

**RCS No. 25 of 2024**

**CNR No.MHBU170002392024**

**Bharat Sirsath Vs. Ramesh Sirsath + 2**

**ORDER BELOW EXH. 5**

**(Dt. 15/07/2024.)**

1. This is an application filed by the plaintiff under Order 39 Rule 1 of the Code of Civil Procedure, 1908 for restraining defendants from causing any interference or obstruction into the use and enjoyment of the suit property by the plaintiff, till disposal of the suit.

2. Description of the suit land is as under

Land Gat No.4 ad-measuring 00-H. 51-R., situated at village Wadgaon Tejan, Tq. Lonar, Dist. Buldhana, bounded together as -

Towards East - Government road

Towards West - Land of Madhav Laxman Sirsat

Towards North - Road

Towards South - Land of Ananta Bhaskar Sirsat

**Plaintiff's case in short**

3. It is the case of the plaintiff that, the suit property was jointly owned and possessed by he and his mother. Vide release-deed No. 297 dated 29/01/2024, the mother of plaintiff namely, Tulsabai Rambhau Sirsat waived her rights in the suit property in favour of the plaintiff. As such, since last 30 to 35 years, the plaintiff is exclusive owner and is in cultivating possession of the suit property. After the death of his father, the plaintiff became exclusive owner thereof. The defendant no. 1 is the son of plaintiff's sister (i.e. the nephew of plaintiff) and defendant no. 2

is wife of defendant no. 1. The father of the plaintiff had already given 2 Acres of land to the mother of defendant no. 1. However, the defendant no. 1 is taking quarrel against the plaintiff and asking the plaintiff to give suit land to him. It is further contended that, the plaintiff has constructed a house as well as cattle shed and go-down of cement concrete over the suit property. The defendants are trying to take forceful possession of the said go-down. When the plaintiff raised voice, the defendant no. 2 lodged false report against the plaintiff and his son with Police Station, Lonar. The defendants also assaulted plaintiff. Therefore, the plaintiff also lodged report against defendants. It is further contended that, on 18/01/2024 and 10/03/2024 defendants tried to enter into said go-down forcefully. The plaintiff tried to give understanding, but defendants did not listen. Defendants are *gunda* person. There is a possibility that they might take forceful possession of the house and go-down. Therefore, the plaintiff being owner and in possession of the suit property and the said constructed area, he is having prima-facie case and the balance of convenience also lie in his favour. If the act of defendants is not restrained by way of injunction order, the loss which might be sustained by the plaintiff cannot be avoided. Therefore, the plaintiff prayed to restrain defendants by passing injunction order in his favour and against defendants.

4. The defendants appeared and filed their say and written statement at Exh. 19. They denied correctness of description and

four boundaries of the suit property. They also denied all the adverse allegations made by the plaintiff against them. It is specific contention of the defendants that, the suit property is purchased by defendant no. 1 vide registered sale-deed no. 1441/2013 dated 02/08/2013. Since then, he became owner and possessor of the suit property. The defendants have constructed house over the suit property. The defendant no. 1 is residing therein along with his mother and wife. It is further contended that, the suit property originally belonged to Rambhau Namdeo Sirsat, (the father of plaintiff) and one Laxman Namdeo Sirsat. On 21/04/1998, there was partition between Rambhau and Laxman. Accordingly, Rambhau allotted the some portion to Laxman for cattle-shed and court-yard. The defendant no. 1 has purchased the said portion from Mahadeo Laxman Sirsat who is the legal heirs of Laxman Namdeo Sirsat. Therefore, on the strength of said sale-deed, the defendant became owner and possessor of the suit property. There is no connection between the suit property i.e. Gat no. 4 belonging to the plaintiff and the portion of land belonging to these defendants.

