



CNR No. MHBU190000162022

Order below Exh.5 in R.C.S. No.01/2022

This is an application filed by the plaintiff herein, praying for the relief of temporary injunction vide O.39 R.1 r.w. S.151 of the Civil Procedure Code.

02. Heard learned Adv. Shri.R.B.Tayade for the plaintiff and learned Adv. Shri.R.P.Thosare for the defendants no. 1 to 4. Perused the application and reply filed in reply. Perused the record of the case.

03. Stated in brief, case of the plaintiff is that a landed property/plot bearing property no.35 admeasuring 1650 sq.ft. situated within Gat No.693 at village Sakharkherda, Tq. Sindkhed Raja, Dist. Buldhana (hereinafter referred to as the 'suit property') is owned and possessed by him. The suit property is situated in Gat No.693 on western side, that is to the west of Lavhala-Bibi tar road. On its east the suit property is bound by aforesaid Lavhala-Bibi tar road. Whereas, on its west it is bound by a road within landed property bearing Gat no. 841.

04. It is further his case that an *idgah* is situated within aforesaid Gat No.841 and Muslim brothers visit it regularly for prayer.

It is alleged by the plaintiff that the defendants are not concerned with the suit property. However, in order to grab the suit property, the defendants together with a mob are obstructing his possession over the suit property and attempting to dispossess him. It is also alleged that the defendant no.5 and father of the defendant no.4 had instituted a suit bearing R.C.S. No.213/2015 before the Hon'ble Civil Judge Senior Division, Buldhana. That suit has been dismissed for default. However, instead of reviving said suit, the defendants no.4 and 5 are causing obstruction to his possession over the suit property intending to grab the same.

05. It is further alleged by the plaintiff that on 28/12/2021, when he visited the suit property, the defendants obstructed him with a mob and threatened him. The defendants told him that they would be taking the suit property for the purposes of *idgah and* if he resists the same, they would cause communal riots and implicate him in false cases for causing communal disharmony and send him to prison or else, they might also kill him at the very place. It is further alleged that the plaintiff orally reported about the said incident to the Officer-in-Charge, Police Station, Sakharkherda. But he was reluctant to register the report. He stated that the dispute is of civil nature and asked the plaintiff to approach a civil court for appropriate remedy. Therefore, on 03/01/2021 the plaintiff made a complaint to the Superintendent of Police, Buldhana in writing. Thus, the suit came to be instituted.

06. It is submitted that the plaintiff has a *prima facie* case in his favour. The balance of convenience is in favour. In case, the

application is not allowed he would suffer an irreparable loss. Hence, it is prayed by the plaintiff that the application may be allowed and the defendants or any person on their behalf may be restrained by a temporary injunction from causing obstruction to his possession over the suit property.

07. The defendants no. 1 to 3 have filed their say on the present application at Exh.41. Likewise, the defendant no.4 has filed his say at Exh.47, which is almost on similar lines to that of the defendants no. 1 to 3. The application has proceeded further without the say of the defendant no.5. It is admitted by the defendants no.1 to 4 that an *idgah* is situated in the landed property bearing gat no.841 and that Muslim brothers visit it regularly for prayer.

08. However, it is contended by the defendants no.1 to 4 that any such property described as suit property does not exist within given boundaries. The north-south running Lavhala- Shendurhan road is situated between the landed properties bearing gat nos.693 and 841. The case of the defendants, in short, is that the defendants no.2 and 3 had purchased a landed property admeasuring 1 H- 72 R out of landed property bearing gat no.841. Said landed property is bound on its east by government road and thereafter by land of one Jagdishprasad Bhagvatiprasad Tiwari. Thereafter, aforesaid purchased land was duly converted to non-agricultural use and layout map was sanctioned. Plot no.1 out of said layout is owned by the defendants no.2 and 3. Said plot no.1 is bound on its east by a 12 mts. wide service road and thereafter by Shendurjan-Lavhala road. It is alleged that the area upon

which the plaintiff is asserting his right is a part of aforesaid service road which is used to have an access to a 9 mts. wide road situated within aforesaid layout meant for having access to inner plots and the adjacent *idgah*. The plaintiff, however, is unlawfully trying to block both the said roads. Thus, the plaintiff is making an attempt to encroach upon aforesaid 12 mts. wide service road. He has attempted to encroach upon said road previously, but the defendants no.2 and 3 have resisted him successfully and therefore, a false suit and present application have been filed.

