

MHAU110013702023

**ORDER BELOW EXH.5**

Present suit is filed for perpetual injunction, wherein plaintiffs filed application under O.39, R.1 & 2 r/w Sec.151 of the Code of Civil Procedure, 1908 to restrain defendants or their agents, servants, relatives or anybody acting on behalf them from obstructing or trying to encroach or doing any illegal acts trying to interfere with peaceful possession of plaintiffs over 32R in Gut No.98 at mauje Murshidabad Wadi, Tal. Phulambri, Aurangabad (hereinafter referred as “suit property” for sake of brevity) till disposal of this suit.

**Contentions of Plaintiffs:**

2. As per plaintiffs, plaintiffs and defendants are relatives of each other. On 15/11/2022 plaintiffs and defendants executed sale deed No.2098/2022 and partitioned land in Gut no.98 amongst themselves. Accordingly, plaintiffs got 32R land while, defendants got 29R land in Gut no.98 as their share. Though defendant no.1 being Ex-Sarpanch of their village and having strong political support, trying to encroached suit property of plaintiffs. Plaintiffs further stated that from Gut no.98 Aurangabad – Phulambri road has gone, due to which land prices there are increased. Due to hike in land prices, defendants wants to grab land of plaintiffs, started harassing plaintiffs. On 27/10/2023 between 5.00 to 6.00 pm defendants came to suit property with their tractor and started ploughing suit property and when plaintiffs objected to it, defendants abused and threatened them. Thereafter, plaintiffs filed NC No.0656/2023 dated 28/10/2023 though, police informed them to go to civil Court for proper relief. Again on 28/10/2023 8.00 pm in the night, defendants came to plaintiff and beaten them by abusing and threatened to dispossessed plaintiffs. Hence, present suit is filed.

**Documents filed by plaintiffs:**

3. In that respect, plaintiffs filed on record 7/12 extract of Gut no.98, ME No.765, sale deed No.2098/2022, NC No.0656/2023 dated 28/10/2023 and supporting affidavit of Machhindra Vitekar to support their contentions.

**Contentions of defendants:**

4. In answer to service of summons, defendant no.1 to 3 appeared and filed their Written Statement. These defendants denied contentions of plaintiff stating that plaintiffs suppressed material facts from the Court and filed false suit. As per defendants, due to Aurangabad-Phulambri Road admeasuring 100 ft., went north to south from Gut no.98, land of plaintiffs divided in two parts. Due to passing of that road, plaintiffs are in possession of 23R land instead of 32R land as claimed, as their land was acquired for said road, which is intentionally suppressed by plaintiffs, to grab land of defendants. Defendants stated further that land shown in 7/12 extract as well as sale deed executed for partition, do not show exact situation on the spot.

5. Plaintiffs are trying to take undue advantage of 7/12 extract and said sale deed, trying to dispossess defendants by filing present false suit. As per defendants, plaintiffs shown their share as common land of 32R while, due to passing of road, now plaintiff no.1 is in possession of 13R land towards west side of road and 2R land from east side of road which comes to 15R land. While, plaintiff no.2 in possession of 6R land towards west side of road and 2R land towards east side of the road, total comes to 8R land. Defendants specifically stated that presently, plaintiffs are in possession of total 23R land in Gut no.98. All these facts are suppressed by plaintiffs from the Court. Plaintiffs, intentionally filed false suit, as partition taken place in the lifetime of fathers of plaintiffs and defendants. However, not shown in 7/12 extract for which sale deed executed. Plaintiffs also suppressed actual four boundaries of their share and given

boundaries of 32R land which is not actual position at spot. Therefore, defendants prayed to reject present application and dismiss said suit with costs.

**Documents filed by Defendants:**

6. Defendants filed certified copy of village map, affidavits of Kaluba Eknath Pawar adjacent owner having land in Gut no.159 alongwith his 7/12 extract and Hiralal Shridhar Vitekar adjacent owner having land in Gut no.99 alongwith his 7/12 extract, NC No.0191/2024 dated 13/04/2024.

7. After going through aforesaid, following points arise for my determination and my findings are as under for the reasons stated hereinafter\_

Sr. No.	Points	Findings
1.	Do plaintiffs proves that he has prima facie case in their favour?	Negative
2.	Do plaintiffs proves that balance of convenience lies in their favour?	Negative
3.	Do plaintiffs proves that if injunction not granted, they will suffer irreparable loss?	Negative
4.	What order?	Injunction is rejected.

**REASONS**

**As to point no.1 to 4:**

8. As points are interlinked hence, to avoid repetition I have taken them together. Firstly, plaintiff came with the case that they are owner and possessor of suit property and defendants are obstructing their possession trying to encroach upon suit property due to highway went from Gut no.98 which hike prices of their land. However, defendants denied possession of plaintiffs over 32R land in Gut no.98 and stated plaintiffs are in possession of 23R land as their land acquired for Aurangabad-Phulambri Road. As per defendant said road went from south to

north due to which Gut no.98 is divided into two parts east side and west side and both plaintiffs collectively hold 23R land in possession actually. Therefore, plaintiff filed false suit taking advantage of land mentioned in sale deed as well as revenue record which is not as per actual situation at the spot.

