

MHAU110012842022



R.C.S. No. 89/2022
Ramdas Bhume Vs. Kishor Bhume

Order Below Exh. 5 In R.C.S.No.89/2022

This is an application filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Civil Procedure Code, 1908 (hereinafter referred to as C.P.C) for temporary Injunction .

2] The present suit is for Perpetual injunction against the defendants for not to obstruct the possession and the cultivation of the plaintiff in Gat No. 33 to the extent of 45 R agriculture land situated at Village Adgaon Bd. Tq. Phulambari, Dist- Aurangabad. The suit property is bounded as under East- Vilas Sarjerao Bhume, West – Balu Sarjerao, South – land of plaintiff in Gat No.41 and Pal road, North- Lehagaon road.

3] It is averred in the application that, the plaintiff has possessor and the owner of Gat no.33 to the extent of 45 R. Gat no. 33 is ancestral Agricultural land of the plaintiff. The plaintiff is cultivating that land for his livelihood. Further, he stated that he has built one Lakshimata Goddess temple on the north side of the suit land 5 years ago in 1 guntha land. He used to pray in the said temple. Also, he has a cowshed in the suit land. The plaintiff cultivated cotton crops in the suit land this year. On 7/08/2022 defendants and their relatives at about 12 p.m. came over to the suit land and irrupted some crop of Cotton and threatened the plaintiff that, they never allowed the

plaintiff to cultivate the suit land. after that plaintiff went to the police station and lodged a report against the defendants. Thereafter the plaintiff filed this suit against the defendants and prayed for a Temporary injunction through this application.

4] Defendants have filed their reply on Exh.13 and strongly opposed the present application on the ground that the plaintiff has wrongly mentioned the boundary of the suit land. Boundary mention in the suit land i.e. of Gat No. 33 towards south side land of the plaintiff in Gat No. 41 is disputed by the defendants. they further contended that,dispute between the plaintiff and defendants is from 2002 about Gat No.41.Father of defendant was filed the suit R.C.S No.41/2002 which was decreed. Against that suit Aappeal filed by plaintiff is dismissed. the suit filed by the plaintiff relating to Gat No.41 RCS no. 45/2014 is also dismissed by a competent court after trial. Against that the plaintiff has again filed an appeal in the District Court. The plaintiff has filed an Injunction application in that Appeal but District Court rejected said application. Therefore, they contended that there is no need to grant an injunction and prayed for the rejection of this application.

5] Perused the application, reply and documents on record. Heard V.D.Dange the Ld. Advocate for the plaintiff and Adv. Ejaj Khan the Ld. Advocate for the defendants.

6] The Ld. Advocate of the applicants strongly the cause of the applicants and again reiterated the contentions from the application.

7] The Ld. Advocate of the defendants argued that the plaintiff not entitled to get relief of injunction if plaintiff is not coming court with clean hand. In support of his argument he relied on the ruling of Hon'ble Bombay High Court **Baburao Mali Vs. Balasaheb 2007 (2) All MR 364.**

8] On the perusal of application, reply and oral arguments advanced by the Ld. Advocates of both parties following points arise for my determination to which I record findings for the reasons given below.

Sr. no.	POINTS	FINDINGS
1.	Whether the plaintiff made out a prima facie case in his favour?	No.
2.	Whether the balance of convenience tilts in favour of the plaintiff?	No.
3.	Whether the plaintiff will suffer irreparable loss if the order of temporary injunction is not passed in his favour?	No.
4.	What Order?	Application Exh. 5 is rejected.

REASONS

As to Point No. 1 :

9] In support of his contentions the plaintiff has relied upon a 7/12 extract of Gat No.33, Mutation entry No.1916 of Gat No.33, and some photographs and F.I.R. copy. On the other hand, the defendants filed a xerox copy of Judgment of RCS No.4/2002, RCA

no.153/2003, RCS No.45/2014, order on T.I. application RCA No.14/2022, toch map and also the 7/12 extract of Gat No.41 and copy of F.I.R. No. 218/2022.

