

ORDER BELOW EXH. 05 in RCS No. 55/2023

Vijay Narayan Kulkarni & Ors.

Vs.

Sheku Ramchandra Shinde & Ors.

01. This application is filed by the plaintiff for temporary injunction under Order 39 Rule 1 of the Civil Procedure Code.

02. It has contended by the plaintiff that they are the owner of the agricultural property having gut no. 70/1 old gut No.70 situated at village Khultabad, Dist. Aurangabad having admeasuring area 18 Acres and 12 R. Defendants predecessors had purchased the property situated at gut no. 70/2 from the heirs of the Bhaurao Kulkarni, relatives of the plaintiff. There is 'Nala' between both properties, which is called as Joginicha Nala. The said nala is passing through the gut no. 70/1. The defendants are not having any concern and right to interfere in the possession of plaintiff and damage the said nala. But defendants are trying to breakdown the said 'Nala' and encroach over property of the plaintiff. Plaintiffs tried to settled the dispute but defendants are not ready to listen anything. Lastly on 05/07/2023 defendants with the help of JCB machine of Navnath Hiwarde tried to excavate the 'Nala'.

03. On the objection of plaintiff, defendant threatened and raised the dispute therefore he approached nearest police station and lodged report. The plaintiff is having apprehension of the obstruction to possession by the defendants in future also. Therefore, plaintiff constrain to file the present suit. Plaintiff has prayed to restrain defendant from causing obstruction to his possession till the final

decision of the proceeding.

04. According to the plaintiff the said nala is described in the family Vatani Patrak. He is having prima facie case. As defendants have threatened to cause loss of property, balance of convenience lies in his favour. If defendant not restrained temporarily from causing obstruction irreparable loss will cause to him hence prayed to allow application.

05. Defendant No.1 and 2 filed their say and denied all contentions and allegations made by the plaintiff. According to them there is no such 'Joginicha Nala', passing through the land of plaintiff. Plaintiff had filed suit having No. 377/1997 for injunction. But as there was no description and proof of Nala, it was dismissed by this Court. Defendant No.1 and 2 are cultivating their land peacefully without any disturbance to plaintiff. They have never encroached over the land of plaintiff. The plaintiff is not having documents regarding actual area of his land and boundaries. As the suit of injunction filed by the plaintiff was dismissed, for want of proof of his possession, he was bound to file the suit for declaration, and possession. The plaintiff has come before the Court with vague case. He is not having any revenue record or authenticate document to show that the said alleged Nala / water channel is flowing through his land. Hence prayed to reject the application.

06. Defendant No.3 to 6 have filed their say and contended that there is Nala flowing between the land of the plaintiff and defendants, which is called as Joginicha Nala. But it is not flowing

through the land of the plaintiff. They are having their own land at northern side of the said Nala. Defendants are having possession over the said nala as well as the land situated at northern side. The defendants had filed suit RCS No. 3/2010 which is dismissed. Previous to it, plaintiff had filed suit for injunction against defendant which has been dismissed, as there was no evidence regarding Nala. The plaintiff has no concern with the said Nala. Defendants were doing work of the cleaning nala, as no water flow should be obstructed. Plaintiff has no right to obstruct the work of defendant. If the work of cleaning the Nala, not completed, the rain water will stop and collect in the said nala, and it will cause damage to the field of defendants. Defendants have since long challenged the rights of the plaintiff over the said nala. Therefore the plaintiff was bound to file suit to seek declaration that the water channel or nala is the part of his property. The plaintiff has brought on record the bogus theory of partition deed which is not registered or by decree of Court. The said partition deed was not pleaded in suit of injunction filed in the year of 1997. Hence prayed to reject the application.

07. Ld. Advocate for defendant relied upon **Anathula Sudhakar Vs. P. Buchi Reddy, LAWS(SC)-2008-3-175, The Hon'ble Supreme Court of India**, the Hon'ble Apex court has held that whenever plaintiff is having possession over land and someone did interference in it, plaintiff has to file suit for injunction. Whenever there is dispute regarding title of plaintiff, he has to file suit for declaration. When plaintiff is having title but not having possession bound to file suit for possession.

