at all situated anywhere abutting to plaintiff's land, there is no question of granting any injunction. At this stage upon perusal of cross-examination of defendant it appears that he answered in negative to the question put to him that he is not concerned with suit property described in plaint para No. 1A. In further cross-examination also he answered in negative to the question put to him that he has no legal right to enter in the suit property. In further cross-examination he answered in negative to the question that his property is not situated between Southern side road and suit property described in plaint para No. 1A. These answers by appellants-defendants during cross-examination shows that defendants are obstructing to the plaintiff's possession over the suit property described in plaint para No. 1A. If defendants admitted that suit property described in plaint para No 1A is abutting to Southern side East-West road and if defendants failed to show that in between both these properties, there is existence of any property owned by them, then it makes clear that defendants are illegally obstructing plaintiff's peaceful possession over suit property.

12. Further, the pleadings in written statement of defendants shows that their property is not at all abutting anywhere with the suit property. In such circumstances defendant

is estopped from saying that they are having any right to the suit property of plaintiff-respondent. In such circumstances it is clear that plaintiff has made out the case showing obstruction to the peaceful possession over the suit property described in plaint para No. 1A. It appears that learned lower Court considered the evidence of the parties and rightly decreed the suit by granting the perpetual injunction.

13. According to plaintiff if during the pendency of suit, if defendants constructed the fencing/compound, then by order of mandatory injunction it be removed. However, it appears that plaintiff has not at all raised such contention by amendment in the plaint or in evidence. In such circumstances prayer for mandatory injunction was rightly refused by the learned lower Court.

14. Considering over all circumstances, it appears that respondent-plaintiff has made out the case for perpetual injunction, hence point No. 1 to 3 are answered in affirmative. Further, for grant of mandatory injunction as stated above no case is made out. The order of learned lower Court appears to be legal and do not require any interference. Hence, point No. 4 and 5 are answered in the negative

15. In view of above discussion and findings on the points following order is passed :-

ORDER

1. The appeal is dismissed.

2. No order as to costs.
3. Record and proceeding of Regular Civil Suit No.114/2014 be sent to Lower Court.

(S. B. Desai)
Ad-hoc District Judge-1
Kopargaon

Date : 04/10/2023.