

MHJN070011712022	<p>ORDER PASSED BELOW EXH. 5 IN Regular Civil Suit No. 136/2022</p> <p>Rama @ Rambhau Bhika Hiwale Vs. Sarverao Deorao Hiwale and ors.</p>
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The agricultural land situated at village Shindi, Tal.Jafrabad bearing Gat no.227 admeasuring 45R out of which 0.22.50 are land is a subject matter of the suit (hereinafter referred as the suit property for the sake of brevity). Four boundaries of the suit property are as follows

Towards east- Agricultural land of Dadarao Gulabrao Kale,

Towards west- Agricultural land of Shaikh Laddu Shaikh Akbar,

Towards north- Agricultural land of Suresh Mohan Gawali,

Towards south- Shindi to Sawasani road.

2] The present suit has been filed by the plaintiff through his wife as his power of attorney. It is averred by the plaintiff that he and defendants are permanent resident of village Sindhi and they belongs to same family. The suit property is owned by the plaintiff and it is his ancestral property. The old survey number of the suit property was 94/4. The suit property has come to the possession & ownership of the plaintiff by way of partition

effected by his uncle Sukhdeo Jayram Hiwale in the year 1977 by mutation entry no.269. Since 1977 the plaintiff is enjoying the ownership of the suit property and cultivating in the same. On 01/09/2022 at about 8.30 a.m. while plaintiff, his wife and his sister-in-law were sprinkling insecticides on the soybean crops, the defendants came there and started abusing plaintiff. The defendant no.1 said that the suit property is his and asked plaintiff to leave from the suit property and they also threatened to beat them and throw them out of the suit property. The defendants stopped plaintiff from sprinkling insecticides on the crops. Thereafter, the people from the village mediated between plaintiff & defendants and asked defendants leave from there. Thereafter, on the next day wife of plaintiff lodged report against the defendants in police station Jafrabad. The defendants have no concern with the suit property however, they are obstructing possession of the plaintiff over the suit property without any reason. The defendants frequently quarreled with the plaintiff and also threatened to kill him. The plaintiff is an old age person and he is economically poor. The defendants have more man power and they are trying to dispossess the plaintiff from the suit property illegally. Therefore, the plaintiff has constrained to file present suit.

3] The suit summons is served on the defendants and they have filed their written statement and say at Exh.22 after

appearing before the court. The defendants have denied all the contentions in the plaint and submitted that the plaintiff has filed false suit and he has no cause of action against defendants. It is submitted on behalf of the defendants that defendant no.1, 2 and 3 are real brothers and defendant no.4 is a son of Shalilram Deorao Hiwale and nephew of defendant no.1. The defendant no.5 is a sister-in-law of defendant no.1 and defendant no.6 and 7 are children of defendant no.5. The defendant no.8 and 9 are children of defendant no.1. The defendants have their share in the suit property and since 1977 they are cultivating in the suit property. Jayram, Shivram and Sakharam were real brothers. Jayram had two sons namely Sukhdeo and Bhika and Sakharam had two sons only Shivram and Tukaram. Sakharam had only one son namely Natha. Sukhdeo had four sons namely Madhukar, Raju, Samadhan and, Totaram and Bhika had had one son namely Rama. Shivram had two sons namely Deorao and Tukaram and Devrao had four children namely Sarjerao, Shalikram, Manikrao and Bhaurao. Tukaram had two daughters namely Punjabai and Lilabai. Sakharam had one son namely Natha and he is dead and Natha had only one son namely Ramesh who also dead. Ramesh has one sone namely Sagar Ramesh Hiwale.

4] It is further contended by the defendants that in gat no. 227 there was 45R land. Out of which Sukhdeo Jayram has sold

his share to Laddu Akbar Tadvi & remaining 22.50R land was still in the name of Sukhdeo Jayram. However Devrao and Shivram also had share in it. Rama Bhika Hiwale also had share in Gat no.228 admeasuring 22.5R and he has sold the same to Ramkrushna Ganpat Bhople. Children of Shivram Hiwale are in possession of their share. As the price of land is increased the plaintiff has filed this false suit against the defendants. The defendant no.8 is doing a job, however still his name is included in present suit. The plaintiff and defendants have their ancestral properties in Gat no.228, 225, 227, 230, 221 and 219. In survey no.94/4 names of Rama Bhika, Tanhabai Tukaram and Mhalsabai Jayram are reflecting. Tanhabai and Mhalsabai both are dead, however the plaintiff has not added their legal heirs as party to the present suit. The family had total 145 Acre land as a joint family property out of which Bhivsan Mukinda Hiwale possessed 41 Acre land as the ancestral property has not been partitioned. Jyaram Mukinda Hiwale possessed 48 Acre 23R land along with his legal heirs and the said property also has not been partitioned. Sakharam Mukinda Hiwale possessed 50 Acre land along with his legal heirs and said property is also not partitioned. The whole property in Gat no.227 belongs to defendants, however the plaintiff has filed this false suit. The suit is not within limitation hence it is not maintainable. Lastly, defendants prayed to reject the suit and also the application at Exh.5.

