

ORDER BELOW EXHIBIT NO - 05.

In this suit for injunction restraining the respondents/defendants from - obstructing him in 45 R of land in land Gut No. 50, admeasuring 13 H 16 R (more particularly described in the plaint at Exhibit No. 1 and hereinafter referred to as the suit land) and further - obstructing him from taking eight annas of share in the well water from the well situated therein, the applicant/plaintiff has filed the present application under Order 39 Rule 1 and 2 and section 151 of the Code Of Civil Procedure, 1908 (Hereinafter referred to as the C.P.C.), claiming temporary injunction against the respondents/ defendants, to the extent of restraining them from obstructing as above till the final decision of the suit.

02- The say of the respondents/defendants is at Exhibit No. 16.

03- Heard Shri.L.S.Limbulkhar -the learned counsel for the applicant/plaintiff and Shri. A.A. Jawlekar -the learned counsel for respondents/defendants.

04- The contention of the applicant/plaintiff is as follows -

A- Respondent/defendant No. 01 is his real brother and respondent/defendant No. 2 is his son. Their families are not joint. He is the owner and possessor of the suit land as the saem is purchased by him 10 years ago from one Padmabai Yadav and the land of respondent/defendant No. 02 is on it's southern side.

B- Thereafter, in 2001-2002, he and respondent/defendant No. 02 have jointly constructed a well on the northern side of the suit land and within the boundaries of the land of the respondents/defendants, but just abutting Anandgaon Loni road on the northern side of the suit land.

C- The entire expenditure of Rs. 45,000/- was paid by the applicant/plaintiff to Bhikaj Limbaji Vairal, who had done the digging and construction work of that well and as it is situated within the boundaries of his land, he was exempted from bearing his share in the said expenses. That new well is not entered in the 7/12 extract as yet, but the application for the same is filed with the concerned Talathi.

D - Since the year 2002, both of them are utilizing the water of that well and are reaping cash crops therefrom. But, the respondents/defendants have started obstructing him taking his share of water from that well. On 05.10.2014, they hurled abuses at him, threatened him of his life and obstructed him from taking his share of water from it. Non cognizable case No. 376/2014 is also registered against them.

D - Even thereafter, they have not paid heed to his requests of allowing him to take the water of his share from that well, because of which he is suffering irreparable loss to the crops in the suit land. Prima-facie case and balance of convenience are in his favour. He will be put to more irreparable loss if they are not restrained from doing so. As such, it is necessary to restrain the

respondents/defendants doing so till the disposal of the suit. So, he has prayed that the application be allowed.

05- The case of the respondents/defendants is as follows -

A - They have accepted the relationship between them, but have contended that as the suit land is purchased out of the income from their joint family, it is not the self acquired property of the applicant/plaintiff and the partition of the same has not been effected.

B - That well - in whose water, the applicant/plaintiff is claiming a share is situated in the land standing in the name of the wife of respondent/defendant No. 01 and the applicant/plaintiff is not at all concerned with it. The entry of share in the old well therein is on the basis of mutation No. 574 in the name of respondent/defendant No. 01 and the wife of the applicant/plaintiff. The entry of that well stands in the name of the wife of respondent/defendant No. 01 as per mutation No. 1404 dated 19.09.2010. As such, the suit is not tenable at all for want of necessary parties.

C- By way of the present suit, the applicant/plaintiff intends to grab control over the water of that well. The allegations leading to the non cognizable case as above are false and baseless. He does not have prima facie case, balance of convenience and irreparable loss in his favour and the application be dismissed with costs.

06- The points that arise for my consideration, along with my findings thereon, are as follows -

POINTS	FINDINGS
1) Whether the applicant/plaintiff has a prima facie case ?	..No.
2) Whether the applicant/plaintiff will suffer irreparable loss?	..No.
3) Whether the balance of convenience lies in favour of the applicant/plaintiff ?	..No.
4) What order ?	The application is rejected.

REASONS

07- For brevity, clarity and precision, in the facts of the suit, it would be proper to deal with point Nos. 1 to 3 together. So, I am dealing with the same in one stroke.

08- It is apt to turn to the documents on record in the light of the provisions of law and the ratio laid down in **Shamrao Ganpat Chintamani versus Kakasaheb Laxman Gorde (2008(2) Mh.L.J 819)**. It is clear from it that, at the stage of temporary injunction, the Court can refer to the documents on record without formal proof and the affidavits and the material

on record, in its entirety can be considered by the Court. For convenience and clarity, the documents are exhibited and referred at relevant places.