5. It is further contended that, the plaintiff and his son had assaulted the defendants. Therefore, the defendants had lodged report against plaintiff and his son. Therefore, the plaintiff is having grudge against defendants on that count. The defendants have purchased the suit property by paying value consideration and constructed house thereon. The name of defendants have

been recorded in property rights of village Panchayat record. Accordingly, property is numbered as House Property No.132 and it is ad-measuring 18 X 20 feet. The plaintiff himself was the witness to the sale-deed on the strength of which defendant no. 1 became owner of the said property. As such, the plaintiff has no voice or any claim against defendants. The plaintiff wants to remove defendants from the possession of their house. Therefore, the plaintiff has filed this suit with malafide intention and on false grounds. The plaintiff has no relation, what so ever, over the ownership and possession of defendants over the said constructed portion. The plaintiff has no prima facie case and the balance of convenience also does not lie in favour of the plaintiff. It is further contended that in case the injunction as claimed by the plaintiff is granted, then the defendants will suffer irreparable loss. Hence, prayed to reject the application.

**6.** Perused application and say of defendants. Perused documents filed on record by both the sides. Heard, Shri. S. B. Mundhe, learned advocate for the plaintiff and Shri. S. A. Avchar, learned advocate for defendants. On the basis of rival contentions, following points arise for my consideration. Findings against them are recorded for the reasons discussed below:

**POINTS FOR DETERMINATION**

| <b>Sr.</b> | <b>Points</b>  | <b>Findings</b>                  |
|------------|--|----------------------------------|
| 1.         | Does plaintiff prove prima facie case?   | No.                              |
| 2.         | Whether balance of convenience lies in favour of plaintiff?  | No.                              |
| 3.         | Whether plaintiff will suffer irreparable loss if injunction as sought for is not granted in his favour? | No.                              |
| 4.         | What order?  | ... The application is rejected. |

**FINDINGS****As to Point No. 1 to 4 -**

7. The plaintiff has filed this suit for declaration of ownership and possession along with perpetual injunction. In respect of his contention the plaintiff has placed on record copy of 7/12 extract of land Gat No. 4 and copy of mutation entry No. 3003. On perusal of said two documents, it became clear that, the plaintiff has 0.46 R land recorded in his name in the said Gat Number. Mutation entry makes it clear that, the plaintiff got suit land on the strength of release-deed executed by his mother in his favour.

8. It is important to note here that, though defendants initially denied the correctness of description and four boundaries of the suit property, in the later part to their written statement, it is clearly mentioned by them that, the land belonging to plaintiff

and constructed portion of the property which is in the possession of these defendants are entirely different properties. Therefore, the plaintiff has no concerned with the property belonging to the defendants. The defendants have placed on record photo copy of sale-deed, on the strength of which they are claiming title over the suit property. It has been pointed out by the learned advocate for defendants that, the plaintiff himself is one of the witness to the said transaction. That fact can be seen from very well by perusing sale-deed No.1441/2013.

9. Now, it is necessary to mention here that, the plaintiff has filed this suit for declaration of ownership and possession. The plaintiff has placed on record copy of 7/12 extract and mutation entry No.3114. However, the plaintiff has not placed on record any document to show that, there is constructed house, cattle-shed or go-down over the suit land. Had there been such constructed portion standing on the suit land, the entries to that effect might have been taken in the revenue record, i.e. the 7/12 extract of the suit property. However, no such entries are found on the 7/12 extract of the suit property. The plaintiff has not placed on record any proof of the fact that he has actually and factually constructed house, cattle shed and go-down over the suit property. It cannot be denied that, the plaintiff seems to be owner and possessor of the suit land Gat No.4 ad-measuring 0 H 46 R. However, the plaintiff in his plaint in para No. 4 specifically contended that, defendants are trying to dispossess

the plaintiff from the house, cattle shed and go-down constructed by the plaintiff over the suit land. Therefore, unless and until the factum of existence of such construction over the suit land is prima-facie proved by the plaintiff. It cannot be assumed, only on the say of the plaintiff, that the defendants are trying to dispossess the plaintiff or the defendants are causing interference into the said constructed portion. Therefore, there is no prima-facie case in support of the claim put forth by the plaintiff. The balance of convenience also does not lie in favour of the plaintiff. Hence, injunction cannot be granted. Therefore, point Nos.1 to 3 are answered in the negative and for the same reasons, in answer to point No.4, following order is passed.

**ORDER**

(1) The application is rejected with costs.

(Pronounced in open Court)

Dt.15/07/2024

Sd/-

(R. B. Hanwate)

Civil Judge Junior Division, Lonar.