

RCS No.02/2023

ORDER BELOW EXH.05 IN RCS No. 02/2023

(passed on 03/01/2024)

Shri. Mantu Nagendranath Sarkar

Plaintiff ...

Vs

Shri. Amal Shambhu Banik & Ors

Defendants ...

Shri R.N. Thakare, Adv for plaintiff.

Shri D.H. Gayali , Adv for defendant no.1.

1] Plaintiff filed this suit for permanent injunction. Plaintiff has filed this application (Exh.5) for temporary injunction under the provision of Order 39, Rule 1 of the Code of Civil Procedure 1908 to restrain the defendant no.1 from constructing the house on the way to the small canal situated near the house of the plaintiff.

Plaintiff's case, in brief, is as under -

2] Plaintiff owned the house bearing property no.239 in Vishwanath Nagar, Tah. Mulchera, Dist. Gadchiroli. Grampanchayat road is situated to the East and North side of the property no.239. Water stored near the house of the plaintiff was passed through the small canal which is adjacent to the Grampanchayat road. Defendant no.1 without any authority and ownership started constructing the house on the way to small canal. As a result of which water stored near the house of the plaintiff was be blocked and it will cause stink which will create the health problem.

3] Plaintiff has lodged the complaint with defendant no.2 and 3 for stopping the construction of the house carried out by the defendant no.1. Defendant no.2 and 3 did not take any action on the complaint of the plaintiff. On the contrary defendant no.2 and 3 cooperate with defendant

no.1 in illegal construction. Therefore, plaintiff is constraining to file suit for injunction and present application for temporary injunction. Plaintiff further submitted that prima facie case is made out and balance of convenience also lies in his favour. No prejudice would be caused to the defendant no.1 if temporary injunction is granted. Hence, plaintiff prayed for allowing the application.

4] The defendant no.1 resisted the application by filling his written statement at Exh.22. Defendant no.1 filed the pursis at Exh.48 stating that written statement be considered as a reply to this application. Defendant no.1 denied all the adverse contention against him. Defendant also denied the four boundaries of the property no.239 and description of the property no.239. Defendant also denied that the plot and house of the plaintiff is situated near the small canal. In the special pleadings defendant no.1 contended that he is the permanent residence of the Vishwanath Nagar and he lives in Vishwanath Nagar with his family. Family of the defendant no.1 became large after the marriage of son of defendant no.1. Therefore, it is difficult for the defendant no.1 to live in his house at Vishwanath Nagar. Narayan Janbandhu Bishwas and his family has given consent to the son of defendant no.1 for constructing the house on 6887 sq. feet land which is situated within limit of Grampanchayat Vivekanandpur. Accordingly, son of defendant no.1 started construction on the above mentioned land. No way through which water is passed is closed due to the construction of the defendant no.1. Defendant no.1 further submitted that no house as mentioned by the plaintiff in the plaint is existed and only vacant land owned by the plaintiff is situated. Small canal which is situated near the vacant land of the plaintiff has been closed due to the filling of soil. With the intention to take possession of the plot on which defendant no.1 constructing the house, the plaintiff has file the false application. Defendant

no.1 has no connection with the dispute raised by the plaintiff. Plaintiff has concealed the real fact from the court. Plaintiff did not come before this court with clean hands. Hence, defendant no.1 prayed for rejecting the application with cost.

5] Heard Ld adv for the plaintiff and Ld adv for defendants. From rival pleadings of both the parties, document placed on record and submission advanced by the Ld adv for both the parties, followings points arose for my determinations and I have recorded my findings against the points with the reason to follow.

<u>POINTS</u>	<u>FINDINGS</u>
1 Whether plaintiff have made out prima facie case ?	<u>In Negative</u>
2 Whether balance of convenience lies in favour of plaintiff ?	<u>In Negative</u>
3 Whether plaintiff would suffer irreparable loss if temporary injunction is not granted in his favour ?	<u>In Negative</u>
4 What order ?	<u>As per final order.</u>

REASONS

AS TO POINT NO.1 to 3 :-

6] It is not disputed that small canal on which the dispute was raised by the plaintiff is not possessed by the plaintiff. Plaintiff came with the specific case that small canal from which the water stored near the area of the house of the plaintiff is passed was closed due to the construction of

house by the defendant no.1. During the course of argument Ld advocate for defendant no.1 contended that there is no house of the plaintiff as claimed by him. Per contra Ld counsel for the plaintiff relied on Namuna-8 of the house of the plaintiff. It is admitted fact that plaintiff did not file the photograph of the house bearing property no.239. Plaintiff could have filed the photograph of his house after objection raised by defendant no.1 over the existence of his house. But plaintiff failed to file any photograph of his house.

