



ORDER BELOW EXH.- 20
In Regular Civil Suit No.- 50 of 2021
[CNR – MHAU120002092021]
Ishwar Deore Vs. Raju & Oths.
[Passed today on 12th July 2022]

1. This application is filed seeking injunction against the defendants, in view of Order XXXIX Rule 1 and 2 read with section 151 of Code of Civil Procedure, 1908.

Plaintiff's Claim:

2. Plaintiff is the legal owner of land in Gut No.- 108 admeasuring 1 H 48 R of land of village Galwada, Tq. Soygaon, Dist. Aurangabad (hereinafter referred as suit property). The entire land in Gut No.- 108 was ancestral property of plaintiff as per the family partition, suit property came on the share of plaintiff vide mutation entry No.- 835.
3. It is the main contention of plaintiff, in this application is that despite of several requests of plaintiff, defendants not closing their doors facing towards suit property and have not stopped the flow of drainage water. Hence, plaintiff prayed to restrained defendants from flowing drainage water in suit property. He has also prayed to directions to defendants for closing doors of their houses.

Contentions of Defendant Nos. 1 to 9 [Exh.-29]:

4. Defendant Nos. 1 to 9 have filed their written statement below Exh.-29 and submitted that the houses of defendants are in the jurisdiction of Gram Panchayat. They are in the possession of respective houses, since their ancestrares. They are regularly paying taxes to the Gram Panchayat and they have Gaon Namuna- 08 of their respected houses on their names. Plaintiff has with the shaking hands with

measurement officers prepared false and bogus documents and filed this bogus suit. Hence, prayed to reject the application of plaintiff.

Hearing of the Application:

5. Heard the learned Advocate of plaintiffs, Mr. S. S. Giri. Learned Advocate for defendant Nos. 1 to 9 Mr. P. M. Chaudhary also argued before me.

Points for Determination:

6. In this background, I need to decide about the upcoming points. I have formulated the points and then recorded decisions about them. The basis of decisions is the reasoning, analysis and discussion worded hereunder.

S.No.	Points for determination	Decisions
1.	Whether plaintiff has established <i>prima facie</i> case, demonstrating that defendants have obstructed his possession over the suit property?	... <u>Yes.</u>
2.	Whether balance of convenience tilts towards plaintiff?	... <u>Yes.</u>
3.	Whether plaintiff would suffer irreparable loss with greater hardship, if injunction is not granted?	... <u>Yes.</u>
4.	What order?	... <u>As Per the Operative Order</u>

REASONS

As to Point No.-1:

7. The party applying and insisting for injunction must establish *prima face* case first. Doing so means to demonstrate that there is a serious question involved in which the Court must intervene into. It also needs to establish that its legal right is in danger. Moreover, the party seeking such equitable relief of injunction is governed by all the maxims

of equity. It is expected that the party seeking such equitable relief must not suppress any facts or at least material facts. Another maxim mandates that the party seeking injunction must come with clean hands. Therefore, the claim of injunction is required to be examined through all such lenses of equity.

8. It is the case of plaintiff that the suit property is adjacent to Galwada village. Therefore, many villagers have evil eye over the suit property. They are trying to encroached over the suit property by making illegal construction. Defendants are flowing drainage water of their house in the suit property. For that purpose plaintiff has filed some photographs on record. From the said photographs it *prima facie* appears that the houses of defendants are adjacent to the suit property. It also appears that the doors of houses of defendants are facing towards the suit property. It also appears that some crop of plaintiff has damaged due to drainage water. Therefore, it appears that there is *prima facie* case in favour of plaintiff. Hence, I have recorded finding to Point No.- 1 in affirmative.

As to Points Nos.- 2 & 3:

9. The plaintiff has filed on record the copy of 7/12 extract of Gut No.- 108 of village Galwada, from which it appears that the name of plaintiff is inserted in 7/12 extract of suit property. However, plaintiff has claimed that defendants have encroached over the suit property to the extent of 5 ares. However, this fact will be proved only after evidence. The question of direction to the defendants for closing of door is concerned, it appears that the defendants have Gaon Namuna-08 in their favour. Therefore, unless the question of encroachment is determined, such direction can not be given at this stage.

10. However, *prima facie* it can be seen that the drainage water of houses of defendants flowing into the suit property. Therefore, it appears that balance of convenience lies in favour of plaintiff. It also appears that grater hardship would be caused to plaintiff, if defendants are not restrained from flowing drainage water in the suit property. Hence, it appears that irreparable injury would be caused to the plaintiff, if temporary injunction is not granted in his favour. Hence, I have recorded my finding to Point Nos. 2 & 3 in the affirmative.

As to Point No. - 4:

11. As per the above discussion it is clear that plaintiff is entitled for temporary injunction. In such circumstances following order is required to be passed:-

OPERATIVE ORDER

01. The application for temporary injunction [Ex.20] is partially allowed.
02. Defendants and any person on their behalf are restrained from flowing drainage water into the suit property.
03. Prayer of direction to close doors of houses of defendants is rejected.
04. No order as to costs.

Date : 12th July 2022.

[Amol B. Ingole]
Civil Judge J.D., Soygaon
[J.O. Code – MH03038]

CERTIFICATE

“I affirm that the contents of this [P.D.F.](#) file Order are same word to word, as per original Order”.

Name of Stenographer	:-	K. P. Dusane.
Court	:-	C.J.J.D. & J.M.F.C., Soygaon.
Date	:-	12.07.2022.
Order signed by presiding Officer on	:-	12.07.2022.
Order uploaded on	:-	12.07.2022.