AS TO POINT NOS. 1, 2 AND 3 -

09- The contents of the plaint at Exhibit No. 01 shows an averment on part of the applicant/plaintiff that, the entry of that well is not taken in the 7/12 extract of the suit land. But, perusal of the 7/12 extract at Exhibit No. 23 shows that its entry stands effected therein, but in the name of the wife of respondent/defendant No. 01 as per mutation entry No. 1404, dated 17.09.2010 at Exhibit No. 21.

10- It is nowhere his contention that, he has raised a challenge to the said documents at Exhibit Nos. 21 and 23 before the revenue authorities. This fact deserves consideration at this prima facie stage, when he is raising a plea of that well being the common well of him and the respondents/defendants.

11- Moreover, in the plaint at Exhibit No. 01, he has not come forth with the specific averment as regards the existence of the old well in the suit land or within the land of the respondents/defendants, excepting mentioning that well as the new well. The existence of the old well is clear - again from the 7/12 extract at Exhibit No. 23 coupled with mutation entry No. 574 dated 15.08.1990 at Exhibit No. 22. Accordingly, the old well stands mutated in the

names of the respondent/defendant No. 01 and the wife of applicant/plaintiff No. 01.

12- This throws a light on the intentions of the applicant/plaintiff and it cannot be safely said that, he has come with clean hands, so as to infer any prima facie case, balance of convenience and irreparable loss in his favour.

13- The 7/12 extract at Exhibit No. 23 pertains to the period from 2003-04 to 2013-14. It mentions about the old well as a common well and about that old well as belonging to the wife of respondent/defendant No. 01.

14- In this premise, when the applicant/plaintiff is claiming that new well to be the common well on the basis of the affidavits of one Bhikaji Limbaji Wairal, who has dug that new well and Bhimrao Subhanrao Nannaware, who is the adjoining land owner, it is clear that, the same is a part and parcel of evidence and it cannot be said that, prima facie case exists sans trial. The said affidavits are at Exhibit Nos. 32 and 33 respectively. More specifically, it is necessary to opine that, the determination of the share of the applicant/plaintiff in the water of that new well cannot be done without evidence and trial and as such, no relief can be granted at this juncture.

15- The said affidavits at Exhibit Nos. 32 and 33 cannot have precedence over the revenue documents at Exhibit Nos. 20, 21, 22 and 23 for the reasons discussed above. The old well being a common well - without establishing his

right over the share in the water of that new well, the applicant/plaintiff cannot claim a share in it, merely by way of those affidavits at Exhibit Nos. 32 and 33.

16- The filing of the latter suit by respondent/defendant No. 01 against the applicant/plaintiff and others for partition of the suit lands therein, inclusive of the present suit land will have no bearing on the decision of the present application. The certified copy of the plaint in that latter R.C.S. No. 09/2015 is at Exhibit No. 34. Likewise, as this suit is for simplicitor injunction, it cannot be said to be bad for non joinder of necessary parties.

17- The filing of a non cognizable case, as is evidenced by its office copy at Exhibit No. 35 will not suffice the purpose of the applicant/plaintiff in the light of the documents at Exhibit Nos. 20, 21, 22 and 23.

18- Resultantly, carrying forward the thread of the above discussion, I hold that the applicant/plaintiff has not made out a case of irreparable loss, prima facie case and balance of convenience in his favour. So, I answer point Nos. 1, 2 and 3 **“in the negative”**.

AS TO POINT NO. 4 -

19- Having answered point Nos. 1, 2 and 3 in the negative, the application is liable to be rejected. It would be apt to direct the parties to bear their own costs of this application. So, in answer to point No. 4, I pass the following order -

(8)

Order below Exh.No.5 in
RCS.No. 95/2014

---- ORDER----

- 01)- The application is rejected.
02)- The parties to bear their own costs.

Date – 16.12.2015

Sd/-
(Smt. V.P.Phadnis)
Civil Judge Junior Division Partur,
District Jalna.

C E R T I F I C A T E

I affirm that, the contents of this PDF file are word to word, as per original.

Name of Stenographer	:	S.S.Gharte
Name of Court	:	Civil Court, (J.D.) Partur.
Case Number	:	RCS No. 95/2014
Name of partices	:	Laxman V.s Wamanrao
Date of Order	:	16/12/2015
Date of PDF	:	16/12/2015

Date :16/12/2015	Sd/- (S.S.Gharte) Stenographer, (L.G.) Civil Court, (J.D.) Partur.
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