

MHAU070006222019



Order below Exh.5 in RCS No.76/2019
(Vitthal Sable Vs. Dnyanesh Jugalkishor Kabara)

1. This is an application filed under order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, (for short C. P. C.) for temporary injunction.

2. Subject matter of the suit is the agricultural land bearing Gut No.44 situated at village Shivrai, Tq. Gangapur, Dist. Aurangabad to the extent of 89 R bounded by **East-** land defendant no.1 out of Gut no.45, **West-**land standing on the name of Chandrakala Uttam Suryawanshi in 7/12 extract which is in the possession of plaintiff, **South-** Lanzi-Shivrai Road, **North-**land of Khansab. (This property is the subject matter of the suit. Hence, here in after referred as suit property.)

3. It is the contention of plaintiff that he has received the suit property after demise of his father by succession. He is owner and possessor of the suit property. Defendants no.1 and 2 are son and father. Defendant no.1 has purchased an area of 88R out of Gut No.45 of village Shivrai. The land of defendant no.1 is adjacent to the suit property from Eastern side. There is common bandh between suit property and land of defendant no.1 from South-North direction. Plaintiff has planted sugarcane to the extent of half portion and sown cotton crop in remaining area. Defendant no.1 has no concerned with the suit property.

4. The lands in Gut No.45 and 44 of village Shivrai, where the ancestral property of plaintiff. The land in Gut No.45 was allotted

to the uncle of Ramrao Khanderao and land in Gut No.44 to the father of Laxman Khanderao. Since the partition between the father of plaintiff and his uncle. They were in their respective possession of the suit properties. The above mentioned bandh was in existence between those lands. The uncle of plaintiff sold 88R area out of Gut No.45 to Anand Bora, who subsequently sold the area to Gautam Chopda. The defendant no.1 has purchased 88R area from Gautam Chopda.

5. That is defendant no.1 has started illegal construction of company over his land. He has also started construction of wall compound around his land. The common bandh between the suit property and the defendant no.1 is in oblique shape. The defendants have employed labours to take five pits over the suit property, in order to make strait the common bandh by encroaching in the land of plaintiff i.e. suit property and thereby cause damage to standing crops in the suit property. The plaintiff had noticed the illegal act on 26/02/2019, in morning time. Both defendants were supervising the construction. Plaintiff told to the defendants that the common bandh in his existence since the time of his father. But the defendants are criminal minded persons and they have not given heed to the request of plaintiff and abused in filthy language. Defendants also threatened to kill him. Defendant with the help of his son any how restrained illegal attempt of defendants. Otherwise the defendants would have demolish the common bandh and encroached over the suit property. The defendant have also lodged false complaint against the plaintiff and his family. If defendant not restrained, plaintiff will suffered irreparable loss. Hence, prayed to allow his application for temporary injunction.

6. Defendants have filed their written statement and say on

Exh.5, below Exh.12, wherein they have submitted that the suit of plaintiff is false, misleading and filed only to harass the defendants. Plaintiff has not come to this court with clean hand and also suppressed the material facts and it is filed to fulfill the illegal demands of plaintiff. The plaintiff is police man and having man and money power. Hence, filed this suit. The plaintiff has given false description of the suit property.

7. Defendant no.1 is the owner and possessor of Gut No.45 to the extent of 88R. He has purchased said property by way of registered sale deed. Thereafter, defendants started plastic moulding factory on that land. He has also invested huge amount. They decided to construct the wall to the property purchased by them. The wall compound of three sides is completed but wall compound of West side could not be constructed because of interference of plaintiff. The land is measured twice through the Government Authorities. There is no obstruction or encroachment by the defendant over the suit property. Defendants have started construction of wall compound within the four boundary of their land. But plaintiff wants to create hurdle by anyway. Hence, threatened to the contractor and assaulted to the employee of the defendants. Hence, defendants have lodged FIR against the plaintiff. Defendants do not want to construct the wall in Gut No.44 and also do not want to strait the bandh, if bandh demolishes, the defendant will loss the portion of their land. There is no standing crop of sugarcane of plaintiff, there is no standing crop in Gut No.44. On the above ground defendants prayed to reject the application of plaintiff.

