

MHAU080000982024



R.C.S. NO. 16/2024
Ganesh V/s. Sagar & Ors.

ORDER BELOW EXH. 5.
(Passed on Date - 24.06.2024)

1. This an application for seeking relief of temporary injunction under Order 39 Rule 1 and 2 of the C.P.C.

2. Application vide Exh. 5 represents as follows :

Plaintiff and all defendants are residing at Pangri. Tq. Sillod, Dist. Chh. Sambhajingar (Aurangabad). Agricultural land Gut No.2 adm. 96-R. to the extent of 56-R which is bounded by, Towards East- Brook (Nala), Towards West- Residential Area from the same Gut number, Towards South- Ambhai-Golegaon Road and thereafter Gut No.1, Towards North- Gut No.9 is the subject matter of the suit and this application. **(Hereinafter, referred to as suit property for the sake convenience).**

3. Originally suit property was owned and possessed by plaintiff gran-father namely Kisan Bapu. From the suit property Western 40-R holding is acquired by the Government for residential Govt. scheme. As such, the very holding is comprised of houses allotted by the Government to the villagers. Rest of holding of 56-R, is in ownership and possession of plaintiff. In between 40-R land acquired by Government for residential scheme and rest of 56-R holding there is Boundary.

4. Original owner and possessor Kisan Bapu allotted the very suit property to the father of plaintiff namely Laxman Kisan Bambarde. Thereafter, father of plaintiff Laxman Kisan Bambarde transferred the suit property by mutation entry No.1490 in the year 2016 in the name of plaintiff. Since, then the plaintiff is cultivating the very suit property.

5. The father of plaintiff namely Laxman Kisan Bambarde applied towards Office of the Deputy Security of land Record, Sillod, Tq. Sillod for getting suit property measured. As such, on dated 02.06.2015 the very office measured the very suit property and fixed it's boundaries.

6. In the Eastern side of suit property, houses have been constructed by villager under the Govt. scheme and they are residing there at. Also, in the eastern direction decide the brook there is apex english school and apex Junior College where students are persuading there education.

7. Neither, defendants nor their community members are concern with suit property any way. Even, in the suit property there is no cremation ground of defendants community. Despite, when the father defendant No.2 and 3 namely Harilal Pachode passed away on dated 28.03.2023, defendants and their community member forcibly tried to cremate the body of deceased in the suit property without the consent and permission of plaintiff. Plaintiff requested defendant to cremate dead body of deceased in the Gut No.8

where defendants community member were cremating dead bodies since earlier. But, defendants did not pay heed and threatened the plaintiff to kill him by life. Even, they warned him that, they do shall cremate dead bodies of their community member in the suit property.

8. On dated 28.03.2023, 27.10.2023 and 01.11.2023 plaintiff complained towards Tahsil Office Sillod, SDO Office Sillod and District Collector Office, Ch. Sambhajinagar. Even, on dated 01.11.2023 plaintiff complained towards Superintendent of Police, Ch. Sambhajinagar, But, in vain. Thus, plaintiff preferred writ petition bearing No.14794/2023 before the Hon'ble Bombay High Court, Bench at Aurangabad. But, the very writ petition is disposed off with direction that, plaintiff should filed suit for injunction alongwith an application under Order 39 Rule 1 and 2. Further, it was directed that, if plaintiff files suit for permanent injunction alongwith an application for temporary injunction, trial Court shall try to decide the very T.I. application as early as possible. Hence, plaintiff filed the present suit and application therein.

9. On dated 24.12.2023 when plaintiff was present in suit property defendant came thereat and tried to creat cremation ground therein. Plaintiff requested them not to do so, but in vain. Even, defendants said that "You are alone we all are members of Teli community and you can't do anything, even Grampanchayat is also in our possession and threatened him that, they shall cremation ground that in his

property. Even, they threatened him that, if he opposes them one day they will kill him in the very suit property and that way they will creat cremation ground thereat and they will burned him thereat. Thus, defendants outsted from suit property threatening plaintiff”.

10. Defendants are likely to dispossess plaintiff using force anytime. Plaintiff is afraid of that, defendants will creat cremation ground in his suit property, as he has been threatened by defendants so. Even, plaintiff tried to understand defendant through respected people of the village. But, they are not in position to listen anybody. Eventually, plaintiff went to Ajintha Police Station to lodge report but, without getting his report lodged, Ajintha Police directed him to file Civil Suit. Thus, on dated 24.12.2023 caused of action is happened to file the present suit.

11. Defendants are in majority by numbers. They are not related suit property anyway. They always creat obstacle to the peaceful possession of plaintiff suit property. In the record of right of suit property no entry of any cremation ground. But, only of causing damage to suit property, with prejudice mind taking benefit of majority defendants are obstructing to the suit property and thereby they are trying to creat cremation ground in the suit property.

12. Suit property is valuable and sole earning source to plaintiff. Defendants on this and that count obstruct plaintiff possession over suit property and the same is causing grate

loss to plaintiff. As such, it has been necessary to prohibit defendants by way of permanent injunction. Plaintiff has prim-facie case based upon sufficient evidence. If defendants are not restrained from causing obstruction to suit property plaintiff will suffer irreparable loss which cannot be compensated in money. Hence, it prayed for granting the very application.