5] Heard both sides. The following points crop-up for my consideration on which I record my findings together with reasons there for as under -

Sr. No.	Point For Determination	Findings
1.	Whether the plaintiff have prima-facie case?	Yes
2.	In whose favor the balance convenience lies?	Plaintiff
3.	Whether the plaintiff would suffer irreparable loss if the order of injunction is not passed in his favor?	Yes
4.	What order?	Application is allowed with costs.

REASONS

6] In support of his case plaintiff has relied on following documents-

- (1) 7/12 extract of Gat no.227 situated at village Sindhi, Tal.Jafrabad (Exh.4/1).
- (2) Mutation entry no. 269 (Exh. 4/2).
- (3) Extract of consolidation (Exh. 4/3).
- (4) Old 7/12 extract of Gat no.227 situated at village Sindhi (Exh. 4/4, 4/5).
- (5) Complaint made to police station Jafrabad dated 02/09/2022 (Exh. 4/6).
- (6) Power of attorney in the name of Kasabai Rambhau Hiwale (Exh.4/7).

In order to support their claim the the defendants have filed

on record-

- (1) 7/12 extract of Gat no.228 situated at village Sindhi (Exh.28/1).
- (2) 7/12 extract of Gat no.227 situated at village Sindhi (Exh.28/2).
- (3) 7/12 extract of Gat no.230 situated at village Sindhi (Exh.28/3).
- (4) 7/12 extract of Gat no.225 situated at village Sindhi (Exh.28/4).
- (5) 7/12 extract of Gat no.222 situated at village Sindhi (Exh.28/5).
- (6) 7/12 extract of Gat no.219 situated at village Sindhi (Exh.28/6).
- (7) Mutation entry no.43 (Exh.28/7).

The defendants also have filed on record 7/12 extracts of survey no.89, 90, 91, 94, 219, 221, 225, 227, 230 alongwith Exh.30 and affidavits of adjacent land holders namely Totaram Sukhdeo Jadhav, Shaikh Munaf Shaikh Sandu and Sahebrao Gulabrao Kale.

As to Point No. 1 to 3:-

As all these issues are interlined and their reasoning is based on same set of facts and law they are discussed under one head.

7] In order to obtain the order of interim injunction the plaintiff has to meet with three criterias i.e., prima facie case, irreparable loss and that the balance of convenience tilts in favour of granting interim

injunction. The Id. Advocate for the plaintiff argued that the suit property is owned and possessed by the plaintiff & on the 7/12 extract of the suit property name of plaintiff is mutated. The plaintiff has received said property by way of partition effected by his uncle Sukhdeo Jayram Hiwale in the year 1977 and since then, the plaintiff is in possession of the suit property and defendants are unnecessarily causing obstruction to the peaceful possession of the plaintiff. If the temporary injunction is not granted the defendants might dispossess the plaintiff, and the irreparable loss will be caused to the plaintiff. The balance of convenience is in favour of the plaintiff. Hence, he prayed to allow the application.

8] On the other hand, the Ld. Advocate for the defendants argued that the suit property is not partitioned in favour of the plaintiff alone, the defendants also have their share in it. There are many other properties which are common ancestral properties of plaintiff and the defendants. The plaintiff is trying to take advantage of his name being mutated to the 7/12 extract of the suit property. The suit property is possessed by the defendants. Therefore no question of causing obstruction to the plaintiff arises. The plaintiff has no cause of action against the defendants. Hence, he prayed to reject the application at Exh.5.