8. For deciding this application following three points are necessary to be framed. I have given my finding and reasons for findings as follows.

Sr. No.	Points	Findings
1.	Whether prima facie case existed in favour of plaintiff ?	Affirmative.
2.	Whether balance of convenience lies in favour of plaintiff ?	Affirmative.
3.	Whether plaintiff will suffer irreparable loss if injunction is refused ?	Affirmative.
4.	What order ?	As per final order.

9. Plaintiff has filed purshis below Exh.17 and submitted that his argument shall be considered as per record. Howerve, defendants and his advocate failed to argue inspite of direction, hence, their argument is closed on 21/07/2023 by passing order below this application.

REASONS

AS TO POINT NO. 1

10. It the contention of plaintiff that he is owner of suit property. Defendant no.1 has purchased property in Gut No.45, which is adjacent to the suit property from Eastern side. There is common bandh between suit property and the land of defendant no.1 from South to North direction. Plaintiff has planted sugarcane and cotton crop in the suit property. Defendants are constructing wall compound around their land in order to make strait common bandh the labour of defendants take five pits in the suit property, in order to make strait the common bandh by encroaching over the suit property. They also damage of the crop of the plaintiff.

11. After going through the record, it appears that it is not disputed between plaintiff and defendant no.1 that they are owner of their respective properties. It is also not disputed that

both parties are over their respective properties. Main dispute between the parties is in respect of common bandh and in respect of obstruction of possession of plaintiff by encroaching over his land i.e. suit property. But plaintiff is owner and possessor of suit property. Therefore, there is prima facie case in favour of the plaintiff. Hence, I have recorded my findings to point no.1 in the affirmative.

AS TO POINT NO.2

12. As discussed earlier, the main dispute between the parties is in respect of common bandh and encroachment over the suit property. There is also dispute between the parties on the said issue. The defendants have filed the measurement maps of Gut No.45 on record from it appears that the land in Gut no.44 is adjacent to the Gut No.45. There is also one copy of FIR filed by the defendants from it also clear that dispute between defendants and plaintiff in respect of wall compound. From the record, it is not clear whether defendants are encroaching over the suit property. However, plaintiff has filed on record affidavit of Tulshiram Balaji Kunjar. In his affidavit, he has stated that on 26/02/2019, when he was working in his field at that time, defendants with the help of his labours tried to make pits in the suit property. Therefore, by considering the affidavit, at this stage, the possibility cannot be ruled out that defendants are encroaching over the suit property. Therefore, balance of convenience lies in favour of plaintiff. Hence, I have recorded my finding to point no.2 in the affirmative.

AS TO POINT NO.3

13. It is stated by the plaintiff that crops are standing in the suit property. Defendants have denied that there is standing crop over the suit property. However, it appears that plaintiff is taking

crop over the suit property. It is no doubt that defendants have right to construct wall compound over their property. However, in this matter, if crop of plaintiff get damaged, it will caused to loss to him. The application is filed in the year 2019, now 2023 is going on, but it is not material of which year plaintiff has filed 7/12 extract, because no agriculturist will keep his land uncultivated without any reason. Therefore, in my opinion, the plaintiff will suffer greater hardship than defendants if defendants have obstructed his possession over the suit property. Hence, I have recorded my finding to point no.3 in the affirmative.

AS TO POINT NO.4

14. In view of above discussion, plaintiff is entitled for temporary injunction. Hence, I pass the following order.

ORDER

1. Application is allowed.
2. Defendants and any person on their behalf are hereby restrained for causing obstruction over the suit property till further order on this application.
3. No order as to costs.

Date:-10/10/2023.
Place : Gangapur.

(A. B. Ingole)
2nd Jt. Civil Judge (J.D.)
Gangapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment is same, word to word, as per the original judgment.	
Name of the Stenographer :	Rajnandini D. Yadav
Court	2 nd Jt.C.J.J.D.,Gangapur.
Date	10/10/2023
Judgment signed by the presiding officer on	10/10/2023
Judgment uploaded on	11/10/2023