

MHAH080024782023



REG. CIVIL SUIT NO. 1159/2023.

Narayan Vs. Sunita & 1

COMMON ORDER BELOW EXH. 5 & 15

1. Perused applications, affidavits Exh.6 and 16 and reply of defendant No.1 and 2 at Exh.26. Heard learned counsel for plaintiffs and defendants. Also gone through record.
2. Plaintiffs preferred present applications for granting temporary injunction against defendant No.1 and 2 from obstructing and taking their possession of suit property mentioned in plaint para No.1A.
3. Heard. Also gone through the documents filed on record, following points arise for my determination to which I have recorded my findings thereon, for reasons stated below :-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1]	Whether prima facie case is made out by plaintiffs for the relief of temporary injunction ?	... <u>In Affirmative.</u>
2]	Whether balance of convenience lies in favour of plaintiffs ?	... <u>In Affirmative.</u>
3]	Whether in absence of order of injunction, plaintiffs will suffer irreparable loss ?	... <u>In Affirmative.</u>
4]	What order ?	... <u>Application is allowed.</u>

REASONS

As to Point Nos. 1 to 3 :-

4. It is settled principle of law that injunction is an equitable and discretionary relief which can not be granted as a matter of course. While granting injunction Court has to consider three important ingredients. In view of that I proceed to decide present application keeping in mind the three basic ingredients.

5. According to plaintiffs, suit property mentioned in plaint para 1A bearing survey No.31/12 of which old survey No.31/2C is owned by plaintiffs and property mentioned in plaint para 1B bearing survey No.31/11 old survey No.31/2A is owned by defendants. Defendant No.1 and 2 got measured their property without plaintiffs consent vide measurement registration No.1060/2022 in plaintiff's absence. Plaintiffs have not received any notice of measurement and on the basis of measurement map RTS application No.75/2023 was filed before S.D.O., Sangamner. In the said application defendants have alleged that, plaintiffs have encroached over their 9 R land and thereby claimed possession. S.D.O., Sangamner has passed an order on 2nd November 2023 and thereby ordered that, plaintiffs have encroached and illegally possessed 8 R land in survey No.31/12 and further directed to handover the possession to defendants. Plaintiffs have challenged the said order in the present suit and contended that, the said order is illegal and without jurisdiction. On the basis of the said order defendants are trying to take possession of plaintiffs' land. Hence, he knocked the doors of Court.

6. During pendency of the suit plaintiffs have preferred application Exh.15 contending that, Circle Officer Sangamner has sent letter to P. I. Taluka Police Station for taking possession on 1st April 2024. Therefore, the said application came to be filed.

7. Defendants opposed present application. According to defendants, the old survey No. of plaintiff's property mentioned in plaint para 1A was 31/2A/2 and it was purchased by father of plaintiffs' Bhoma Bapu Pavase by registered sale deed bearing No.916/1964 on 04th June 1964. By the said sale deed he has purchased 0.23 R land. Accordingly, mutation entry No.696 was recorded on 7/12 extract. After that, plaintiffs' joined their other lands in property mentioned in plaint para No.1A and the total area became 0.80 R and accordingly, 7/12 extract is now appears for 0.80 R land. However, plaintiffs have not explained how they consolidated the said area. In RTS application No.75/2023 report has been submitted which shows defendants 0.8 R land is less. The measurement was carried out after issuing notices. Therefore, the order of S.D.O., Sangamner is legal. Plaintiffs are trying to grab defendants land therefore, filed this present false suit and false applications.

8. Before starting discussion let us advert here some admitted facts by parties. It is admitted that, property of plaintiffs is their ancestral properties and defendant No.1 and 2 have purchased the property mentioned in plaint para No.1B. Filing of RTS application No.75/23 is also admitted.

9. In this backdrop let me mentioned here that, it is settled law that, while deciding injunction application possession is to be seen. From the contention of both the parties it is apparently clear that, suit property is possession of plaintiffs. According to plaintiffs, defendants are trying to take possession of their 8 R land. It is contended that, the measurement carried out by the measurer is without following due procedure of law. According to plaintiffs, they have not received any notice from the land measurer which is mandatory under The Principles of City and Land Survey. Ld. counsel for plaintiffs argued that, while passing the order in RTS application No.75/2023 dt. 2nd November 2023, S.D.O., has not assigned any reason how he conclude it about the encroachment by plaintiffs over defendants land. He drew my attention towards the map Exh.3/3 wherein, encroached area is not mentioned. Another limb of his argument is that, notices have not been issued to adjoining land holders which is mandatory. He drew my attention towards Chapter 8 of the Principles of City and Land Survey at page No.372 wherein, the necessary requirement of measurement has been explained. In support of his contentions, he placed his reliance on **Smt. Niranjanabai Vs. Pramilabai of 2004 (3) BCJ 413** Bombay High Court Bench at Nagpur.

10. As against this Ld. defence counsel submitted that, in the present suit plaintiffs have challenged the order of S.D.O. however, he is not added as a party to the suit. He further argued that, plaintiffs have not described the suit property properly in the plaint. Another limb of argument is that, plaintiffs have not challenged the order of S.D.O. The boundaries of plaintiffs'

property are not fixed.

11. Plaintiffs have brought on record 7/12 extract of suit property at Exh.3/1. Perusal of the same it reveals that, suit property stands in the name of plaintiffs. I have gone through the measurement map Exh.3/3. Perusal of the same it reveals that, in the said map it is nowhere mentioned about the encroachment of plaintiffs as alleged. It is pertinent to state here that, plaintiffs came before this Court contending that, the measurement carried out by the measurer is without following due procedure of law and S.D.O., Sangamner have passed the order illegally and without jurisdiction. It is a matter of fact that, plaintiffs have possession over the property mentioned in para No.1A and it is not disputed by defendants though they have contended the encroachment by plaintiffs.

12. It is pertinent to state here that, in the present suit plaintiffs sought declaration of the order of S.D.O., Sangamner in RTS No.75/2023 and the illegality of measurement registration No.1060/2022. Certainly, it will take time to decide the suit and has to be decided on recording evidence. At this juncture, from the documents of 7/12 extract it is prima facie established that, plaintiffs have possession over property mentioned in para No.1A and shows their possession. According to plaintiffs, defendants are trying to take their possession on the basis of the order of S.D.O. dt. 02 November 2023. Therefore, if plaintiffs' possession is disturbed on the basis of the said order then certainly plaintiffs will suffer irreparable loss and they will be thrown out of

the Court at this very initial stage. Therefore, I am of considered opinion that, plaintiffs have established prima facie case in their favour.

13. I have thoroughly gone through the ruling cited supra. However, the correctness of the map and the procedure carried out for the same is a matter to be decided on merit. Now, coming back to the point of inconvenience, I would like to mention here that, if plaintiffs possession is taken of then more inconvenience would cause to plaintiffs and they will suffer irreparable loss. Therefore, considering the facts brought before me by way of present applications and the documents in support thereof, I am of considered opinion that, at this juncture, injunction has to be granted in favour of plaintiffs. Hence, I answer point No.1 to 3 in affirmative and in answer to point No.4, I proceed to pass the following order.

ORDER

- 1] Application Exh. 5 and 15 are allowed.
- 2] Defendants are hereby temporally restrained from disturbing and taking plaintiffs possession over the suit property mentioned in plaint para No.1A till further order.
- 3] Cost in cause.
- 4] Parties to take note.

(Dictated and pronounced in Open Court).

Date :- 12-09-2025.
Place :- Sangamner.

(Smt. D. P. Kaduskar)
2nd Jt. Civil Judge Senior Division,
Sangamner.