

Nitin Vs. Gayabai

CNR No.- MHJN050000572021

Order below Exh. 05 in RCS No. 03/2021

This is temporary injunction application of the plaintiff vide Exh. 05.

Plaintiffs' case in a nutshell-

2. Plaintiff has given the description of his property as follows-

House Property No. 439 area 30x30 ft. means 900 Sq.ft.	East -Government road, West - Government road, South - Trimbak Narayanrao North - Achyutrao Garad Situated
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(For the sake of brevity hereinafter above mentioned property will be called as the suit property.)

3. Plaintiff and defendants are the permanent residents of mauje Singona Tq. Partur. They are not the relatives of each other. Plaintiff is the owner and possessor of the suit property and his name is recorded in form 08 of suit property at Grampanchayat Singona. Defendants have illegally encroached upon the suit property by putting tin fencing. Plaintiff was in possession in suit property from many years and previously suit property was an open plot having shevri and hivra trees. Plaintiff was using it, as a place for keeping its ox, cart and agricultural tools. Plaintiff has kept bricks and stones for construction in the suit property. Though defendants are not related with suit property, behind the back of plaintiff, on the date 24.09.2020 defendants cut shevri and Hiwra trees in the suit property. When the plaintiff asked defendants about the cutting of Shevri and Hiwra trees, defendants replied that suit property belongs to them and defendant no. 01's name is there in form no. 08 relating to the suit property, as an owner of it. Plaintiff was outside for taking education. Defendants have taken benefit of it

and encroached upon the suit property. Plaintiff when went to police station for lodging the FIR, police told plaintiff to institute the civil suit. When the plaintiff went for giving the complaint at Partur, defendant no. 01 with the help of defendant no. 02 and two three people of village constructed tin compound in the suit property. Plaintiff requested for removal of that tin compound. But defendant threatened plaintiff with lodging of false cases. Hence, the plaintiff has made the present temporary injunction application.

Defendants' case in a nutshell-

4. Defendants have appeared and filed their written statement vide exh. 14. Defendants have given pursis vide **exh. 16** whereby W.S. at exh. 14 was prayed to be treated as say to exh.05 application. Defendants specifically denied the ownership and possession of the plaintiff and submitted that defendant no. 01 instituted RCS no 77/2010 against plaintiff's father Pandit Garad on the date 16.09.2010. That suit is decreed with cost on the date 24.04.2012. Defendant no. 01 is the owner of grampanchayat milakat no. 448 of which new number is 420. Defendants wherein possession of this property from many years and till to this date also. Plaintiff is neither the owner of the suit property nor the suit property exists on spot. Plaintiff is the possessor of the suit property and having cattle shade over it. Plaintiff has instituted the present suit for grabbing the defendant's property. Four boundaries of the suit property are false. plaintiff has never requested for removal of tin compound over the suit property as he was not the owner and possessor of the suit property. Hence, defendants prayed for rejection of temporary injunction application.

5. Heard Ld. Advocate of the plaintiff **Shri Mhaske** at length. Heard Ld. Adv. **Shri R.B. Ambhure** for defendants.

6. After considering the rival contentions of the plaintiffs, following

points arise to my consideration and I have given my findings with reasons thereon as follows-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiff is having a prima facie case in his favour ?	In the affirmative
2	Whether the balance of convenience lies in favour of the plaintiff ?	In the affirmative
3	Whether the plaintiff will suffer the irreparable loss if injunction is not granted in his favour ?	In the affirmative
4	What order ?	As per final Order.

REASONS

7. Perused following documents submitted by the plaintiff.

Sr. No	Description of document	Exhibit no.
1	Certified copy of Form no.08 of Grampanchayat Singona property No. 439 Tq. Partur Dist. Jalna Assessment Year 2019-2020	07
02	Photos of the suit propety dated 25-09-2020	along with list at exh. 04/02
03	Photos of the suit propety dated 27-09-2020	along with list at exh. 04/03

Ld. Adv. of the plaintiff submitted Judgment of Hon'ble Apex Court as follows :-

Shri Mallappa Shivling nandani Vs. Shri Bhushan Prakash Risbud & Anr.
2018(4) ALL MR 305.

8. Perused following documents submitted by the Defendants-

Sr.No.	Description of document	Exhibit Numbers
01	Original copy of form no. 08 of Grampanchayat at Singona property no. 448 dated 05-05-2009.	21
01	Certified copy of Form no. 08 of Grampanchayat Singona property No. 420 Tq. partur Dist. Jalna.	22

02	Original copy of Judgment of RCS 77/2020 dated 24.04.2012	23
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As to point Nos. 1 to 3 :-

9. For the sake of brevity, I am discussing the points no. 1 to 3 together. Plaintiff has instituted the suit for declaration, removal of encroachment, and perpetual injunction. By way of temporary injunction application, present, plaintiff/applicant has prayed for the temporary injunction in the nature" **not to obstruct and not to alienate** ", as against the defendants. Plaintiff has come up with the case that he is owner and possessor of the suit property bearing Grampanchayat Mikat no. 439 admeasuring the area of 30x30 ft. To show the ownership and possession over the suit property, plaintiff has adduced on record the **Certified copy of Form no.08 of Grampanchayat Singona property No. 439 Tq. Partur Dist. Jalna of the assessment Year 2019-2020 vide Exh 7.** Perused the Form 8 of Milkat no. 439 vide Exh 7. It mentions the same area as pleaded by the plaintiff. The four boundaries as given by the plaintiff in the suit property column are also correct as per the form no.8.

