

R.C.S. No. 09/2019
Bhaulal V/s. Rahup

ORDER BELOW EXH. 05

Plaintiffs moved present application under Order 39 Rule 1 & 2 of C.P.C. and prayed for temporary injunction restraining defendants from making any encroachment over suit property as well as restraining them from dispossessing the plaintiffs from suit land till the disposal of main suit.

2. It is case of plaintiffs that their father Shyamrao had purchased land Kh. No. 322/2 & 324/1, total Area 0.12 H.R. from Chaitram Dhekal Walde through registered sale-deed dated 15/01/1963. The aforesaid land collectively converted into Survey No. 883, Area 0.12 H.R. in consolidation scheme. Now, it is standing as Survey No. 883, Area 0.12 H.R. having four boundaries as follows :

East - Sonegaon road, West - land of Sukhlal Dhawde

North - Z.P. road, South - land of defendant Nos. 1 & 2
(*hereinafter called as suit property*).

3. Since time of father, he and thereafter, plaintiffs are possessing the suit property till date. After death of father, name of plaintiffs and their sisters are recorded in Revenue Record as legal heirs. Their sisters are married and they are residing at their

respective matrimonial houses. Plaintiffs are cultivating the suit land.

4. As per plaintiffs, defendant Nos. 1 & 2 purchased land towards the Southern side of suit land from defendant No. 3 on 17/11/2017. The original owner of land was Mankabai Khobragade. Now, defendants are possessing their land toward South side of suit land and they are trying to grab the suit property by taking undue advantage of wrong map prepared at the time of consolidation by Land Record Officers. In the month of August – 2017 defendant No. 3 tried to encroach over suit property. Therefore, plaintiffs measured their land on 25/09/2017 from T.I.L.R., Tirora. Wherein it reveals that consolidation map was not prepared properly, in fact plaintiffs are possessing their land as per the four boundaries of sale-deed as well as shown in measurement map. In the year – 2018 defendant Nos. 1 & 2 again tried to encroach over suit property, therefore, plaintiffs tried to convince them but invain. Hence, they filed present suit for perpetual injunction.

5. 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.

6. Defendants filed reply (Exh. 17) and contended that plaint map filed by plaintiffs is false and baseless. The Revenue

Map shows correct location of land Gat No. 883, Mouza – Gondmohadi. As per that map towards East – Cannal, West – Gat No. 884, North – Gat No. 884, South – Gat No. 882.

7. Defendants are owners & possessors of land Gat No. 632, Area 0.36 H.R. by virtue of registered sale-deed dated 17/11/2017. The name of defendant Nos. 1 & 2 came to be recored in Revenue Record. Plaintiffs have misguided the Court and suppress the correct location of Gat No. 632. Plaintiffs are trying to encroach over defendants land Gat No. 632. Defendants have no concern with land No. 883. Plaintiffs are claiming their possession over Gat No. 632 and sought injunction in respect of Gat No. 883. In such circumstances plaintiffs cannot ask for injunction as sought. Finally they prayed for rejection of application

8. 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 <i>prima-facie</i> case ?	... No.
2.	Whether balance of convenience lies in favour of plaintiffs ?	... No.
3.	Whether plaintiffs will suffer irreparable loss, if injunction is not granted ?	... No.
4.	What order ?	... Application is rejected.

REASONS FOR THE FINDINGS

As to Point Nos. 1 to 3 :

9. I have gone through the application alongwith documents on record. Heard learned advocate Shri. Malewar for plaintiffs and advocate Shri. Yadav for defendants.

10. At the outset, it is to be noted that plaintiff claimed his possession over suit property on the basis of title. He mentioned the suit property as Survey No. 883, Area 0.12 H.R. surrounded by four boundaries mentioned in the application and plaint. They come with the case that their father purchased the old Kh. No. 322/2 & 324/1, Area. 0.12 H.R. surrounding by four boundaries mentioned in sale-deed. From the date of sale-deed they are owner & possessor of suit property. In consolidation scheme both Khasara number merged into Gat No. 883 and accordingly 7/12 extract have been prepared by Revenue Authority. 7/12 extract also bears name of plaintiffs in the record of Survey No. 883.

11. As per plaintiffs, when defendants tried to encroach over this land they got measured the suit property on 25/09/2017 through T.I.L.R., Tirora. I have gone through the measurement map furnished by plaintiffs. It reflects that Gat No. 883 is possessed by the holder of Gat No. 884. Moreover, the possession show by plaintiffs is reflected by words *ABCD* in said map. However, said possessed area of plaintiffs is having different Gat number and not

Gat No. 383. Though the possession of plaintiffs reflects upon the *ABCD* area, further though the possessed area is surrounded by four boundaries as mentioned in plaint, but the plaintiffs mentioned the Gat No. 383 to said area. However, in fact they are possessing the Gat No. 632.

12. It is not case of plaintiffs that they applied for correction of consolidation. Obviously correction of Revenue Record is not a job of Court as argued by learned advocate for defendants. No doubt the possession of plaintiffs reflects over area surrounded by four boundaries as mentioned in plaint, but said area does not bear Gat No. 383 as prayed or sought in application by plaintiffs.

13. Obviously plaintiffs have liberty to prove their case on merit, but at this juncture the injunction sought by plaintiffs in respect of Gat No. 883 cannot be granted. Because further complication cannot be ruled out if blanket order of temporary injunction granted in respect of Gat No. 883. Misuse of said order also cannot be ruled out. Hence, I have no hesitation to hold that plaintiffs failed to prove *prima-facie* case, balance of convenience also not lies in their favour. If injunction is granted then mere complication would arise and no irreparable loss is going to cause to plaintiffs. Hence, I have recorded my finding to point Nos. 1 to 3 in negative.

As to Point No. 4 :

14. In view of my finding to point Nos. 1 to 3, plaintiff is not entitled to temporary injunction as claimed. Hence, application is liable to be rejected. As a result, I passed following order :

ORDER

1. Application is rejected.
2. Cost in main cause.

Tirora**Date : 23/07/2019****(V. G. Karmore)****Civil Judge (Jr.Dn.) Tirora.**