09. It is submitted that one Madhukar Vithhal Pawar has purchased a plot situated within gat no.693 from Shivdas Ramchandra Rindhe who had purchased the said plot from the plaintiff. However, due to wrong advice of the plaintiff said Madhukar Pawar has encroached upon aforesaid 12 mts. wide service road and government road by raising a shed. The defendants no.2 ad 3 have resisted the same and have instituted a suit bearing RC.S. No. 40/2015 before the court at Mehkar. The said suit is sub judice and the said fact has been suppressed by the plaintiff. Similarly, one Sanjay Sadashiv Ingale had filed a suit against said Madhukar Pawar and others before this court. However, he was forced to withdraw the said suit. This fact is also concealed by the plaintiff. It is further alleged that the plaintiff has previously cheated people by selling them bogus plots in gat no.665 pretending them to be situated within gat no.693. However, the said transactions came to light and N.A. permission for in all 54 plots was cancelled. This fact too has been suppressed by the plaintiff.

10. It is further alleged that the plaintiff does not own the suit property. The present suit and application have been filed with an intent to extract money from the defendants no.2 and 3 by obtaining injunction and thereby encroaching upon the service road and blocking road. There is no cause of action for the suit and present application. The cause of action which is alleged to have occurred is false and fabricated. Hence, it is prayed by the defendants no.1 to 4 that the application may be rejected.

11. The points for determination, alongwith my findings thereon and reasons for the same, are as follows :-

Sr.No.	Points	Findings
i)	Whether the plaintiff has a <i>prima facie</i> case in his favour ?	No
ii)	Whether the plaintiff would suffer an irreparable injury if the relief of temporary injunction is not granted ?	No
iii)	Whether the balance of convenience is in favour of the plaintiff ?	No
iv)	What order ?	The application is rejected.

REASONS

As to the point no.(i) :-

12. The suit is for perpetual injunction simpliciter. Therefore, the precise location of the suit property and possession of the plaintiff over the same are vital aspects in the present matter. However, the parties are at variance in respect of those aspects. According to the plaintiff the suit property is situated in Gat No.693 on the western side to the west of Lavhala-Bibi tar road. The suit property is bound on its east by aforesaid Lavhala-Bibi tar road and to its west it is bound by a road within landed property bearing Gat no. 841. On the other hand, it is contended by the defendants no.1 to 4 that the suit property does not exist within given boundaries. The north-south running Lavhala-Shendurjan road is situated between the landed properties bearing gat nos.693 and 841. The plot no.1 situated in gat no.841 and owned by the defendants no.2 and 3 is bound on its east by a 12 mts. wide service road in the relevant layout and thereafter by Shendurjan-Lavhala road. According to them, the plaintiff is asserting right upon an area which is part of aforesaid 12 mts. wide service road and he is making an attempt to encroach upon said 12 mts. wide service road meant for having access to another road of 9 mts. width used for having access to inner plots and the adjacent *idgah* situated within gat no.841.

13. A perusal of copies of extracts of Assessment list- Form No.8 for the years 2021-22 and 2022-23, produced by the plaintiff at

Exh. Nos. 3/1 and 33/4 reveal that name of the plaintiff is entered therein as owner and occupant of property no.35. However, further perusal of those extracts would reveal that the boundaries of that property are recorded in a vague manner. The boundaries mentioned in those extracts do not tally with the boundaries of the suit property as mentioned in the plaint with certainty.

