

MHGO060001482021



Order passed below Exh.5

(Dated 18/10/2023)

The plaintiffs have filed the present application for grant of temporary injunction against the defendant.

2] Heard learned Advocates for both the sides. The learned Advocate for the plaintiffs submitted that the plaintiffs have filed present suit for permanent injunction against the defendants. It is stated that plaintiff's owned and possesses 0 H. 17 R. land in the Gat No.464, 0 H 16 R land in Gat No.465 and 0 H. 17 R. land in Gat No. 466 at Mauza Budhewada, Tq. Arjuni/Morgaon, Dist. Gondia (Hereinafter referred as suit properties)

3] It is submitted that on 03.01.2021 when the plaintiffs were cultivating their land, the defendant came to the suit properties and abused and threatened the plaintiffs for not cultivating the said land. It is submitted that the defendant is trying to create obstruction in the peaceful possession of the plaintiffs over the suit properties. Therefore, the plaintiffs prayed temporary injunction against the defendant for not creating obstruction in the peaceful possession of the plaintiffs over the

suit properties.

4] Per contra, the learned advocate for the defendant denied the case of the plaintiffs and submitted that the old Gat number of suit properties is Gat No. 145 having area 1.25 Acre. It is submitted that, the plaintiff agreed to sale 0.84 Acre land of Gat No. 145 to the uncle of the defendant i.e. Narayan Pandu Maske on 12.04.1973, on the condition that after obtaining permission from sub divisional officer he would execute sale deed in favour of the defendant's uncle. But the plaintiff is not executed the sale deed till today inspite of receiving consideration amount from the uncle of defendant. It is submitted that the uncle of the defendant was in possession of 0.84 Acre land since 1973 and now defendant is in possession of the suit property i.e. 0.84 Acre land. Therefore, he prayed for the rejection of the application.

5] I have heard learned Adv. R. W. Kesalkar for plaintiffs and learned Adv. T. D. Kapgate for the defendants.

6] After considering pleading of both the parties, following points arise for my determination and I have given my findings and reasons there to which are as under -

Sr.No.	Points for determination	Findings
1)	Whether the plaintiffs prove the prima facie case?	Yes

2)	Whether the balance of convenience lies in favour of the plaintiffs?	Yes
3)	Whether the plaintiffs will suffer irreparable loss if injunction is refused?	Yes
4)	What order?	As per final order.

As to point no. 1 :-

7] Whenever party applies for temporary injunction, it has to satisfy Court about existence of prima facie case. Prima facie case means a situation in which Civil Court has to intervene. In the present suit the plaintiffs have claimed temporary injunction on the basis of 7/12 extract and boundary cards of Gat No. 464, 465 and 466 and map of suit properties and letter given to police Station Arjuni/Morgaon. On the other hand, the learned advocate for the defendant is not filed any documents on record in support of his case.

8] The learned Adv. for the plaintiffs argued that plaintiffs are the owner and in the possession of the suit properties. The defendants have no right to obstruct the peaceful possession of the plaintiffs over the suit properties and therefore, temporary injunction should be granted against the defendants.

9] The learned Advocate for defendants argued that the plaintiff agreed to sale 0.84 Acre land of Gat No. 145 to the uncle of the

defendant i.e. Narayan Pandu Maske on 12.04.1973 on the condition that after obtaining permission from sub divisional officer he would execute sale deed in favour of the defendant's uncle. But the plaintiff is not executed the sale deed till today inspite of receiving consideration amount from the uncle of defendants and the uncle of the defendants was in possession of 0.84 Acre land since 1973 and now defendant is in possession of the suit property i.e.0.84. Hence, he prayed to reject the application.

10] Heard both the sides. Perused the record. From the perusal of entire documents filed on record, it appears that the 7/12 extract of Gats No. 464, 465 and 466 bear the name of the plaintiffs. The plaintiffs to prove that they are in the possession of the suit properties have filed 7/12 extracts, boundaries card and map of suit properties. On the contrary, the defendant to prove his possession has not filed any documents.

11] The 7/12 extracts of Gat No. 464, 465 and 466 bear the name of the plaintiffs, show that the plaintiffs are the owner of Gat No. 464, 465 and 466. Suit properties i.e. Gat No. 464, 465 and 466 are open land. By taking into consideration 7/12 extracts, boundaries card and map of suit properties, it is prima-facie appears that the plaintiffs are the owner of the suit properties and they are also in possession of the said properties. Per contra, defendant has not filed any document to show his

possession over the suit properties.

12] The plaintiffs have also filed letter given to police Station Arjuni/Moargaon dated 10.02.2021. From perusing the letter, it is prima facie seen that defendant is creating obstruction in the peaceful possession of the plaintiffs over the suit properties. In such circumstances, at this juncture, the plaintiffs prima-facie proved that they are in the possession of the suit properties and defendant is disturbing and obstructing the peaceful possession of the plaintiffs over the suit properties. Hence, it can be said that prima-facie case exists in favour of the plaintiffs. Therefore, I record my findings as to point No.1 in positive.

As to points no. 2 and 3 :-

13] I have clubbed discussion of these points together as the discussion is interconnected. As I have already discussed that plaintiffs proved their prima-facie case, hence it cannot be said that irreparable loss will be caused to the defendants, if temporary injunction as prayed for, is granted in favour of the plaintiffs. Balance of convenience also appears to be lies in favour of the plaintiffs rather than in favour of the defendant. Thus, at this stage of the matter, the plaintiffs have made out case for granting relief of temporary injunction as claimed by them. Hence, I am giving my findings as to point Nos.2 to 3 in positive.

As to point no. 4 :-

14] Considering the above said discussion, I am not hesitant to pass the upcoming order. It is to be made clear that, any observation made herein should be taken to be not relevant at the trial on merits. These are only prima-facie observation, subject to adducing of the evidence and proof at trial on merits in the suit. Therefore, in answer to point No.4, I pass the following order.

ORDER

- 1) The application at Exh.5 is hereby allowed. Defendant, his family members, agents, servants, or any other person on his behalf are hereby temporarily restrained from creating obstruction in the peaceful possession of the plaintiffs over the suit properties till final disposal of the present suit.
- 2) Costs shall follow the events.
(Pronounced in open Court).

Dt. 18/10/2023.

SD/-
(Smt.Neha V. Sahu)
Civil Judge Jr. Dn., Arjuni/Morgaon