



Order below Exhibit No.05

CNR. No. MHAH230005482017

The present application has been filed by the Plaintiff for restraining the defendants from obstructing the peaceful possession of the plaintiff over the suit property more particularly described in the paragraph 01 of the plaint.

2. It is the case of the Plaintiff that, the suit property more particularly described in the paragraph on of the plaint was transferred by brother of defendant no. 02 namely Dhondiba Tarate on 04.12.2010 by way of sale deed that, the plaintiff purchased the sit property excluding the land belonging to Nivruti Parvati Ingale and Kisan Parvati Ingale towards the northern side excluding the house property belonging to Nivruti Parvati Ingale and Kisan Parvati Ingale. However, while executing the aforesaid sale deed the seller Dhondiba Yashwanta Tarate inadvertently made mistake vide describing boundaries of

the suit property. Therefore, correction deed was executed by Dhondiba Yaswanta Tarate bearing no. 2291/2012 on 26.12.2010. Further, angered by the fact that, the defendants were not able to purchase the suit properties, the defendants started obstructing the peaceful possession of the plaintiff over the suit property. Hence, the plaintiff also filed Regular Civil Suit no. 59/14 against the defendant no. 01 and 02 and other defendants for measurement of suit property. After measurement was done through the court commissioner the defendant stopped causing obstruction. Hence, the plaintiff withdrew the aforesaid suit on 19.10.2015. Thereafter, the plaintiff started cultivating the suit property from the western and southern side as shown in the measurement map. The plaintiff and her husband also laid down stones boundaries as shown in the measurement mat in R.C.S no. 59/14. However, on 08.08.2017 the defendants illegally trespassed the suit property while plaintiff was using borewell and threatened to destroy the stone boundaries led down by the plaintiff. Hence, the plaintiff is constrained to file the present

application restraining the defendants obstructing her peaceful possession over the suit property bearing no. 392 western to north part.

3. Thereafter, Dhondiba Yashwant Tarate sold the suit property belonging to defendant no. 02 in the favour of third person on 22.05.2012. It is further submitted that, the plaintiff along with her father-in-law are residing in the suit property by constructing house. However, no right title interest is created in favour the plaintiff by the virtue of construction of house. The plaintiff has filed Civil Suit bearing no. 59/14 for measurement of suit property which was withdrawn. However, the plaintiffs are still causing obstruction to the peaceful possession of the defendants over the suit properties. Hence, the defendants have filed measurement proceeding of 439/15. Therefore, the 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, she has prima facie case. Prima facie case means that she 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 her favour.

6. Perusal of the 7/12 extract of the suit property filed along with list of document at Exh. 03 reveal that, the suit property is in possession of plaintiff. From the perusal of the 7/12 extract of the suit property more particularly Gat no. 392 it can be seen that, the names of the defendant nos. 01 Nitin Tarate , Defendant no. 02 Kisan Tarate and the plaintiff Latabai Hingane are jointly recorded in the 7/12 extract. Further, it appears that, the plaintiff Latabai Hingane is in possession of the suit property by virtue of registered sale deed bearing no 1537/2016 since 07.05.2016. Whereby, Dhondiba Yashwanta Tarate had transferred 5.42 R of land to Latabai Hingane. Hence, prima facie it appears that, the possession of the defendants over the suit property is lawful. Hence, I am of the view that, the plaintiff has made out a prima facie cae for grant of

temporary injunction in his favour. Therefore, I answer point no. 01 in affirmative and record my findings thereon.

As to Point no. 02 and 03

07. I have already held in point no. 01 that, the plaintiff is in possession of the suit property 07.05.2016. Therefore, I am of the considered that, greater inconvenience would caused to the plaintiff if the injunction is not granted in his favour.

08. I have already held in point no. 01 that, the plaintiff is in possession of the suit property since 07.05.2016. 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

09. I have already held that, plaintiff has made out a prima facie case in his favour. Further, she has prima facie proved balance of convenience lies in her favour. She has also proved that, irreparable loss would be caused to

her if injunction is not granted in her 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

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