14. The maps produced on record by the plaintiff at Exh. nos.3/2 and 16/4 in respect of landed property bearing gat no.693 (old survey no.221), do correspond with one another. Similarly, maps produced by the plaintiff in respect at the same landed property at Exh. nos. 33/1 and 49/3 correspond with one another. However, the comparison of the maps at Exh. nos. 3/2 & 16/4 on one hand and the maps at Exh. nos. 33/1 & 49/3 on the other hand, would reveal that those maps, although being in respect of the same landed property, are inconsistent with each other. Perusal of the maps at Exh. nos.3/2 and 16/4 reveal that two north-south running roads almost parallel to one another pass through the aforesaid landed property. One of the said roads runs alongwith western boundary of said landed property. Whereas, the other passes through middle of the said landed property. On the other hand, the maps at Exh. Nos.33/1 & 49/3 depict one north-south running road passing through middle of the aforesaid landed property. Apart from this difference, a further comparison of those maps would show that on the northern boundary of the aforesaid landed property, the exit points of the road passing through the middle of the property, as depicted in the maps at Exh. nos. 3/2 & 16/4 on one hand and the maps at Exh. nos. 33/1 & 49/3 on the other hand are

different.

15. Apart from being inconsistent in manner discussed above, it is important to note that these maps are in respect of the entire landed property bearing gat no.693. These maps do not depict the suit property/plot with its accurate boundaries and location within the landed property bearing gat no.693. The plaintiff has produced on record documents with respect to N.A.P./36/Sakharkherda/2005-2006 at Exh.40/5. A map alongwith said proceeding at page no.5 depicts the portion of land within gat no.693 which was proposed to be converted to non-agricultural purpose in that proceeding. However, that map too does not reveal the exact location of the suit property viz. plot no.35. A minute scrutiny of said map would also reveal that the portion of land which was proposed to be converted to non-agricultural purpose is not bound on its east by landed property bearing gat no.841. Also, the trajectory of the single road running alongwith the western boundary of property bearing gat no.693 depicted in the said map could be seen to be slightly yet significantly different when compared to that what is depicted in maps at Exh.3/2 and 16/4.

16. Considering the aforesaid material on record it cannot be *prima facie* inferred that a certain portion of land out of landed property gat no.693 is situated to the west of Government tar road. And that the suit property is situated in that portion, in such a manner so as to be bound on its east by the aforesaid government tar road and on its west by a road within landed property bearing gat no.841. On the other hand, the site inspection report of the talathi (Exh.43/1), the map (Exh.43/4), N.A. order in N.A.P./34/Sakharkherda/10/2003-2004

and more importantly the sanctioned layout plan (Exh.43/15) produced on record by the defendants no.1 to 4, support their claim that the landed property bearing gat no.841 is bound on its east by government Shendurjan-Lavhala road. The said layout plan (Exh.43/15) also further supports their claim in respect of position and location of the plot no.1, *idgah*, 9 mts. wide road and importantly 12 mts. wide road in the said layout, all of which is situated the aforesaid landed property bearing gat no.841. Further, the said sanctioned layout plan (Exh.43/15) does not reveal that the suit property or even any portion of property bearing gat no.693 for that matter is situated adjacent to the east of property bearing gat no.841 and to the west of Lavhala-Shendurjan road.

17. In the present matter the plaintiff has not sought the relief of injunction in respect of the entire landed property bearing gat no.693, but in respect of the suit property which is claimed to be a part and parcel of the said landed property. However, in view of above discussion, it could be said that the plaintiff has *prima facie* failed to establish the accurate and precise location and boundaries of the suit property and thereby he has also failed to establish his possession over a specified and identifiable portion of land out of gat no.693 viz. an area constituting the suit property, by adducing consistent and sufficient material on record.

18. The defendants no.1 to 4 have alleged that the plaintiff has suppressed certain material facts. The learned advocate for the defendants has relied upon the decision of the Hon'ble Bombay High

Court in the case of **International Airport Authority of India Vs. Shri. Bhimrao Chandappa Dasar 2005(3) ALL MR 257** wherein it is observed that, *in case of suppression of material facts by the plaintiff, court should draw an adverse inference against him.* He has also relied upon another decision of the Hon'ble Bombay High Court in the case of **Vasudev Nene Vs. Dattatray Jog 2000(1) Civil Court Cases 291 (Bombay)** wherein it is observed that, *where a party seek an equitable relief he should approach court with clean hands and should not suppress any material fact and document, otherwise he or she cannot seek indulgence of the court or any equitable relief.*

