



R.C.S. No. 66/2021
Vasant Mavchi Vs. Jatrya Raut + 4

CNR-MHDH05-001916-2021

ORDER BELOW EXH. NO. 5 IN R.C.S. NO. 66 of 2021

This is an application for temporary injunction filed under section order 39 rule 1 and 2 of the CPC for injunction against defendants.

2. In brief, the suit properties are A. gut no. 66/1/5 situated in Umarpata, Tal. Sakri, admeasuring areas 1 H. 6 R., having found boundaries viz., On eastern side gut No. 67, western side *gaonshiv*, southern side gut No. 66 and northern side *gaonshiv*.

3. B. gut no. 66/1/6 situated in Umarpata, Tal. Sakri, admeasuring areas 1 H. 5 R., having found boundaries viz., On Eastern side gut No. 67, Western side *gaonshiv*, Southern side gut No. 66 and Northern *gaonshiv*. These are the suit properties.

4. The suit properties are in possession of Plaintiffss since 1995. Defendants are the relatives of the Plaintiffs. The Plaintiffss cultivate the suit properties. Defendants trying to obstructed their possession. There is partition between father of defendant namely Hatya Goma Mavchi and father of Plaintiffs Malya Soma Mavchi, the in the year 1980. Then in the year 1995 there was partition between Plaintiffs and other sons of Malya Soma Mavchi since then Plaintiffs are in possession and cultivate suit property.

5. The defendants are the obstructing possession, since last six months. They illegally trying to trespass in suit property. On dated 09.09.2021. The defendant has trying to trespass in suit properties and damaged the *bandh*. The

defendants has threaten to Plaintiffs labor. They abuses in filthy language and threaten to killed them. So Plaintiffs has filed complaint against defendants dated 13.09.2021. That was registered as N.C.R. 340/2021. Then after, on 10.10.2021 the defendants has threaten to Plaintiffs. Once again Plaintiffs has approach to police station. The police informed him, it is civil matter. So Plaintiffs has filed suit and prayed interim injunction. So he prayed to allowed this application.

6. The defendant No. 1 to 6 appear and they filed say and W.S., vide Exh. 15. The Plaintiffs claim and Exh. no. 5 application are completely false and illegal. The defendant denied all claim and pleading of Plaintiffs. Farm field at Mauje Umarpata Group no. 62 and 66 were owned, usufruct and occupied by the maternal grandfather of the defendants named Goma Bekrya Mavchi. Goma Bekrya Mavchi along with his family lived in the said farm field gut no. 66 for the rest of his life. He resides in Wadage. After the death of Goma Mavchi, his children Hataya and Baba along with their families i.e. the defendants were and are living in the houses in agricultural field gut no. 66. At present, the said houses of the defendants and the field around those houses i.e. Wadage are agricultural fields in gut no. 66 i.e. gut no. 66/1/5 and gut no. 66/1/6. Presently the defendants along with his family is living in the houses in farm field gut no. 66 i.e. gut no. 66/1/5 and 66/1/6.

7. The possessions of the said houses of the defendants in farm field gut no. 66 i.e. gut no. 66/1/5 and 66/1/6 are registered in the name of the defendants in *Grampanchayat Office Namuna no. 8*. The defendants lives with his family in the said houses of the defendants in the agricultural field gut no. 66 i.e. gut no. 66/1/5 and group no 66/1/6. That is, the said houses of the defendants in field gut no. 66 i.e. gut no. 66/1/5 and gut no. 66/1/6 and the field around those houses i.e. Wadage were owned, occupied and occupied by the defendants since before.

8. The Plaintiffs and their father has no relationship with Goma Bekrya Mavchi and defendants. The Plaintiffs has no concern with their properties. Mavlya Soma, Gotaya Soma and Poslya Sukrya were not and are not nephews of Goma Bekrya Mavchi. In such a situation, after demise of Goma Mavchi, the names of the children Hatya Goma and Baba Goma as his heirs along with the names of Malya Soma, Gotya Soma and Poslya Sukrya are recorded as the nephews of Goma Mavchi is the false and illegal alteration entry No. 4 dated 01.10.1979. The defendants have recently come to know about mutation farm field in respect of farm field Group No. 62 and 66.

9. Malya Soma, Gotya Soma and Poslya Sukrya are not brother of Hatya Goma. But Hatya has mutated entry no. 5 dated on 23.10.1980 is illegally. This fact recently know to defendants. Further illegally entry no. 54 is mutated in favour of Malya and Baba about gut no. 62. Then also mutation no. 114 is recorded illegally. All entries are illegal. The defendants has Wadage in gut no. 66. Wadage means house having a open space. The Wadage are of defendants ancestral and since their father resides there.

10. The competent authority are not follows Maharashtra Land Revenue Code 1966 and its rules. That suit properties are conditional suit properties so is required sanction of section 36 (2) That suit properties are not never transfer to Plaintiffs. So with intention to grab Wadage the suit has filed. So the defendants request to reject this application. The Plaintiffs is not possession of suit properties. If injunction is granted in favor of Plaintiffs it will cause hardship and prejudice to the defendants. So defendants are prayed to reject this application.

