

CNR No.:
MHAH230006392022



R.C.S. NO.199/2022

Haribhau Kashinath Gawde

Vs.

Pandurang Kashinath Gawde

ORDER BELOW EXHIBIT No. 05

The present application has been filed by the plaintiffs for restraining the defendants from creating third party interest in the suit property.

2. It is the case of the plaintiff that, the suit property is iron shed room bearing No. 480 which is 30 foot long and 12 foot wide, situated in Gat no.178 at village Pisorekhand, Taluka Shrigonda. It is the case of the plaintiff that, the plaintiff and defendant no.1 are real brothers. The defendants were undertaking construction in the properties which had come to their share. Therefore, the defendants requested the plaintiff to give the defendant iron shed belonging to their share to the defendants for residence till the construction work in their property is completed. As the

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plaintiff and defendant no.1 are real brothers, there was no written agreement executed between them. On 05.12.2020, the plaintiff demanded to the defendants to handover the suit property to the plaintiff, but the defendants refused to handover the possession of the same and stated that, the house is recorded in their name in the Grampanchayat record and the house property belongs to them. Therefore, the plaintiff is concerned to file the present case for vacating the suit premises. It is submitted that, the defendants are trying to alienate the suit property taking advantage of their names being recorded in 7/12 extract. Hence, the plaintiff has prayed for restraining the defendants from alienating the suit property till the disposal of the suit.

3. The defendants have filed their reply to the present application at exhibit 13. It is the case of the defendant that, the plaintiff and defendant no.1 are brothers and the suit properties are ancestral properties. It is further the case of the defendants that, the suit property was partitioned

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between plaintiff and defendants. It is further submitted by the defendants that, the plaintiff has received extra 0.34 R land in gat no.220 as per the partition. The reason for the same is that, there is a common land admeasuring 0.7 R in the suit property belonging to all three brothers for easement and for road. It is further submitted that, the defendants have constructed the rooms in the suit property and are living there and the plaintiff does not have any right, title, interest in the rooms constructed by the defendants. The defendants are in possession of the same since 1991. Name of the defendants are also recorded in the grampanchayat office. The plaintiff wants to grab the suit property. Hence, the application filed by the plaintiff is liable to be rejected.

4. I have heard learned advocate of both parties and perused the record. On hearing learned advocate for both parties and on perusal of record, following points arise for my determination;

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SR.	POINTS	FINDINGS
1	Whether the plaintiffs prove that, they have made out prima facie case for grant of temporary injunction in their favour ?	Yes
2	Whether the plaintiffs prove that, balance of convenience lies in their favour ?	Yes
3	Whether the plaintiffs prove that, irreparable loss would be caused to them if the injunction is not granted in their favour ?	Yes
4	What order ?	Application is allowed.

REASONS

As to Point No.1

5. For the grant of temporary 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

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aforesaid position of law, now I proceed to determine whether the plaintiff has made out prima facie case in his favour.

6. In order to prove prima facie case plaintiff has relied upon 7/12 extract of suit property at exhibit 3/2, notice dated 11.12.2020 at exhibit 3/3, copy of public notice dated 11.12.2020 at exhibit 3/4. plaintiff has further filed Namuna 8 of suit property at exhibit 3/5. On the other hand, the defendants have placed on record, the house tax receipt along with exhibit 18.

7. I have carefully gone through the documents filed by the plaintiff and defendants. The learned advocate for the plaintiff placed his reliance on the doctrine of dual ownership. It was submitted by the learned advocate for the plaintiff that, name of the plaintiff is recorded on 7/12 extract of the suit property. Therefore, as per the doctrine of dual ownership, the rooms which are constructed in the suit property are also belong to the plaintiff as there cannot

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be different ownership of land and construction made thereon.

8. I find considerable force in the argument advanced by the learned advocate for the plaintiff. On perusal of 7/12 extract of the suit property it reveals that, name of the plaintiff is record at the occupant column in the suit property. Therefore, at this stage, it is difficult to accept the proposition that, the defendants are owners of the rooms constructed on the suit property when the suit property is in the name of the plaintiff. Therefore, I am of the considered opinion that, the plaintiff has made out an arguable case for grant of temporary injunction in his favour. Further, it is pertinent to note that, the documents produced by the defendants, that is the house tax receipts, are not documents which can be considered as proof of title of the defendants to the rooms constructed on the suit property. Hence, I answer point no. 1 in the affirmative and record my findings thereon.

As to Point No.2 and 3

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9. For the grant of temporary injunction, plaintiff has to prove that, balance of convenience lies in his favour. I have already held that, name of the plaintiff is shown in the occupant column of the 7/12 extract. Therefore, I am of the considered opinion that, more inconvenience would be caused to the plaintiff if injunction is not granted in his favour.

10. In order to grant temporary injunction, the plaintiff has to prove that, irreparable loss would be caused to him if injunction is not granted in his favour. I am of the considered opinion that, if defendants are not restrained from alienating the rooms constructed which are the suit property, irreparable loss can be caused to the plaintiff. Hence, I answer point no. 2 and 3 in the affirmative and record my findings thereon.

As to Point No.4

11. The plaintiff has to establish prima facie case in their favour. The plaintiff has also prima facie proved that, irreparable loss will be caused to him if injunction is not

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granted in his favour. The plaintiff has proved that, the balance of convenience lies in his favour. Consequently, the plaintiff has made out the case for grant of temporary injunction in his favour. The present application is allowed.

ORDER

1. The present application is allowed.
2. Defendants are restrained from creating any third party interest in the suit property till the disposal of the suit.
3. No order as to cost.

(N. P. Baji)

Date: 30.08.2023

2nd Jt. Civil Judge J.D.,

S h r i g o n d a.