08. Considering the facts of the application and say filed by the defendants following points arise for my determination. Findings are recorded with reasons given under :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiff has made out prima- facie case ?	Negative
2. Whether the balance of convenience lies in favour of plaintiff ?	Negative
3. Whether plaintiff will suffer irreparable loss if prayer is rejected ?	Negative
4. What order?	As per final order.

REASONS AS TO POINT Nos.1 to 3

09. Heard Ld. Advocate for plaintiff and defendant at length. Perused the documents filed by plaintiff and defendants.

10. As three points are interlinked, to avoid repetition discussed together.

11. In a matter arising under Order XXXIX, Rules 1 and 2, Code of Civil Procedure, three conditions are to be satisfied, that the applicant has a *prima facie case*; the balance of convenience is in his favour, in the event of not granting injunction he would be put to an irreparable loss and injury. All these three conditions must co-exist so that the applicant can be entitled to injunction under Order XXXIX, Rule 1 of Civil Procedure Code.

12. The plaintiff has come before the Court with the case that at southern side of his agricultural filed, there is joginicha nala, flowing through his filed. The defendants are having their agricultural fileds at southern side of the said nala. Defendants have no rights and possession over the said nala. But they intentionally to encroach over the field of plaintiff caused damage to the nala and property of plaintiff. Number of time they obstructed and threatened plaintiff for encroachment over his land. On 05.07.2023 defendant brought JCB machine in his field and excavated said nala with the intention to damage the property of the plaintiff. According to the plaintiff in the year of 2010 defendants have filed suit for declaration against him and his family members but same was dismissed. The defendants are intending to grab the part of his property. Hence they are needs to be restrained by temporary injunction, from causing obstruction and damage to his property.

13. On the other hand defendants have filed say and denied the possession of plaintiff over the said nala / water channel. The defendant No.1 and 2 have challenged the existence of said nala. According to them plaintiff had filed suit for injunction in the year 1997 which was dismissed by the Court by holding that there is no cogent evidence to establish that there is nala / water channel flowing through the filed of plaintiff. The appeal of plaintiff was also dismissed. The plaintiff has without any cuase filed present suit. The defendant No. 3 to 6 have admitted that there is joginicha nala flowing from the northern side of their filed but they have contended that it is passing through their filed. According to them they are having their own land at northern side of the said nala. Said nala is

not from the property of the plaintiff.

14. It found from the record and documents that since long there is dispute between the parties regarding possession and ownership of the property. The plaintiff relied upon the documents which is according to him is "partition deed", executed by his family members. On the other hand defendant have denied the authenticity of the said deed. According to defendant they were doing work of cleaning of the nala. Admittedly there is no any revenue record or government document to show the said disputed nala is passing through the property of plaintiff. As discussed above both parties have filed suit against each other. The suit No. 377/1997 which was filed by the plaintiff, is admittedly dismissed by the Court. So also the suit having No. 3/2010 filed by the defendant is dismissed. The plaintiff had filed the above said suit for the same relief of injunction. To made out the prima facie case plaintiff was bound to show prima facie that the disputed portion of the suit property is belonging to him. He has not filed on record the document showing his possession over the said disputed nala. Therefore I find that though plaintiff has contended that defendants are trying to excavate nala and committing encroachment, in the absence of cogent documentary evidence, plaintiff failed to prove prima facie case. As plaintiff failed to prove prima facie case there is no balance of convenience lies in his favour. Therefore no question of irreparable loss to the plaintiff. Hence I have recorded findings to the point No.1 to 3 in the negative.

As to Point No.4-

15. In the result of discussion made to the point No.1 to 3

plaintiff is not entitled for relief of temporary injunction. Hence order,

-:: ORDER ::-

Application is Rejected.

Date: 30/08/2024

(N. R. Indalkar)
Civil Judge Junior Division
Khultabad

CERTIFICATE

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

Name of the Stenographer :- J. A. Jamdade
(Stenographer Grade-III)

Court :- CJJD & JMFC, Khultabad

Date :- 30/08/2024

Judgment/order signed by :- 30/08/2024
the presiding officer on

Judgment/order uploaded on :- 03/09/2024