11. While passing an order of temporary injunction under order 39 rule 1 and 2 of the CPC, the Court has to consider, following points, to which I answers my findings.

Sr. No.	Points	Findings
1.	Whether the Plaintiffs has a prima-facie case ?	...No
2.	Whether the balance of convenience in favor of Plaintiffs ?	...No
3.	Whether the Plaintiffs has irreparable loss and injury if an order of injunction was not passed ?	...No
4.	What order ?	Application is rejected

REASONS AS TO POINT NO. 1 to 3

12. The Plaintiffs has filed following documents

Sr. No.	Description	Exh. NO.
1.	7/12 extract of Vijay Malya Mavchi	Exh. No. 3 Doc. No. 1
2.	7/12 extract of Vasant Malya Mavchi	Exh. No. 3 Doc. No. 2
3.	Copy of complaint forwarded to Pimpalner police station by Plaintiffs.	Exh. No. 3 Doc. No. 3
4.	Village map.	Exh. 19 Doc. 1

13. The defendants has also relied upon following documents.

Sr. No.	Description	Exh. NO.
1.	Namuna No.8, of property belongs to Jatrya Hatya Raut	Exh. No. 21 Doc. No. 1
2.	Namuna No. 8 of property belongs to Vinayak Hatya Raut.	Exh. No. 21 Doc. No. 2
3.	Namuna No. 8, of property belongs to Suresh Hatya Raut.	Exh. No. 21 Doc. No.3

14. The Plaintiffs has filed suit for permanent injunction against all defendants. In that in that he is claiming temporary injunction. The properties situated in Umarpata. The Plaintiffs has filed documents on record. Gut No. 66/1/6 situated in Umarpata belongs to Vijay Malya vide Ex.h. 3 doc. No. 1. another documents of 7/12 extract bearing No. 66/1/5 belongs to Vasant Malya Mavchi. Plaintiffs specifically pleaded that, defendant obstructed them on 09.09.2021. So they approach to police station. The N.C. is on record. It reveals the date of incident is on 09.09.2021.

15. The Plaintiffs claiming temporary injunction. Specifically Plaintiffs admit that, there is Wadage of defendants in the same property. It means the defendants has having the possession over suit properties.

16. The defendants has filed some documents. It reveals that Jatrya, Vinayak and Suresh having house in the vicinity of Grampanchayat Nandarkhi. The defendants in their W.S. mentioned that the suit properties are situated in Nandarkhi Grampanchayat. Here the suit properties i.e. belongs to Plaintiffs. As it is pleaded in Complaint and application. The documents reveals that the suit properties are belongs to Plaintiffs. The Plaintiffs has filed the document i.e. *gaon nakasha* vide Exh. No 19 doc. No. 1, the objection about the possession is raised by defendants and Plaintiffs are admit it. The Plaintiffs is submit that there is Wadage of defendants but possession of field i.e. suit properties are belong to Plaintiffs.

17. Let me take up the element of prima-facie case. suit is for the relief of injunction. nature of pleadings becomes pivotal. Hence, Thus, at this threshold stage it could be held without demur that the Plaintiffs has satiated the point of prima-facie case. Thus documents filed by Plaintiffs is about the properties and the ownership. The defendant has exactly objected about his ownership and possession. The Plaintiffs has possession of the property is the important fact. Importantly

defendants have Wadage in the suit property. But defendants has trying or willing obstructed them. N.C. is on record.

18. The prima-facie case should be appear with the documents. The documents has about the only ownership. The defendant has obstructed the Plaintiffs. Importantly the properties belongs to the Plaintiffs is documents filed on record.

19. As regards balance of convenience and inconvenience, if the defendants are restrained by an order of injunction and ultimately the suit fails, they are to suffer more than that will be suffered by the Plaintiffs. If the injunction is refused and suit ultimately succeeds, the Plaintiffs cannot suffer loss or injury.

20. The suit is filed in the year 2021. i.e. almost prior to one year. What loss has Plaintiffs suffer is not submitted by Plaintiffs. Even otherwise the Plaintiffs has not filed any documents and affidavit about loss. What he will suffer in the consequences. But what irreparable loss will cause if the application is rejected is not appeared on record. An irreparable injury means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the Plaintiffs in case of success in the suit would not place them in the position in which they were before injunction was refused. In view of discussions and findings of points No. 1 to 3, I am of the considered opinion that the applicants would not suffer irreparable loss or injury, if temporary injunction is not granted as prayed for. Hence, I record Negative findings of points No. 1 to 3. Hence order

:ORDER:

The application vide Exh. 5 is rejected.

Sakri
Date : 16.09.2022

(R.B. Dole)
Jt.Civil Judge J.D., Sakr9

-: CERTIFICATE:-

I certify that the contents of this PDF File are word to word as per Original Judgment /Order .

Name of the Steno :- Mayur Yogendra Jadhav

Name of the Court :- Jt. C.J.J.D. & J.M.F.C., Sakri.

PDF Uploading Date :- 17.09.2022.

Sd/- xxx

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