



Order below Exh.5 in R.C.S.No. 60/2024

MHAK080013162024

Md. Razique and others

VS

Syed Irshad and others

(Passed on 9th Day of January 2025)

1) The plaintiffs have invoked the jurisdiction of this Court vide Order 39 Rule 1 and 2 of the Code of Civil Procedure (for short 'CPC') for restraining the defendants from disturbing the possession of plaintiffs over the suit property -

A) Open space admeasuring 64 sqft. (8x8) bounded as, towards **East-** Open space of Weekly Market, **West-** Mangurlpir Road , **North-** Open space of Weekly Market, **South-** Road, situated at Barshitakli Tq. Barshitakli, Dist. Akola

B) Open space admeasuring 64 sqft. (8x8) bounded as, towards **East-** Open space of Weekly Market, **West-** Mangurlpir Road , **North-** Road, **South-** Shop of Sabir khan, situated at Barshitakli Tq. Barshitakli, Dist. Akola

C) Open space admeasuring 64 sqft. (8x8) bounded as, towards **East-** Open space of Weekly Market, **West-** Mangurlpir Road , **North-** Shop of Wahid khan, **South-** Shop of Umesh Manekar, situated at Barshitakli Tq. Barshitakli, Dist. Akola, (Here-in-after referred as “Suit Property”).

2) According to plaintiffs, the Nagarpanchayat Barshitakli (Defendant No. 3) allotted the suit property No. A to C respectively to the plaintiffs and they are running their business in the suit property. One Chand Shah Bismilla Shah and his brother Mahboob Shah Bismilla Shah were the owner of plot No. 735 admeasuring 66.94 sqmt. (720.27 sqft.). Maheboob

Shah Bismilla Shah sold out said plot to Dildar Khan Mohammad Khan and other on dtd. 05.01.1994.

3) Further contention of the plaintiff is that, after the death of Chand Shah his son Noor Shah Chand Shah (Defendant No. 2) illegally mutated his name as only legal heir of Chand Shah and again sold out said plot No. 735 to defendant No. 1 by of registered sale deed No. 529/12. The defendant No. 2 was not the owner of the said plot No. 735. Further contention of the plaintiff is that the defendant No. 2 has illegally obtained the order from Sub-Divisional Officer Akola of correction of revenue record of plot No. 735 and thereby the area of plot No. 735 has been corrected as 425 sqmt.

4) Further contention of the plaintiffs is that, the sale deed No. 529/12, the order of S.D.O. Akola is illegal. But now on the basis of the sale deed No. 529/12 and the order of S.D.O. Akola the defendant No. 1 claiming possession over the suit property, he is threatening the plaintiffs to remove their structure. Thus the plaintiffs have challenged the sale deed No. 529/12 and by way of this application the plaintiffs have prayed to restrain the defendant No. 1 from causing obstruction to his possession over the suit property.

5) The defendant No. 1 filed written statement and denied over all claim of the plaintiff. According to defendant No. 1 he has purchased the plot No. 735 from defendant No. 2 by way of registered sale deed and he became owner and possessor of

the plot No. 735. On the basis of order of S.D.O. Akola the area of plot No. 735 has been corrected and the Additional Collector Akola confirmed the order of S.D.O. Akola. Further contention of the defendant No. 1 is that the sale-deed No. 529/12 and order of S.D.O. Akola is proper and correct. The plaintiff has no cause of action to file the suit. The suit is not within limitation, the suit has not been properly valued and suit is not maintainable and therefore the plaintiffs are not entitled for discretionary relief. The defendant No. 1 has prayed to reject the application.

6) From the foregoing pleadings and after hearing the submissions advanced by the parties, following points arise for determination. My findings are mentioned against each point for the reasons given further.

