

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 22

1. The original defendant number 1 to 3 in the suit have filed counter claim vide exhibit 19 and stated that, they have become owner of properties in the counter claim by way of adverse possession and 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 as well as properties in the counter claim. They are described in paragraph number 1A and 1B of the suit and paragraph number 1A and 1B of counter claim vide exhibit 19.

2. The original defendant number 1 to 3 in the suit have stated that suit properties are not in possession of original plaintiffs. The original defendants have stated that, properties in counter claim are ancestral properties of original plaintiffs and

original defendants. There is oral partition of those 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 those properties due to unavoidable circumstances. The properties in counter claim are in possession of original defendants in the suit since 1988. Therefore, original defendants in the suit have become owners of those properties by way of adverse possession. The original defendants in the suit have also filed application for temporary injunction vide exhibit 22. The original plaintiffs have no concern with suit properties. The original defendants have prayed that application vide exhibit 22 is to be allowed.

3. The original plaintiffs have filed written statement to counter claim vide exhibit 26 and stated that, Dattatray Bala Fadake had executed sale deed on 17-11-1977 in favour of original plaintiff number 1 in respect of property described in paragraph number 1A of counter claim vide exhibit 19. The original plaintiff number 1 had executed sale deed on 08-08-2019 in favour of original plaintiff number 2 in respect of area admeasuring 0-60-0 (H.R.) out of property described in paragraph number 1A of counter claim. Thus, the original plaintiff number 1 and 2 have become owner of property described in paragraph number 1A of counter claim.

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

5. The original defendants are cultivating properties of counter claim and taking crops. The original defendnats have further stated that original plaintiffs are trying to interfere with possession of original defendants over properties in counter claim. The original plaintiffs have illegally caused obstruction to possession of original defendants. The original defendants are praying for restraining the original plaintiffs by way of temporary injunction and not to disturb peaceful possession of original defendants over those properties.

6. I have perused application vide exhibit 22 and say vide exhibit 26. I have heard both sides. The following points arise for my determination.

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

REASONS

As to point number 1 to 3

7. The counter claim is for declaration of ownership by way of adverse possession and perpetual injunction. The original defendants are coming with a case that they are owners of properties of counter claim. The original defendants are cultivating those properties and taking crops. The original defendants have further stated that original plaintiffs are trying to interfere with possession of original defendants over those properties. The original plaintiffs have illegally caused obstruction to the original defendants. However, original defendants failed to mention about date on which original plaintiffs have caused obstruction to them.

8. The original defendants have to establish prima facie case. Prima facie case means true case on the face of it. The

original defendants have filed 7x12 extract of properties of counter claim on record vide list exhibit 33/1, 33/2. It reveals that, the names of original plaintiffs are recorded in the occupancy column of those 7x12 extract. The original plaintiffs have filed 7x12 extract of properties of counter claim on record vide list exhibit 3/1, 3/2, 31/1, 31/2, 31/6, 31/7. It reveals that, the names of original plaintiffs are recorded in the occupancy column of the 7x12 extract. The original defendants have produced nothing on record to establish their possession. It reveals that, the original plaintiffs are in the possession of suit properties. The original defendants failed to narrate incident as to when original plaintiffs have caused obstruction to them. There is nothing on record to establish possession of original defendants over properties of counter claim. Therefore, question of threatening to dispossess will never arise. More so, if the injunction is issued, then inconvenience would be caused to the original plaintiffs. Consequently, the original defendants failed to show balance of convenience in their favour.

As to point number 4

9. The original defendants in the suit have not established prima facie case, and balance of convenience is not in their favour. There is no irreparable loss to original defendants, which cannot be compensated in terms of money if the application vide exhibit 22 is rejected. Therefore, the application is to be rejected. In the result, the following order is passed.

ORDER

The application vide exhibit 22 is rejected.

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