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Duration : 2Y2M19Ds

IN THE COURT OF AD HOC DISTRICT JUDGE -2, JALNA.

(Presided over by R. M. Mishra.)

Misc. Civil Appeal No. 35/2015 .

Exh. No.

Shivaji S/o Parasram Raut
Age 50 years Occ. Agriculture
R/o Mardi Taluka Ambad
District Jalna.

Appellant
(Org. Plaintiff)

VERSUS

- 1) Grampanchayat Mardi
Through G. U. Alse Gramsevak
R/o Madi Taluka Ambad District
Jalna.
- 2) Omprakash S/o Ramnath Raut
Age 5 years Occ. Agriculture &
Sarpanch Grampanchayat Mardi
Taluka Ambad District Jalna.

Respondents.
(Org. Defendants)

Appeal U/Order 43 Rule 1(r) of the Code of Civil Procedure.

Shri. S. V. Mundlik Advocate for the Appellant.
Shri. A.V. Wayal Advocate for Respondents.

J U D G M E N T

(Delivered on 11/09/2017 in Open Court.)

Being aggrieved by the order passed below the
application Exh. 5 in Regular Civil Suit No. 105/2015, under Order

XXXIX Rule 1 and 2 of the Code of Civil Procedure by the learned Joint Civil Judge Jr. Dvn. Ambad whereby the learned trial court rejected the application Exh. 5, this appeal is preferred by the appellant/original plaintiff.

2. It is the case of the appellant/plaintiff that the suit property bearing G. No. 66 admeasuring 7 hectare 78 R out of it, 30 R of Mouje Mardi, here-in-after referred as the 'suit land' is the gairan land. It is contended that the Government has implemented a scheme in respect of the gairan land to be allotted for the livelihood of needy persons who made encroachment thereon and thereby to regularize these lands by recording the same in the names of respective persons in the revenue record. As such, it is contended that since 1985, the plaintiff is cultivating the suit land. The plaintiff has applied several times for taking mutation of the suit land in the revenue record in his name. In this regard, the State Government also issued a G.R. dated 14/04/1990 to regularize these lands. Despite, the revenue authorities are not implementing those directions intentionally. It is contended that on 24/10/1998, Tahsilar, Talathi and Circle Inspector visited at Mouje Mardi and after making

inspection , panchnama was drawn in respect of gat No. 66 in the presence of panchas. The plaintiff is earning his livelihood by cultivating the suit land and maintaining his family. He has also improved the suit land. However, the defendants started causing obstruction into the peaceful possession of the plaintiff over the suit land. In order to achieve their ill-intention, the defendants have issued notices to remove the encroachment over the gairan lands. Despite several requests, defendants are not paying any heed and trying to evict the plaintiff from the suit land. It is contended that the suit is in the peaceful cultivating possession of the plaintiff and if, the defendants are not restrained by way of interim injunction from interfering into the peaceful possession of the plaintiff, it will cause great loss to the plaintiff. The plaintiff, therefore, prayed for temporary injunction restraining the defendants from interfering into his peaceful possession over the suit land.

3. The application is resisted by the defendants/respondents. Averments in the application are denied in toto. It is contended that the plaintiff was never in possession of the

suit land which is the Government land. The plaintiff never made any kind of improvement in the said land. It is contended that the suit land was handed over by the State Government to the Forest Department in the year 1989. After taking its possession, Forest Department has planted 1600 plants in the said land by making expenditure of Rs.95,864.80ps., thereafter, the said land was given in the possession of Grampanchayat Mardi on 31/03/1995. However, the plaintiff has removed those plants by making encroachment in the said land and caused obstruction in the environmental programme implemented by the State. In this context, State Revenue and Forest Department Mumbai has issued a circular No. Land 213/2009/Case No./13/J dated 07/09/2010 to remove the encroachments on such lands. It is contended that the plaintiff is neither landless nor he is the Backward or Tribe. The family of the plaintiff has owned agricultural lands in other gat numbers. In order to grab the suit land, the plaintiff has filed this false suit. It is, therefore, contended that the application is liable to be rejected.

4. Learned trial court after giving opportunities to both sides, rejected the application for temporary injunction and the said

order is impugned in this appeal.

5. Upon perusal of record, it reveals that this appeal has been transferred from the court of Ad hoc District Judge-1 Jalna. It reveals that after issuing show cause notice, the respondents appeared and resisted the application for temporary injunction which has been filed in this appeal. It also reveals from the record that the Hon'ble Ad hoc District Judge-1 Jalna, by an order dated 14/02/2017, decided the application for temporary injunction, on merits.

6. It reveals from the record that the learned Ad hoc District Judge-1 Jalna has observed that the description of the suit property is not given either in the appeal memo or in the temporary injunction application nor its four boundaries are mentioned. It is not in dispute that the appellant is the trespasser in the suit land who illegally encroachment over the Government land. It is also held that it is nowhere mentioned in the 7x12 extract that the appellant is in possession of the suit property to the extent of 30 R of land.

7. Having regard to the aforesaid circumstances, leaned Ad hoc District Judge-1 Jalna held that the plaintiff has not made out the

prima facie case nor balance of convenience lies in his favour. The appellnat/plaintiff being a trespasser, his illegal possession cannot be protected by issuing temporary injunction and thus, no question arise of any irreparable loss to the appellant/ plaintiff. Thus, interim application has been rejected on merits by order passed below Exh. 5 on 14/02/2017.

8. Having regard to the reasons and the order passed below Exh. 5, it can safely be gathered from the record that the appellant has encroached upon the Government land and his status is nothing more than that of the trespasser. In these circumstances, no question arise of issuing a writ of injunction to protect the illegal possession of the appellant. Hence, in view of rejecting the application for temporary injunction on merits, the appeal deserves to be dismissed. In the result, I proceed to pass the following order.

ORDER

- a) Appeal stands dismissed.
- b) No order as to costs.

Date. 11/09/2017

Sd/- 11.9.17
(R.M.Mishra.)
Ad hoc District Judge-2,
Jalna.

C E R T I F I C A T E

I affirm that the contents of this PDF file are word to word as per original.

Name of Stenographer	Suresh G. Hebare
Name of the Court	Court of Ad Hoc District Judge-2, Jalna
Date	12/09/2017
	Sd/-
	Stenographer