	<u>Points</u>		<u>Findings</u>
1)	Whether plaintiff has made out <i>prima-facie</i> case for grant of temporary injunction ?	...	In the Affirmative
2)	Whether plaintiff would suffer irreparable loss if temporary injunction as prayed is refused ?	...	In the Affirmative
3)	Whether the balance of convenience lies in favour of plaintiff ?	...	In the Affirmative
4)	What order ?	...	Application is allowed

REASONS

AS TO POINT NO.1 TO 3 :-

7) To show the entitlement of the relief of temporary injunction plaintiff shall establish prima facie case, balance of convenience is tilt in his favor and refusal of injunction would result in irreparable loss. It is also trite that the relief of injunction being an equitable relief shall not be granted without verifying the factual position and without ignoring the consequences on the right of other side. In other words, the relief of injunction shall not affect on the right of other side who is not in fault.

8) Resolution dtd. 29.05.2003 and other resolutions on record discloses that, the Nagarpanchayat Barshitakli has allotted the suit property No. A to C to the plaintiffs. Various Extracts No. 7 and 8 discloses that, plaintiffs are paying tax of suit property to the Nagarpanchayat since the day the suit properties were allotted to the plaintiff. The certificates on record issued by Nagarpanchayat Barshitakli discloses that, the plaintiffs are running the small business in the suit property. The certificates on record further discloses that on the consent of Nagarpanchayat Barshitakli the electricity connection has been given to the suit property. The written statement of the defendant not discloses the serious dispute that the suit property have been allotted to the plaintiffs. In short the available record discloses the possession of plaintiffs over the

suit property. Now it is necessary to see the contention of the defendant No. 1.

9) It is admitted fact that the defendant No. 2 is son of Chand Shah Bismilla Shah. It is also admitted fact that the Chand Shah Bismilla Shah and his brother Mahboob Shah Bismilla Shah were the owner of Plot No. 735. Revenue record i.e. sheet No. 48 discloses that Chan Shah Bismilla Shah and his brother Mahboob Shah Bismilla Shah purchased the said plot No. 735 on dtd. 04.07.1969. Sale deed No. 700/1994 discloses that Mahboob Shah Bismilla Shah sold out plot No. 735 to Dilawar Khan Mohammad Khan on dtd. 05.04.1994.

10) The above mentioned record disclosed that the plot No. 735 had been sold out in the year 1994. It means neither the defendant No. 2 nor his family were owner and possessors of plot No. 735. In such situation the very act of defendant No. 2 to again muted his name on revenue record of plot No. 735 and again execute the sale-deed No. 529/12 in favor of defendant No. 1 is illegal. This is not end but the order of S.D.O. Akola also not discloses that what procedure has been followed, which revenue documents have been relied upon to correct the area of plot No. 735 and how it is decided that the area of the plot No. 735 is 425 sqmt. instead of 66.94 sqmt. In short neither the defendant No. 2 had any right on the ownership of the Plot No. 735, nor the defendant No. 1 became the owner of the plot No. 735 not the defendant No. 1 has any right either on the suit property or even on the plot No. 735.

11) The above mentioned sequence made is crystal clear that the defendant No. 1 and 2 have no any concern with the suit property. In such situation the very act of defendant No. 1 and 2 to issue notice to the plaintiffs with the effect to say that he is adjacent to the suit property or the weekly market. There is no any legal and proper record with the defendant No. 1 and 2 to show their ownership or concern with the suit property. On the contrary the defendants are taking objections to the possession of the plaintiffs. Thus the plaintiffs have good arguable case on merit. In such situation the prima facie case is in favor of plaintiffs and if the application is not allowed the defendants may dispossess the plaintiffs. If the application is allowed it would not cause any hardship over the rights of the defendant No. 1 and 2. In other words the balance of convenience is in favor of plaintiffs and refusal of injunction would result in irreparable loss of plaintiffs. Thus the plaintiffs have passed the triple test. The upshot is that the plaintiffs are entitled for the relief of temporary injunction. Hence point No. 1 to 3 are answered as **Affirmative** and proceed to pass following order as an answered to point No. 4.

ORDER

- 1) Application is allowed.
- 2) The defendant No. 1, his servant, agent or anybody claiming through him is hereby temporary restrained from causing obstruction to the possession of plaintiffs over the suit property till the final decision of the suit.

3) Costs is in main cause.

Sd/-

Date : 09/01/2025

(Pritesh Bhandari)
Civil Judge (Jr. Dvn.)
Barshitakli