

MHAU120003122018



R.C.S. No. - 41/2018.
Dwarakabai Vs. Rajendra

ORDER BELOW EXH. 5

This is an application filed by applicant Under Order 39 Rule of I and II of Civil Procedure Code for seeking order of temporary injunction.

2. In short it is contentions of the applicant that, Grampanchayat property No. 105 admeasuring about 75x22 Ft. bounded by Towards East - Road, Towards West - House of Sakhubai & Rajendra Narayan, Towards North - House of Kashinath & Nana and Towards South - House of Dilip & Ashok situated at Vangaon Ghorkund, Tq. Soygaon, Dist. Aurangabad (In short above mentioned property will be called as “suit property” for the sake of brevity).

3. Suit property was owned and possessed by the late Narayan Shankar Mahalpure, he was the husband of the plaintiff No. 1 and father of plaintiff No. 2 and defendant No. 3 to 6. After sad demised of Narayan, plaintiffs and defendant No. 3 to 6 are become the owner and possessor of the suit property as a successors of

Narayan. However, the name of the plaintiff and defendant No. 3 to 6 not recorded to the Grampanchayat record in respect of suit property till today.

4. Defendant No. 1 is having no concerned with the suit property. However, defendant No. 1 is trying to construct the house over the suit property and thereby obstructing to the peaceful possession of plaintiff over the suit property.

5. On 01/07/2018 defendant No. 1 had given threats that, he will make constructions over the suit property. Therefore, plaintiff constrained to filed suit for injunction and interalia he has filed this application for temporary injunction. Plaintiffs further contended that, they are having prima facie case, balance of convenience is in their favour and if injunction not granted then irreparable loss will be caused to the plaintiffs only. Therefore, prayed for allow the application.

6. Defendant No. 1 filed on record his written statement cum reply at Exh. 19. He has denied all adverse contentions of the plaintiff and came with the case that, he has purchased suit property by way of agreement of sale dated 21/05/2005. Since then he is in possession of the suit property. Plaintiffs not owner and possessor of the suit property. Therefore, prayed for reject the application.

7. Defendant No. 3 to 6 filed on record their pursis below Exh. 9 and admitted the claim of plaintiffs. In respect of defendant No. 2 suit is proceed without written statement against the defendant No. 2.

8. After considering the submission and perusal of record following points arise for my determination and I have recorded my findings on those points with reasons as follows:-

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether applicants establish that prima facie case is in their favour ?	... <u>Yes.</u>
2	Whether applicant establish that balance of convenience is in their favour ?	... <u>Yes.</u>
3	Whether applicant establish that if injunction is not granted, they will suffer heavy irreparable loss ?	... <u>Yes.</u>
4	What order ?	... <u>As per final order.</u>

FINDINGS AND REASONS

9. To prove the claim plaintiffs, plaintiffs filed on record Gaon Namuna 8 below list Exh. 4, death certificate of Narayan, legal heir certificate issued by the Sarpanch and four boundaries of suit property issued by the Gramsevak and Sarpanch. As against defendant No. 1 filed on record affidavit of Sanjay Jaiswal, Nana Patil & Santosh Gunjal and also filed on record photographs below list Exh. 26-A.

As to Point No. 1 :-

10. It is the case of plaintiffs that, they are owner and possessor of the suit property. On the contrary it is the contentions of the defendant No. 1 that, he is the possessor of the suit property on the basis of agreement sale dated 21/05/2005.

11. In support of the contentions of the plaintiffs, plaintiffs filed on record Gaon Namuna 8 of suit property. It shows that, name of the Narayan Shankar is mentioned as the owner and possessor of the suit property. It is the contentions of the plaintiff that, Narayan is died and as a successor they are the possessor of the suit property. In support of their contentions plaintiffs filed on record death certificate of Narayan.

12. It is pertinent to note that, defendant No. 1 not specifically denied that, plaintiff No. 1, 2 & defendant No. 3 to 6 are not successor of the Narayan. Therefore, in view of Order 8 Rule 5 of C.P.C., I come to conclusion that, plaintiff No. 1, 2 & defendant No. 3 to 6 are the successor of Narayan.