10. Plaintiff has adduced on record some photographs along with list vide Exh 4/2 and 4/3. Though this photographs are still not proved, but at the stage of deciding the temporary injunction application, consideration should be given to these photographs. As per the pleading of plaintiff, suit property was an open plot and he was using it for keeping the ox, cart and agricultural tools. But later on, defendants made tin compound over it. These photographs vide list exh 4/2 and 4/3 shows the same pictures that previously that area was an open plot and tin fencing is made on it.

11. Defendants vide their say Exh 14, submits that the four boundaries of the suit property are incorrect. Infact, these are the four boundaries of their property bearing Grampanchayat Milkat no.448 of which new Milkat No. is 420. Defendants have adduced on record, **original copy of form no. 08 of**

Grampanchayat at Singona property no. 448 dated 05-05-2009 vide Exh 21 and Certified copy of Form no. 08 of Grampanchayat Singona property No. 420 Tq. partur Dist. Jalna vide Exh 22. On the perusal of this documents it becomes clear that defendant are the owners and possessors of Grampanchayat Milkat No. 448 which is having new number 420. But so far as the contention of the defendants that plaintiff has shown their four boundaries as the four boundaries of the suit property, is concerned, perused the four boundaries mentioned in form no. 8 of suit property and milkat no. 420 of the defendant. To the southern side of Milkat no. 420, Gulab Kundalik Bhadarge is shown as having the property and so far as suit property is concerned, to the southern side of Milkat no 439 Trimbak Narain is shown to have property. Hence, in this way, the statements made in the WS of the defendants that in suit property column, four boundaries are incorrectly given, and the plaintiff has shown his own boundaries, are in fact the four boundaries of defendants property, are **incorrect**.

12. Plaintiff shows his ownership, possession over the suit property with the help of Exh 7. Plaintiff also proves his four boundaries of the suit property, when tallied with the four boundaries mentioned on Exh 7.

13. Ld. Adv. Shri. Ambhure of the defendants adduced on record the Certified copy of judgment of RCS No. 77/2010 vide Exh 23 wherein suit of perpetual injunction instituted by the present defendant no. 01 Gayabai against the father of the present plaintiff is decreed. Based on it, Ld. Adv. Shri. Ambhure made submission that Pandit Garad in that suit has admitted that Gayabai is the owner of Milkat no. 448 amasuring 30x30ft. Now, I want to point out that plaintiff is not claiming to be the owner of Milkat no. 448. Plaintiff is claiming to be the owner of Milkat No. 449. So, admission made by Pandit Garad in that suit bearing RCS No.77/2010 that Gayabai is the owner of Milkat No.448, is not fatal to the present suit and nor even to temporary injunction application.

14. Perused the rulling of Hon'ble Apex Court adduced on record by Ld.Adv. of the plaintiff Shri. Mhaske, that is *Shri Mallappa Shivling nandani Vs.*

Shri Bhushan Prakash Risbud & Anr.2018(4) ALL MR 305. It is very well applicable to plaintiff's case as it revolves round the issue that in a simplicitor suit for perpetual injunction, when title of the suit is disputed then plaintiff should institute the suit for declaration, possession, and injunction. And in the instant case also plaintiff has come up with the suit of declaration, possession and injunction.

15. As the plaintiff has shown that he is the owner and the possessor of suit property with the help of Exh.7, he has prima facie, case in his favour. Plaintiff has clearly shown the location of his suit property by proving his four boundaries with the help of Exh 7. Defendants have not produced on record any evidence, which will show that four boundaries of the suit property are incorrect. Hence, balance of convenience lies in favour of the plaintiff. If the temporary injunction is not granted to the plaintiff, he can be thrown out of the suit property and he is also under the treat of alienation of his property. Considering all the above mentioned reasons, I answer to **Point nos. 1 to 3** in the **affirmative**.

As to point no. 4 :-

16. Plaintiff prayed for the temporary injunction in the nature "**not to alienate and also not to obstruct**". I came to conclusion that plaintiff is entitled to the temporary injunction. On the basis of findings to points nos.01 to 03 and in order to answer point no. 4, I proceed to pass the following order-

Order

- 1] Temporary injunction application vide exh. 05 is allowed.
- 2] Defendant nos.01and 02 are hereby **temporarily restrained** from causing obstruction to the plaintiff in his suit property bearing No. 439 admeasuring 30x30 ft. which means 900 Sq.Ft.at Singona, Tal.Partur., either by themselves or through servant,agent or any person acting on their behalf till the final disposal of the suit.

- 3] Defendant nos.01and 02 are hereby **temporarily restrained** from alienating the suit property of the plaintiff bearing No. 439 admeasuring 30x30 ft. which means 900 Sq.Ft.at Singona, Tal.Partur., either by themselves or through servant, agent or any person acting on their behalf till the final disposal of the suit.
- 4] Cost in Cause.

Date: 21/01/2022

(**Smt. Pooja.N. Kokate**)
Civil Judge (J.D.)
JO Code-2489