19. The defendants no.1 to 4 have submitted that institution of a suit bearing RCS No.40/2015 by the defendants no.2 and 3 has been suppressed by the plaintiff. However, perusal of the copy of plaint in the RCS No.40/2015 (new RCS No.41/2019) and the order dated 27/06/2019 passed by the Hon'ble Civil Judge Senior Division, Mehkar produced by the plaintiff at Exh.16/3 (and also at Exh.36/5), reveals that the said suit has been dismissed in default for want of prosecution. The defendants no.1 to 4 have also submitted that the N.A. permission in respect of 54 plots in gat no.693 has been canceled and this fact too has been suppressed by the plaintiff. However, on perusal of the order dated 21/10/2016 passed by the learned Collector, Buldhana (Exh.45/1) would show that status quo has been granted in respect of the operation of order dated 20/07/2016 passed by the Sub Divisional Officer, Sindkhed Raja in N.A.P.-34/Sakharkherda/3/2014-2015. Thus, under such circumstances it could not be *prima facie* inferred that the plaintiff have suppressed aforesaid facts. Therefore,

the ratio laid down by the Hon'ble Bombay High Court in the aforesaid cases of **International Airport Authority of India Vs. Shri. Bhimrao Chandappa Dasar 2005(3) ALL MR 257** and **Vasudev Nene Vs. Dattatray Jog 2000(1) Civil Court Cases 291 (Bombay)** is of no avail to the defendants no.1 to 4.

20. Be that as it may. It has been already observed above that the plaintiff has *prima facie* failed to establish the accurate and precise location and boundaries of the suit property and he has thereby also failed to establish his possession over a specified and identifiable portion of land out of gat no.693 viz. an area constituting the suit property. An order as prayed by the plaintiff, even if passed, would remain in-executable for want of accurate location of the suit property. Therefore, in my opinion the plaintiff has failed to establish a *prima facie* case in his favour for grant of injunction as prayed by him. Hence, the point no.1 is answered in negative.

As to the point no. (ii) & (iii) :-

21. It is a settled position of law that, when a party fails to show a *prima facie case* in its favour, question of considering the balance of convenience or irreparable loss and injury to the concerned party would not be material at all. The learned advocate for the plaintiff it relied upon the decision of the Hon'ble Bombay High Court in the case of **M/s. Dukle Constructions and Others Vs. Domingos Antonio and Others 2009(4) ALL MR 352** wherein it was observed that, *the plaintiffs being in possession of property, the balance of convenience lies also in their favour.* However, perusal of the entire

judgment and especially paragraph no.17 of the said decision would reveal that, in the facts of that case the plaintiffs had made out a *prima facie* case. Also, it was found that they would suffer an irreparable loss. But, in the present case before me it has been already observed above that the plaintiff has failed to establish a *prima facie* case in his favour. Therefore, the ratio laid down in the aforesaid decision is not helpful to the plaintiff in present matter. At this juncture it would be helpful to refer to the decision of the Hon'ble Bombay High Court in the case of **Baban Bhikoo Dube Vs. Municipal Corporation of Greater Bombay, 1996(1) B.C.J. 12**, relied upon the defendants no.1 to 4, wherein it observed that, *it is plaintiff who has come to Court and wants an equitable relief of injunction and he must succeed or fail on the basis of his strength and certainly. Not on the weakness of the defence case.* Hence, in view of above discussion the points no.(ii) & (iii) are answered in the negative.

As to the point no. (iv) :-

22. The points no. (i) to (iii) are answered in the negative. Therefore, consequently, in answer to point no. (iv), the following order is passed :-

:- O R D E R :-

The application is rejected.

Sd/-

Place : Sindkhed Raja
Date : 15/11/2022

(Aditya G. Naik)
Civil Judge Junior Division,
Sindkhed Raja.

CERTIFICATE

It is certified that the contents of the present PDF file are true and correct as per the original signed order/judgment.

Date : 16/11/2022

Dattatray M. Mirge
Name of stenographer