13. Record shows that, vide Exh.6 and 7 defendants are served with suit summons but, they have not caused their appearance. As such, on dated 06.04.2024 my Ld. Predecessor passed ex-party order vide Exh.1. Thus, the suit being proceeded ex-party against all defendants.

14. After having heard to the counsel of plaintiff and perusal record in hand, following points arise for my consideration and I have recorded my findings thereon with reasons recorded as follows :

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiff makes out prima facie case ?	Yes.
2.	Whether balance of convenience lies in favour of plaintiff ?	Yes.
3.	Who will suffer greater hardship ?	Plaintiff.
4.	What order?	Exh. 5 is Partly Allowed as per final order.

:: R E A S O N S ::

15. In order to substantiate the case of temporary injunction, plaintiff relied upon following documents vide Exh.4.

- 1.** Copy of order passed in writ petition No.14794/2023 dated 06.12.2023,
- 2.** 7X12 extract of Gut No. 2, situated at Pangri, Tal. Sillod, Dist. Aurangabad for the year 2020 to 2023.
- 3.** 7X12 extract of Gut No. 2, situated at Pangri, Tal. Sillod, Dist. Aurangabad for the year 1979 to 2015.
- 4.** Copy of mutation entry No.1490.
- 5.** Copy of four boundary map from Gut No.2.
- 6.** Copy of mutation entry No.102
- 7.** Copy of letter as to measurement bearing No.2056, dated 30.06.2015 issued by Depty. Superintendent of Land Record.
- 8.** Copy of **C** sheet of measurement matter bearing No.666/2015.
- 9.** Copy of adhar card of plaintiff.
- 10.** Copy of extract of 9(3) and 9(4) prepared under consolidation scheme.
- 11.** Copy of mutation entry No.1071.
- 12.** Copy of survey No.1/1.

POINT NOS. 1 TO 3 :

16. On perusal of 7/12 extract of suit property available on record. It appears that, right now plaintiff is the owner and possessor of suit property. The very fact is substantiate by

those 7/12 extract available on record. Mutation entry No.1490 filed on record shows that, plaintiff father Laxman Kisan Bambarde transferred suit property in the name of plaintiff Ganesh Laxman Bambarde. It is not the case that, mutation entry No.1490 is not in existence as of now. Thus, in view of section 157 of the Maharashtra Land Revenue Code, 1966, the same mutation entry is having presumption as to correctness. Thus, it is safely said that, plaintiff is rightful owner and possessor of suit property.

17. Four boundary map of suit property filed on record shows that, boundaries of suit property shown by plaintiff are correct. It also appears that, from Gut No.2, 40-R holding is acquired by the Government for the purpose of constructing houses under the Government Housing Scheme. The very fact is substantiate by mutation entry No.102

18. Documents as to measurement of suit property filed on record are enough to hold that, plaintiff's father Laxman Kisan Bambarde applied for measurement of suit property by application dated 06.04.2015 and the same suit property measured on dated 02.06.2015 and his boundaries were fixed on dated 23.06.2015. 'C' Sheet of measurement also, fortified four boundaries of suit property.

19. The grievance of plaintiff is that, on dated 28.03.2023 father of defendant No.2 and 3 namely Harilal Pachode passed away and defendants and members of Teli community from village Pangri tried to cremate dead body of

that deceased in the suit property and even they threatened plaintiff that, they shall create cremation ground for the deceased of their community. The allegations appear to be probable at this stage. Reason is that, though defendants are served with suit summons but, they did not appear before the Court to contest the suit. Thus, there is every scope to infer that defendants have obstructed the peaceful possession of plaintiff for the suit property.

20. Record shows that, plaintiff is lawful owner and possessor of suit property and he is cultivating the same. The suit property is sole means of livelihood of plaintiff. The plaintiff is having every right to enjoy suit property peacefully without any hurdle from anybody. Even, there is no on record to hold that in the other rights of suit property, there is entry of cremation ground reserved for deceased of Teli community residing in village Pangri. Even, 7/12 extract of suit property filed on record shows that, in the other right of suit property there is no such entry.

21. At the stage of deciding Exh.5 public documents are to be looked into without their formal proof as per Evidence Act. Thus, documents available on record show that, plaintiff succeeded in proving prima-facie case in his favour. Whereas, in favour of plaintiff there is prima-facie case, balance on convenience is to be tilted in favour of plaintiff. If at this stage, temporary injunction is not granted in favour of plaintiff, then it is plaintiff who shall suffer greater hardship than defendants. Hence, I record my finding in the

affirmative against points No.1 and 2. As against point No.3 my finding is that, it is plaintiff who will suffer greater hardship. Accordingly, I pass the following order :-

ORDER

- 1.** Exhibit 5 is hereby partly allowed.
- 2.** The defendant No.1 to 10 and anybody on their behalf are hereby temporarily restrained from causing obstruction to the peaceful possession of plaintiff over suit property, till the decision of suit.

Date: 24.06.2024

(K. T. Adhayke)
Jt. Civil Judge J.D., Sillod.

:- CERTIFICATE:-

I certify that the contents of this **PDF** File are word to word as per Original Judgment/Order.

Name of the Stenographer	:- F. U. Tadavi.
Name of the Court	:- Jt. C.J.J.D. & J.M.F.C., Sillod.
Judgment signed by the presiding officer on	:- 24.06.2024.
Judgment PDF Uploading Date	:- 24.06.2024.

Sd/- xxx
Stenographer (III).