

MHAU060001022018



**R.C.S. NO. 07/2018**  
**Karbhari+3 Vs. Rajaram**

**ORDER BELOW EXH.5**

Present suit is for perpetual prohibitory injunction. Plaintiff has filed this application for temporary injunction vide Order 39 Rule 01 of C.P.C. Heard learned Advocate Shri. M. D. Bharuka for plaintiff and learned Advocate Shri. B. J. Chavan for defendant.

2. Considering contentions of the parties, following points arise for determination these points and findings along with reason are as under :-

<b>Sr.No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether plaintiff has prima facie case ?	In The affirmative
2.	In whose favour balance of convenience lies?	...Plaintiff
3.	Who will suffer irreparable loss ?	...Plaintiff
4.	What order ?	As per final order.

**REASONS**

**AS TO POINT NO.1 TO 3 :-**

3. Learned Advocate Shri. M. D. Bharuka for plaintiff vehemently submitted that, plaintiffs are owner and possessor of land bearing Gat No. 227 admeasuring 2 H 13R situated at village Palashi (Bk), Tq. Kannad. They have purchased suit property from defendant vide Regd. Sale deed dt.18.5.1990 since then they are in possession of suit property. On southern side of suit property there is land of defendant. Defendant unnecessary trying to encroach in the suit

property. In that respect, plaintiff have lodged police complaint against defendant. Plaintiffs got measured suit property through Govt. survey 22 R land from suit Gat no. acquired in Kannad-Pishor road. Now defendant unnecessarily trying to obstruct plaintiffs cultivation. Hence, according to him prima facie of case and balance of convenience lies in favour of plaintiff. If obstruction at the hand of defendant remain continue then plaintiff will suffer irreparable loss. Therefore, he requested to allow this application and temporarily restrained defendant.

4. Ld. Adv. for defendant urge that there is no dispute about alienation of suit property by defendant to the plaintiff. However, plaintiffs are never in possession of land purchased from defendant. Plaintiffs are not in possession of 2 H. 13 R. land. Plaintiffs are not owner of land purchased by them. In consolidation scheme there is exchange of area on record. Plaintiffs are always creating dispute in respect of common bandh. Plaintiffs got measured suit property behind back of defendant. Defendant have no knowledge about said measurement nor he was present at the time of said measurement. Due to the Kannad-Pishor road land of plaintiff came to be acquired. Defendant had sold 2 H. 35 R. land out of total area 4 H. 42 R. to the plaintiff. Thereafter, 2 H. 7 R. land remain on the name of defendant however Talathi Sajja Khatkhea, Vasadi wrongly shown 5 acres land and made mutation entry no. 1441. Defendant has filed appeal before Sub Divisional Officer for cancellation of mutation entry no.1441. Plaintiff by taking advantage of this mistake trying to dispossess defendant from his land. Therefore, he requested to reject the application.

5. On the background of the rival contentions of the parties at the outside it will apt to consider admitted facts. It is not disputed that defendant is original owner of Gat no.227 admeasuring total area 4 H. 42 R. Out of that property defendant has alienated 2 H. 13 R. land to plaintiff no 1 to 4 vide Registered sale deed Dt. 18.5.1990. Defendant has alienated northern part of his land to plaintiff. On the southern parts of plaintiffs land there is remaining land of defendant. In such situation it is admitted that plaintiff and defendants are co-owner in Gat no. 227.

6. On perusal of Regd. Sale deed dt. 18.5.1990 it reveals that defendant has transferred ownership and possession of 2 H. 13 R. land to plaintiff. Name of plaintiff have entered on 7/12 extract of Gat no. 227 vide mutation entry no.2509. The 7/12 extract shows that plaintiffs are in possession of property purchased from defendant. On the date of suit plaintiff were is in possession of suit property. So far as defendants objections are concerned. Dispute regarding exchange of land, acquisition of land and less area shown in 7/12 extract required sufficient evidence on record. Defendant has not filed any documentary evidence to prima facie corroborate his contentions. It also appears that there is dispute between plaintiff and defendant regarding area of land. They are adjacent land owner. As discussed above prima facie plaintiffs appeared in possession of the suit property. In such situation if dispute between parties remain continue then possibility of multiplicity of proceeding cannot be ruled out. To avoid future litigation and dispute between parties it is necessary to issue temporary injunction and prevent defendant from causing obstruction to plaintiff peaceful possession. In the result I answer point No.1 to 3 in affirmative.

**AS POINT NO.4:-**

7. Plaintiffs succeeded to establish *prima facie* case in their favour and balance of convenience also lies in their favour. So far as irreparable loss is concerned, as plaintiffs succeeded to establish their possession over suit property, they have right to protect it. Hence, I proceed to pass the following order:-

**ORDER**

1. Application is allowed.
2. The defendant is hereby restrained from interfering, obstructing peaceful enjoyment and possession of the plaintiff over the suit property by himself or any other person on his behalf till final disposal of the suit.

Date :- 20.10.2018

Sd/-  
(B. R. Thakur)  
Jt. Civil Judge. J. D. Kannad.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file order are same, word to word as per the original order.

Name of the Stenographer	:	Rajendra Mahajan Sundarde,
Court	:	Jt. C.J.J.D. & JMFC,Kannad.
Date	:	20.10.2018,
Order signed by the presiding officer on	:	22.10.2018,
Order uploaded on	:	22.10.2018.