13. From the Gaon Namuna 8 it's become a clear that, Narayan was the owner and possessor of the suit property. To disprove the presumption attached to the Gaon Namuna 8, no documentary evidence filed on record by the defendant No. 1.

14. It is the case of defendant No. 1 that agreement of sale dated 21/05/2005 was burnt when his house caught fire. However, he has not filed on record any documentary evidence to established that, his house was caught fire and agreement of sale was burnt.

15. Defendant No. 1 has filed on record affidavits of Sanjay Jaiswal, Nana Patil and Santosh Gunjal. As per Section 91 of Indian Evidence Act when terms of contract, grants or other disposition of properties have been reduced to a form of document and in all cases in which any matter is required by law to be reduced to from of document. The document itself is to be produced to prove the terms of contract, grant or other dispositions. In present case defendant No. 1 not established his contentions by producing documentary

evidence. Therefore, in view of Section 91 of Indian Evidence Act, I am of the opinion that, the affidavits of Sanjay Jaiswal, Nana Patil and Sandesh Gunjal not admissible to prove the contentions of the defendant No. 1 and disprove the presumption of Gaon Namuna 8 filed by plaintiff.

16. Defendant No. 1 also filed on record photographs. In respect of photographs, Ld. counsel for defendant No. 1 submitted that, defendant No.1 has constructed the house over the suit property to shows such construction defendant No.1 has filed on record photographs. However, Ld. counsel for the plaintiffs, submitted that, in absence of affidavit of the photographer it cannot be said that, such photographs are of suit property.

17. Admittedly defendant No. 1 has not filed on record, affidavit of the photographer. Therefore, in absence of affidavit of photographer it cannot be conclude that, photographs are of the suit property. Therefore, I come to conclusion that, photographs filed by defendant No. 1 not sufficient to disprove the Gaon Namuna 8 filed by the plaintiff.

18. Therefore, considering all circumstance, evidence on record, I have to considered the Gaon Namuna 8 filed by the plaintiffs. Therefore, considering Gaon Namuna 8, death certificate,

all circumstances and evidence on record, I am of the opinion that, contentions of plaintiffs seems to be probable one. Hence, I come to conclusion that, plaintiffs are succeed to prove prima facie case is in their favour. Hence, I answer Point No. 1 in affirmative.

As to Point No. 2 & 3 :-

19. As plaintiffs have proved their interest in the suit property by proving Point No. 1. Therefore, it can also conclude that, balance of convenience is in favour of plaintiffs. Therefore, if injunction is not granted then certainly irreparable loss will be caused to the plaintiff only because defendant not establish that, plaintiff is not entitle for relief. Therefore, I come to the conclusion that plaintiff proved Point No. 2 and 3. Hence, I answer Point No. 2 and 3 in affirmative.

As to Point No. 4 :-

20. As plaintiff proved point Nos. 1 to 3 in their favour. Therefore, in view of the provision Under Order 39 Rule of I and II. I am of the opinion that, applicant is entitled for order of temporary injunction in his favour and against the defendant. Hence, I pass following order in the answer of Point No. 4 :-

ORDER

1. Application is allowed with costs.

2. Defendant No. 1, his servant, agent and family members are hereby restrained by order of temporary injunction from creating obstruction to the peaceful possession of plaintiff over the suit property, till disposal of suit.

Dt. - 03/02/2020.

**(S.S.Salwe)
Civil Judge, (Jr.Dn.),
Soygaon.**

CERTIFICATE

I affirm that the contents of this PDF file Order are same word to word, as per the original Order.

Name of the Stenographer	:- K. P. Dusane.
Court	:- C.J.J.D. & J.M.F.C., Soygaon.
Date	:- 03/02/2020.
Order Signed by the presiding officer on	:- 03/02/2020.
Order uploaded on	:- 04/02/2020.