7] Plaintiff filed the affidavit of Krushna Pralhad Bishwas and Jagannath Jiten Sarkar in support of his contention. On perusal of affidavit of both the person it show that there is plot existed on the land where plaintiff claimed to have the house thereon. It also show that defendants have made an encroachment on the small canal due to which the way from which water is passed has been closed. Both the deponent stated that their plot is also situated near the small canal. However, they further stated that they have knowledge about the small canal because they used to come and go on the Mallera to Koperalli road. These two deponent claimed that their house is situated near the small canal and they further stated that they have knowledge because they used to come and go on Mallera to Korperalli road. Both this statement are contradictory as person residing nearby the small canal would automatically have the knowledge about the small canal. Therefore, doubt is raised over the existence of the house of the plaintiff and the knowledge of the two deponent on whose affidavit plaintiff relied. Plaintiff should have file the affidavit of the adjoining owner of the plot of house owned by him. It is not the case of the plaintiff that there is no plot and house adjacent to his house.

8] Plaintiff relied on complaint lodged with the Grampanchayat Vivekanandpur which show that defendant no.1 have started illegal construction due to which flowing of the water through its small canal is stopped. Grampanchayat Viveknandpur have a control and authority over the illegal construction and flowing of the water in rainy season. Even Grampanchayat have given the letter dated 21/03/2023 to defendant no.1. On perusal of letter issued by Grampanchayat it show that spot panchanama was carried out by Grampanchayat and defendant no.1 assured that soil in small canal will be cleared and the way will be carved out from small canal for flowing of the water. Defendant no.1 has also started the construction without the permission of Grampanchayat. It appears from the letter issued by Grampanchayat to defendant no.1 that the construction was started without the permission and the way of small canal is blocked due to the filling of soil in the small canal. It is not the case of the plaintiff that small canal was blocked due to the filling of the soil but plaintiff claimed that defendant no.1 started the construction on the way to small canal owing to which water is blocked. The soil and other garbage in the small canal can be cleared by Grampanchayat or defendant no.1. Prima facie it is not seen that the defendant no.1 started construction on the way to small canal on account of which water stored near house of the plaintiff is blocked. Moreover, no other person from the village Vishwanath Nagar lodged any complaint with the Grampanchayat, even though defendant no1 carried out the construction without any permission. No prejudice would be caused to the plaintiff if injunction is not granted. On the contrary the defendant no.1 has started construction. If injunction is granted the defendant no.1 is required to stop his construction of the house. Plaintiff did

not challenged the illegality of the construction carried out by the defendant no.1. Therefore, it is not within purview of this court whether defendant no.1 carried out the construction legally or illegally. Even house of the plaintiff does not appear to be situated near the small canal. Documentary proof such as Namuna-8 are not the conclusive proof of existence of the house. In the instant case small canal appears to be suit property. In that case plaintiff should have given description and boundaries of small canal for which plaintiff sought the relief. Plaintiff failed to mentioned the boundaries of small canal. Plaintiff have other remedy in the form of pursuing Grampanchayat to clear the small canal or compelling the Grampanchayat to stop the construction which appears to be carried out without permission. In the instant application plaintiff did not seek any relief against the defendant no.2 and 3 who is Sarpanch and Secretary of Grampanchayat. Prima facie case is not made out and balance of convenience does not lies in favour of the plaintiff. Plaintiff would not suffer the irreparable loss if injunction is not granted. Hence, I answer the point no.1 to 3 in negative and proceed to pass following order in answering to point no.4

ORDER

1. Application (Exh.5) is rejected.
2. Status quo granted by this court is hereby vacated.

Sd/-

Date : 03/01/2024.

(N. D. Meshram)
Nyayadhikari, Gram Nyayalaya,
Mulchera.

CERTIFICATE

I affirm that the contents of this P.D.F. file are word to word same, as per original Judgment.

Name of Stenographer :Mr.S.N.Khandekar,Stenographer
(Grade-3)

Name of Court :Gram Nyayalya, Mulchera.

Date of order : 03/01/2024.

Judgment checked and
signed by Presiding Officer on : 03/01/2024.

Judgment uploaded on : 03/01/2024.