10] As a rule, a prima facie case should be such that it should appear on the record that there is a bona fide contest between the parties and a serious question is required to be tried. In the case in hand the plaintiff specifically came with the case that the suit property is his ancestral property and he is in possession. Also as per the 7/12 extract, Gat no.33 shows in the name of the plaintiff admeasuring 45 Ar. the plaintiff further argued that the defendants are clearly seen in the photographs while an irrupting cotton crop of the suit land.

11] The defendants argued that the plaintiff has not come with clean hand in the court. He has suppressed material facts from the court. Already the suit regarding Gat no.41 was filed by plaintiff in the year 2014 RCS No.45/2014. In the said Suit after trial court dismissed the suit. Against that judgment, the plaintiff filed an appeal R.C.A no.14/2022 at District court, Aurangabad which is pending till today. Further, argued that the plaintiff has filed a Temporary injunction application in the appeal but the same is rejected by the District court. After that plaintiff has filed this suit .Plaintiff has not mentioned those things in this suit and Ex.5 application .plaintiff has no concern with Gat no. 4

12] Therefore, It is settle principal of law while deciding application of temporary Injunction Court should not go in to the merit of the matter. Upon perusal of documents filed by the plaintiff along with the suit and the defendants with their say on Ex.5, in its prime facie transpires that the

plaintiff is the owner of Gat no.33 and that thing is also admitted by the defendants. But the dispute regarding gat no.41 is pending between the plaintiff and defendants in the honorable District Court, Aurangabad. In which Honorable District Court is rejected Temporary injunction Application of the plaintiff for restraining the defendants on the ground that in para No.9 “ RCS No. 4/2002 it is a matter of record that, the judgment and decree passed by learned Trial Court in RCS No. 4/2002 has attended finally. The name of plaintiff is shown in Form No. 12 of 7/12 extract in the year 2001-2002. Perusal of this document, the Tahasildar by its order dated 20-2-2003, recorded the name of defendant Sarjerao Bala in cultivation column. Nevertheless, it can be noted that as per The Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules 1971, As per Rule 29, Form XIII Register of Crops for taking entries of crops and as per Rule 31 Register of persons in possession other than the persons deemed to be in possession according to the Record of Rights are prescribed. Therefore, the name of plaintiff though recorded in second part of 7/12 extract is not avail of plaintiffs case to chain of possession in the disputed property. If the request of appellant / plaintiff is accepted, it would certainly prejudice the rights of the defendant / Respondent who has obtained decree in respect of suit property on 21-7-2004 ”. Therefore Defendants right regarding Gat No. 41 is confirmed by competent court after trial. The plaintiff mentioned boundaries of Gat No. 33 in which southern side he shows the land of the plaintiff in Gat No. 41 for which no document is filed by the plaintiff on record which shows the plaintiff have land in Gat no.41 and Cowshed and Temple of Goddess. But toch map filed by the defendant shows that on the southern side of Gat No. 33 there is Gat No.41. Also some photographs filed by the plaintiff but that photographs alone are not sufficient at this stage. Therefore, the plaintiff has not

made out a prima-facie case to show that he has the land in Gat No. 41.
Hence, I answer point no.1 negative.

As to points no.02 and 03.

13. As the plaintiff has not made out even a prima-facie case, it can not be said that the balance of convenience lies in his favour. Thus, there is no question of suffering irreparable loss by the plaintiff, if the injunction, as prayed, is not granted. Hence, points no.02 and 03 are answered in the negative.

As to point no.04.

14. Given negative findings as to points no.01 to 03, this is not a fit case to grant a temporary Injunction, the application is liable to be rejected. Hence, order:-

ORDER

1. Application Ex.5 is rejected.
2. Costs of this application shall be the Cost in the cause.

Sd/-

(Dhananjay S. Deore)
Jt.Civil Judge Junior Division,
Phulambri, Dist. Aurangabad.

Date :28/09/2022.

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	: S. D. Chavan Stenographer
Court	: JMFC Court, No. 2, Phulambri.
Date	: 28/09/2022.
Order signed by the presiding officer on	: 28/09/2022.
Order uploaded on	: 28/09/2022.

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