

Regular Civil Suit Number 245/2020
CNR Number MHAH-23-003957-2020

1. Ramdas Bhagwant Jathar **Plaintiffs**

Versus

1. Mohan Bhausahab Jathar **Defendants**

ORDER BELOW EXHIBIT 5

1. The suit is for perpetual injunction. The land bearing gat number 240/2 area admeasuring 1-20-00 (H.R.) situated at Village Mungusgav, Taluka- Shrigonda, District- Ahmednagar and land bearing gat number 249/1 area admeasuring 0-96-00 (H.R.) situated at Village Mungusgav, Taluka- Shrigonda, District- Ahmednagar are suit properties. The suit properties are described in paragraph number 1A and 1B of the suit.

2. The plaintiffs have stated that, Dattatray Bala Fadake had executed sale deed 40 years ago in favour of plaintiff number 1 in respect of suit property described in paragraph number 1A of suit. The plaintiff number 1 had executed sale deed on 08-08-2019 in favour of plaintiff number 2 in respect of area admeasuring 0-60-0 (H.R.) out of suit property described in paragraph number 1A of suit. Thus, the plaintiff number 1 and 2 have become owner of suit property described in paragraph number 1A of suit.

3. The grandfather of plaintiff Bhagwant Gulab Jathar was owner of suit property described in paragraph number 1B of suit. Bhagwant Gulab Jathar had executed sale deed in favour of plaintiff number 3 in the year 2012 in respect of suit property described in paragraph number 1B of suit. The plaintiff number 3 had executed sale deed on 08-08-2019 in favour of plaintiff number 1 in respect of area admeasuring 0-58-0 (H.R.) out of suit property described in paragraph number 1B of suit. Thus, plaintiffs have become owners and in possession of suit property.

4. The plaintiffs are cultivating suit land and taking crops. The plaintiffs have further stated that defendant are trying to interfere with possession of plaintiff over suit properties. The defendants have illegally caused obstruction to possession of plaintiffs while cultivating suit land on 24-06-2020 and 05-07-2020. The plaintiffs are praying for restraining the defendants by way of temporary injunction and not to disturb peaceful possession of plaintiffs over suit properties.

5. The defendant number 1 to 3 have filed say and written statement and counter claim vide Exhibit 19. The defendants have stated that suit properties are not in possession of plaintiffs. Therefore, question of disturbing possession of plaintiffs over suit property will never arise. The defendants have stated that, suit properties are ancestral properties of

plaintiffs and defendants. There is oral partition of suit properties and they are allotted to share of Bhausahab Babaji Jathar. However, name of Bhausahab Babaji Jathar is not entered into record of rights of suit properties due to unavoidable circumstances. The suit properties are in possession of original defendants in the suit since 1988. Therefore, original defendants in the suit have become owners of suit properties by way of adverse possession. The original defendants in the suit have also filed application for temporary injunction vide exhibit 22. The plaintiffs have no concern with suit properties. The defendants have prayed that application vide exhibit 5 is to be rejected. The plaintiffs have no title of suit properties.

6. I have perused application vide exhibit 5 and say vide exhibit 19. I have heard both sides. The following points arise for my determination.

Serial Number	Points	Findings
1	Whether plaintiffs prove prima facie case in their favour ?	In the affirmative.
2	Whether plaintiffs prove balance of convenience in their favour ?	In the affirmative.
3	Whether plaintiffs prove that they will suffer irreparable loss if the application is rejected ?	In the affirmative.
4	What is order ?	Application is allowed.

REASONS

As to point number 1 to 3

7. The suit is for perpetual injunction. The plaintiffs are coming with a case that they are owners of suit properties. The plaintiffs are cultivating suit properties and taking crops. The plaintiffs have further stated that defendants are trying to interfere with possession of plaintiff over suit properties. The defendants have illegally caused obstruction to the plaintiffs while cultivating suit land on 24-06-2020 and 05-07-2020.

8. The plaintiffs have to establish prima facie case. Prima facie case means true case on the face of it. The plaintiffs have filed 7x12 extract of suit properties on record vide list exhibit 3/1, 3/2, 31/1, 31/2, 31/6, 31/7. The mutation entry bearing number 2429 and 2430 are filed on record vide list exhibit 31/8, 31/9. The Court has perused the 7x12 extract of suit properties vide list exhibit 3/1, 3/2, 31/1, 31/2, 31/6, 31/7. It reveals that, the names of plaintiffs are recorded in the occupancy column of the 7x12 extract. It reveals that, the plaintiffs are in the possession of suit properties. The plaintiffs have stated that, the defendants have caused obstruction to possession of plaintiffs on 24-06-2020 and 05-07-2020. It reveals that, there is obstruction to the possession of plaintiffs. The defendants are threatening to dispossess the plaintiffs. The defendants have produced nothing on record to establish their

possession. Therefore, the plaintiffs have established prima facie case in their favour in respect of suit properties. More so, if the injunction is not issued in respect of suit properties, then inconvenience would be caused to the plaintiffs. The plaintiffs will suffer irreparable loss, which cannot be compensated in terms of money, if the injunction is rejected in respect of suit properties. Consequently, the plaintiffs have shown balance of convenience in their favour in respect of suit properties.

As to point number 4

9. The plaintiffs have established prima facie case, and balance of convenience in their favour in respect of suit properties. If the application is rejected in respect of suit properties, it will cause irreparable loss to plaintiffs, which cannot be compensated in terms of money. Therefore, the application is to be allowed. In the result, the following order is passed.

ORDER

- 1) The application vide exhibit 5 is allowed .
- 2) The defendants and any other persons on behalf of these defendants are hereby restrained from disturbing peaceful possession of plaintiffs over suit properties till final decision of suit.

Sd/-

Shrigonda
Date – 01-08-2024

Smt. K. A. Katkar
Joint Civil Judge(J.D.)
Shrigonda.

:-CERTIFICATE:-

I affirm that, the contents of this pdf file order are same,
word for word as per original order.

Case No.	:-	R.C.S. No. 245/2020
Name of Stenographer	:-	Smt. S. V. Jadhav
Court Name	:-	Smt.K.A.Katkar, Jt. Civil Judge, J.D.& J.M.F.C, Shrigonda.
Date of Decision	:-	01-08-2024
Order signed by P.O. on	:-	01-08-2024
Order uploaded on	:-	01-08-2024