**Arguments advanced by Ld. Adv. N.B. Sonawane for plaintiffs:**

9. Adv. for plaintiffs argued that suit property came to their share as per sale deed No.2098/2022 which is filed on record and they are owner and in possession of suit property. While, defendants not related to suit property though obstructing their possession over suit property. He also argued that plaintiffs filed said sale deed as well as ME No.765 and 7/12 extract to show their prima facie possession. He further argued that as Aurangabad- Phulambri Road went through said gut, prices of land has increased considerably. Plaintiffs filed NC registered against defendants on 28/10/2023 to show obstruction by defendants. It is also argued that affidavits of Machhindra and Pankaj to support their contentions. While, defendants trying to confuse the Court by taking share of plaintiff no.2 in Gut no.95 also which is not related here in this suit. Further, no document filed by defendants in their support. Defendants also admitted partition and since partition, parties are in their possession. He lastly argued that defendants registered false complaint against plaintiffs and map filed by defendants is not legible so also, defendants not filed any case or counter-claim against these plaintiffs. Therefore, plaintiffs shown prima facie case and balance of convenience is in their favour and if injunction not granted, plaintiffs will suffer irreparable loss as defendants will succeed in encroaching upon suit property, hence, to protect suit property, prayed to allow said application. Adv. for plaintiff admitted that land was acquired for said road.

**Argument advanced by Ld. Adv. M.G. Patil for defendants:**

10. Against this, adv. for defendants argued that it is admitted fact that road has been went through Gut no.98, therefore, boundaries given by plaintiffs

are not proper as it includes Aurangabad-Phulambri Road which cannot be allowed as present suit is for simplicitor injunction and not land acquisition. He also argued that mode of transfer based upon which plaintiff is claiming in possession of suit property is also not proper, as instrument is sale deed with which plaintiffs claiming partition. It is argued that land in Gut no.98 was in the name of plaintiffs and they were not giving defendants' their share, therefore, defendants executed and signed said sale deed to get their share. He also argued that situation as per 7/12 extract and sale deed is different than actual situation on spot. He also filed supporting affidavits of adjacent owners in their support, and lastly argued that plaintiffs failed to show prima facie case and balance of convenience in their favour and if temporary injunction is granted in favour of plaintiffs, they will grab land of defendants. Defendants prayed to reject said application as plaintiffs suppressed material information from the Court.

11. After hearing both sides and going through documents filed on record. Most importantly, going through pleadings of both the parties, it seems that it is admitted fact that Aurangabad-Phulambri Road is went from Gut no.98 and land was acquired for the same. However, plaintiff failed to state as to how much land was acquired for said road. This itself shows that prima facie case is not in favour of plaintiffs, as they are not in possession of 32R land. At this stage, after going through record, firstly, documents mainly filed by plaintiffs are title documents, however, going through 7/12 extract and mutation entry no.765 filed on record which mentions 32R land in the name of plaintiffs however, plaintiffs themselves stated that there is road went through said gut and land was acquired for the same. This itself clears that documents filed on record does not show existence of said road as well as land acquired for the same.

12. Now, coming to present suit, wherein plaintiffs filed suit for injunction which is specifically filed for protection of possession over property. both the parties filed affidavits of adjacent owners, however, affidavits filed by

both of them, can be properly considered after putting witnesses for cross-examination. Therefore, at this stage, affidavits do not hold much value to consider prima facie case. Plaintiffs themselves claiming 32R land while road has went through said gut and land was acquired therein, however, not coming with clean hands. As road went south to north side is not denied which shows Gut no.98 divided into two parts east and west. However, map filed by defendants shows road from Gut no.98 which is also admitted by plaintiffs. Said relief is claimed by plaintiffs stating they are owner and in possession of 32R land in Gut no.98 however, mentioned prices of land hiked due to road crossing through said gut but failed to mention land acquired for the same and location of the suit property.

13. Therefore, at this primary stage, considering admission that road crossing through Gut no.98 and land acquired for the same, it clearly shows that plaintiff not having possession over 32R land in Gut no.98. therefore, at this juncture, contentions of plaintiff itself not supported by documents brought by him on record. As well as NC complaints filed by both the parties against each other, therefore, does not weigh enough to benefit any party while considering prima facie case. At this stage, plaintiffs not prima facie seen in possession as claimed by them, therefore, cannot grant injunction relief at this stage. As no prima facie case seems in favour of plaintiffs when plaintiffs not in possession of suit property. Going further, prayer of interim relief, cannot be granted at this interim stage, where plaintiff failed to show his possession over 32R land in Gut no.98. Seeing interim prayer which seems if granted will have effect of finally decided present suit. Therefore, at this stage, it is not proper to allow said application in absence of evidence in that regard. Therefore, as plaintiff not came with clean hands stating they are in possession of suit property which is not supporting by their own contentions, in such situation, document filed by them cannot be considered without taking evidence of both the parties. In such

circumstances, such interim relief cannot be granted. Therefore, I answer point no.1 to 3 in negative.

12. As I observed earlier that prima facie case not seems in favour of the plaintiff. So also balance of convenience is not in favour of the plaintiff and if injunction is granted then defendants will seem to be having irreparable loss. Hence, I answer point Nos. 1 to 3 in negative and in answer to point no.4, I pass the following order:

**ORDER**

1. Application is rejected.
2. Costs shall follow the decision of the suit.

Date:-14/11/2024

(V.V. Raojadeja)  
Civil Judge Junior Division  
Phulambri.

**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	:-	Shri. Yuvraj Bhagwansing Mirdhe
Court	:-	CJJD & JMFC Phulambri.
Date	:-	14.11.2024
Order signed by the Presiding		
Officer on	:-	14.11.2024
Order uploaded on	:-	15.11.2024