9] The plaintiff has filed on record 7/12 of Gat no.227 (Exh.4/1) which shows that plaintiff has 22.50R land in his name. It also shows that Shaikh Laddu Shaikh Akbar has 22.50R land in his name. The 7/12 extract also shows that the crops of Soybean has been taken in the suit property since year 2016. The plaintiff further has filed on record

mutation entry no.269 (Exh.4/2) which shows that on 11/04/1977, Sukhdeo Hiwale has transferred property in the name of plaintiff from survey no. 89/1, 90/1, 91/1, 92/1, 94/2, 94/4, 94/6 and 94/7 by way of partition. According to the plaintiff the old survey number of Gat no.227 was survey no.94/4. The plaintiff also has filed on record the consolidation extract of Gat no.94/4 which shows that after consolidation the new Gat number of old survey no.94/4 has become Gat no.227 and it has total 0.45R land in it. The plaintiff has filed on record 7/12 extract of Gat no.227 (Exh.4/5) from the year 1983 to 1993 wherein also the name of Sukhdeo Jayram Hiwale has been deleted and name of Rama Bhika Hiwale i.e., plaintiff has been entered. Moreover in the 7/12 extract of year 2000-01 to 2015-16 also name of the plaintiff is mutated to the 7/12 extract of the Gat no.227 and it also mentioned that various crops have been taken by the plaintiff in the Gat no.227.

10] According to the defendants, the suit property is their ancestral property and it has not been partitioned. However, the plaintiff has filed on record the mutation entry no.269 which is regarding partition of the suit property and he has also filed on record the documents showing entries of his name in the revenue record of the suit property. The defendants themselves have filed on record 7/12 extract of Gat no.227 from year 2021-22 to 2023-24, therein also name of Rama Hilwale i.e., plaintiff is mutated over the land admeasuring 22.50R. It also mentioned that the Soybean crop is taken in said Gat number. The defendants have filed on record 7/12 extract of Gat no.230, 225, 228, 221 and 219 on record which also shows that in all

said gat numbers there is a land in the name of plaintiff separately which supports the averments of the plaintiff that by way of partition he has received property in said gat numbers.

11] The defendants have filed on record the mutation entry no.43 to show that the plaintiff has sold his property in Gat no.228 to Ramkisan Ganpat, however the plaintiff has come before this court with dispute regarding property in Gat no.227 and not property in Gat no.228. Even though it has come on record the plaintiff has sold his property in Gat no.228, it does not prove that the plaintiff has no land remained in his name or in his possession. The defendants have filed on record the 7/12 extracts of survey no.89, 90, 94, 91, 92 & Gat no. 219, 222, 225, 227, 230 to show that all these properties are ancestral properties, however from the perusal of all these 7/12 extracts it appears that gradually the names of old owners and possessors have been deleted and the names of new owners and possessors have been come on said 7/12 extracts. The defendants have not brought on record that they have challenged the mutation entries in the name of the plaintiff. Moreover, it appears that the said mutation entries are in existence since long. Even though the revenue entries are only for the fiscal purpose, however, as the said revenue entries are taken on the basis of the partition effected by the Sukhdeo Jayram. It cannot be said that by way of said revenue entries the plaintiff has not come in the possession of the suit property or the entries in the 7/12 extract is not helpful to plaintiff to prove his possession over the suit property, as said entries are long standing and unchallenged.

12] Prima facie from the perusal of the revenue record it appears that the plaintiff is in possession of the suit property. Moreover as the defendants themselves have denied the ownership and possession of the plaintiff over the suit property, itself shows that they are trying to obstruct the peaceful possession of the plaintiff. Moreover on 02/09/2022 wife of the plaintiff has filed complaint against the defendants that they are trying to obstruct their peaceful possession over the suit property, it also shows that the defendants are trying to dispossess the plaintiff from the suit property. To decide this case on merit and after taking the evidence, it would take a time, therefore meanwhile it is necessary to protect the plaintiff from getting dispossessed from the suit property. As the prima facie it has come on record the plaintiff is in possession of the suit property, the balance of convenience lies in favour of the plaintiff and if he is dispossessed from the suit property certainly irreparable loss would be caused to the plaintiff. Hence, I answer point no.1 to 3 in the affirmative.

As to point no.4 :-

13] In view of my findings recorded to the point no 1 to 3, the application Ex.5 deserves to be allowed. The costs of this application may leave to be considered at the time of adjudication of the costs of the entire litigation. In the conclusion, I pass the following order.

ORDER

1. The application [Exhibit-5] is hereby allowed.
2. Defendants or any person on their behalf are hereby temporarily restrained from causing obstruction to the

possession of the plaintiff over the suit property i.e. 22.50R in land provided four boundaries of the plaint situated in Gat no.227 at village Shindi, Tal. Jafrabad District. Jalna, till the decision of the suit.

3. Cost in cause.

Date- 25/11/2024

(Aparna D. Gade)
Civil Judge, Jr. Division,
Jafrabad.

CERTIFICATE

Affirm that the contentions of this PDF file are word to word as per original order.

Date 25/11/2024

Sd/-xxx
(Ahmad Shaikhh)
Stenographer.