



Order below Exhibit No.05
CNR. No. MHAH230002412017

The present application has been filed by the Plaintiff for restraining the defendant no. 01 and 02 from obstructing the peaceful possession of the plaintiff over the suit property.

2. It is the case of the Plaintiff that, the suit property is the ancestral property of the plaintiff. The defendants have no right title interest over the suit property. The defendant no. 02 has filed civil suit no. 59/2014 for measurement of his share of the suit property. On 19.03.2017 the defendants illegally committed encroachment over the suit property. Therefore, the plaintiff has filed the present application to restrain the defendants from obstructing the peaceful possession of the plaintiff over the suit property.

3. Defendants have filed say to the present application on Exh. 15. It is the case of the defendants that,

the said suit property was transferred to the defendants on 04.12.2010 to the extent of 20R of land and their name was also mutated in the revenue record vide mutation entry no. 34/13. However, since at the time of sale deed predecessor in title of defendant no.02 Dhondiba Yashwant Tarate committed mistake in describing the boundaries of the suit property and a correction deed bearing no. 2291/2012 was executed. Pursuant to the aforesaid correction deed name of the defendant was mutated in the revenue records. As the plaintiff used to encroach upon the boundaries of the suit property time and again plaintiff filed civil suit no. 59/2014 in the civil court for seeking perpetual injunction against the defendants. The aforesaid civil suit was withdrawn by the plaintiff when after measurement of the suit property it was found that, the boundaries were correct. Thereafter, again the plaintiff started raising false dispute over the suit property and has filed the false suit against the defendants. Hence, the present application is liable to be rejected.

4. I have heard the Ld. Advocate for the parties and perused the record, on hearing the Ld. Advocates for

the parties, following points arise for my determination.:

Sr. No.	POINTS	FINDINGS
1	Whether the plaintiff proves that, he has made out the prima facie case for grant of temporary injunction for restraining the defendant from obstructing peaceful possession over the suit property ?	No.
2	Whether the plaintiff proves that, balance of convenience lies in his favour ?	No.
3	Whether the plaintiff proves that, irreparable loss would be caused to him if the injunction is not granted in his favour ?	No.
4	What order ?	Application is allowed

REASONS

As to Point No.01

5. For the grant of interim injunction in favour of the plaintiff, the plaintiff has to establish that, he has prima facie case. Prima facie case means that he has arguable case. The Hon'ble Supreme Court in a catena of cases has held that "*Prima facie case*" means that, the Court should be satisfied that, there is a serious question to be tried at the

hearing, and there is a probability of plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. In view of the aforesaid position of law, now, I proceed to determine whether the plaintiff has made out prima facie case in his favour.

6. Perusal of the 7/12 extract of the suit property more particularly filed along with list of document at Exh. 03 reveal that, the plaintiff Nitin Tarate is in possession of 0.48R of land since the year 05.07.1971. The aforesaid sale deed was corrected vide mutation entry no. 3604 vide correction deed bearing no. 2291/2012. Therefore, it appears that, the plaintiff is in continuous possession of the suit property since 05.07.1971. Therefore, I am of the considered view that, the plaintiff has prima facie proved his possession over the suit property. Therefore, I am of the view that, the plaintiff has made out prima facie case for grant of temporary injunction in his favour.

7. The defence taken by the defendant that, the plaintiff does not have any right in the suit property and that, there is a house constructed by the defendant in the

suit property can only be adjudicated in light of evidence led by the parties at the time of trial. Further, withdrawal of Civil Suit bearing no. 59/2014 has no bearing on the merit of the present case and the present suit has to be adjudicated on its own merit. Therefore, I am of the considered view that, the plaintiff has made out a prima facie case for grant of temporary injunction in his favour. Hence, I answer point no. 01 in affirmative and record my findings thereon.

As to Point no. 02 and 03

08. I have already held in point no. 01 that, the plaintiff is in possession of the suit property since 05-07-1971. Therefore, I am of the considered that, greater inconvenience would caused to the plaintiff if the injunction is not granted in his favour.

9. I have already held in point no. 01 that, the plaintiff is in possession of the suit property since 05-07-1971. Therefore, I am of the considered that, if the possession of the plaintiff is not protected then irreparable

loss would be caused to him. Hence, I answer point no. 02 and 03 in affirmative and record my findings thereon.

As to point no. 04

10. I have already held that, plaintiffs has made out a prima facie case in his favour. Further, he has prima facie proved balance of convenience lies in his favour. He has also proved that, irreparable loss would be caused to him if injunction is not granted in his favour. Therefore, I pass the following order:

ORDER

1. Application is allowed.
2. Defendants are restrained from obstructing the peaceful possession over the suit property till disposal of the case.
3. No order as to cost.

Date: 29.04.2024

(N. P. Baji)
2nd Jt. Civil Judge J.D.,
S h r i g o n d a.

CERTIFICATE

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

Name of the Stenographer : D. T. Kasare
Name of the Court : Shri. N. P. Baji,
2nd Jt. C.J.J.D.,
Shrigonda.
Date of Order : 29 -04-2024
Date of PDF : 07 -05-2024
Date of uploading : 07 -05-2024