

ORDER BELOW EXH. 5

This is an application under Order XXXIX Rule 1 & 2 of C.P.C. wherein plaintiffs prayed for restraining defendants from obstructing peaceful possession of plaintiffs over suit land Gat No. 258 area 0.06 HR as shown by letter B A D E F G in plaint map.

2. It is case of plaintiffs that one Natthu Sathawane was owner of land Gat No. 258 total area 0.62 HR. Out of which plaintiff No. 2 purchased 0.02 HR through sale deed dated 15.12.2002 and he constructed a house over it. Subsequently in the year 2009, defendant No. 1 purchased 0.56 HR land out of Gat No. 258. Lateron plaintiff No. 1 purchased remaining 0.04 HR land through sale deed dated 10.02.2021. The land total area 0.06 HR purchased by plaintiff No. 1 and 2 are adjacent to each other. Whereas the land purchased by defendant No. 1 is facing towards west of suit property. On 16.07.2021 the defendant No. 2 obstructed the cultivation of plaintiff No. 1 and matter was reported to police. Further defendants also obstructed possession of plaintiff No. 2 from southern side. Therefore plaintiff conducted the measurement of suit property on 26.08.2021 through Land Record office, Tirora. The boundaries of plaintiff No. 1's land

are demarcated. However again on 15.12.2021 defendants obstructed the possession of plaintiff over suit property.

3. The defendant No. 1 has also filed R.C.S. No. 57/2021 against plaintiff No. 2 and her husband to harass them. Therefore plaintiffs filed present suit for declaration along with injunction.

4. As per plaintiffs, they have proved prima facie case, balance of convenience lies in their favour and they will suffer irreparable loss if injunction is not granted. Therefore, they prayed for temporary injunction as sought.

5. The defendant filed reply (Exh. 15) and contended that defendant No. 1 is owner and possessor of 56 R land from the date of sale deed i.e. 22.07.2009. The plaintiff No. 1 never measured 0.04 HR land prior to purchase from Natthu Sathawane, therefore it is not acceptable that Natthu Sathawane was possessing 0.04 HR land prior to executing sale deed in favour of plaintiff No. 1. On 20.06.2021 plaintiff and original owner Natthu obstructed the possession of defendant over his 0.56 HR land. The matter was reported to police on 16.07.2021. Plaintiffs are trying to grab some portion of defendants towards western side of their land. Therefore they filed civil suit R.C.S. No. 57/2021 against present plaintiff and got temporary injunction

against them. Plaintiffs tried to counterblast the temporary injunction order running in favour of defendants. Finally they prayed for rejection of present application with cost.

6. Following points arose for my determination and I have recorded my finding against each of them for following reasons :

Sr. No.	Points for Determination	Findings
1.	Whether plaintiffs have proved prima-facie case ?	... Yes.
2.	Whether balance of convenience lies in favour of plaintiffs ?	... Yes.
3.	Whether plaintiffs will suffer irreparable loss, if injunction is not granted ?	... Yes.
4.	What order ?	... Application is allowed.

REASONS FOR THE FINDINGS

7. Perused application, say and rival documents. Heard Ld. Advocate Shri. Chavhan for plaintiffs and Shri. Malewar for defendants.

As to Point Nos. 1 to 4 :

8. Admittedly the defendant No. 1 has purchased 0.56 HR

land out of Gat No. 258 in the year 2009. Admittedly the plaintiff No. 2 purchased 0.02 HR land out of Gat No. 258 on 15.02.2002 and constructed house over it.

9. At the out set it is to be noted that present defendants have filed civil suit bearing R.C.S. No. 57/2021 against present plaintiff in respect of suit land Gat No. 258 area 0.56 HR. Furthermore the temporary injunction has been granted in that suit against present plaintiffs.

10. The sale deed on record clearly shows that the plaintiff No. 2 Ramchandra purchased 0.02 HR land in the year 2002. So also defendant No. 1 purchased 0.56 HR land in the year 2009. Subsequently the plaintiff No. 1 purchased 0.04 HR land in the year 2021. The sale deed of defendants clearly shows that there is 4 R and 2 R land towards east side of his land area 0.56 HR.

11. Defendants have admitted the sale deed of plaintiff No. 2 but they are denying the sale deed of plaintiff No. 1 of 4 R land which was possessed by original owner Natthu at the time of sale deed of defendants. The sale deed of plaintiff No. 1 clearly shows that the original owner Nathu Sathawane has sale out remaining 4 R land to plaintiff No. 1 which is possessing towards east of defendant's land.

Even original owner filed affidavit and stated that remaining 4 R land sold by him to plaintiff No. 1 and handed over possession to him.

12. No doubt the temporary injunction has been granted in favour of present plaintiffs in R.C.S. No. 57/2021 for the land possessed by present defendants. It is to be noted that the defendant No. 1 never measured his 0.56 HR land prior to or after his sale deed. He got the temporary injunction whatever land possessed by him in Gat No. 258. On the other hand plaintiffs have measured their land and the measuror has fixed their boundaries of suit property. In such circumstances the possession of plaintiffs can not be obstructed over their 6 R land. Admittedly there is house of plaintiffs over 2 R land. Main dispute is regarding 4 R land which was later on purchased by plaintiff No. 1. The plaintiff is possessing his 4 R land, then the defendants have no right to obstruct the possession of plaintiffs over their land i.e. suit property. Defendants can not misuse the temporary injunction which they got against plaintiffs, since they got the temporary injunction regarding whatever land possessing by them. Now defendants can not claim their area more than the land possessing by them.

13. Prima facie plaintiffs are owner and possessor of 6 R land which is towards East direction of defendant's land. Photographs on

record also clearly shows that plaintiff are possessing their 6 R land which appears towards East of defendant's land. Though defendants got temporary injunctions against plaintiffs in respect of land possessed by them, at the same time plaintiffs have also right to claim injunction against defendants to the extent of area owned and possessed by them.

14. Plaintiffs have clearly demonstrated the suit property, then defendants have not right to interfere in their possession over suit property. The police complaint from both sides clearly shows that there is obstruction as claimed by plaintiffs. Therefore obstruction from defendants needs to be restrained.

15. In view of above discussion, I come to conclusion that plaintiffs proved prima facie case and balance of convenience lies in their favour. Moreover they would suffer irreparable loss if they deprive to enjoy their suit property. On the other hand defendants are not going to suffer any irreparable loss since they are possessing temporary injunction in respect of whatever land possessed by them. Hence, I have recorded my finding to point No. 1 to 3 in ***Affirmative***. As a result, the application deserves to be allowed, hence in answer to point No. 4, I passed following order :

ORDER

1. The application (Exh. 5) is allowed.
2. Defendants, their agents or any person acting on their behalf are temporary restrained from obstructing peaceful possession of plaintiffs over suit land Gat No. 258 area 0.06 HR as shown by letter B A D E F G in plaint map.
3. Cost in main cause.

Tirora
Date : 28/03/2022

(V. G. Karmore)
Civil Judge (Jr.Dn.) Tirora.