

(...I...)

R.C.S. No. 90/2018
Ankush Anpat & anr Vs. Mohan Anpat & anr.
CNR No. MHJN 080004842018

ORDER

(Below Exh. 5)

1] This is the application filed by the plaintiffs u/s 39 (1) (2) of Civil Procedure Code, 1908 (hereinafter mentioned as 'CPC') against the defendants.

2] An agricultural land bearing gat no. 84, admeasuring 1H 12R & 1H 20R, located at Mangujalgaon, Tq. Ghansawangi, Dist. Jalna owned and possessed by plaintiff no. 1 & 2 respectively (hereinafter mentioned as 'the suit property') are the subject lands of the suit.

3] It is submitted by the plaintiffs that the defendants are their adjacent land owners and though have no concern with the suit properties, are trying to encroach and obstruct their lawful possession over it. That in 2012-13, with the consent of defendant no. 1, cement poles were installed on common boundary with the help of intermediaries and relatives. But the defendants broke one of the poles. So the defendants were tried to understand through their relative and a complaint has also been made with Tahsildar. That on 10.06.2028, defendant no. 2 burnt a tree on common *bandh* of the plaintiff. The defendants suspect that they possessed less

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areas than actually owned, therefore want to disposes the plaintiffs from the suit properties. The plaintiffs tried to understand the defendants. But nothing worked out. The suit properties are only source of their livelihood and defendants have manpower and thereby trying to dispossess them. Therefore, they prayed for interim injunction against the defendants.

4] Per contra, defendants through their say below Exh. 11 strongly opposed the application. They though admitted ownership and possession of the plaintiffs over the suit properties, denied that they tried to encroach and interfere in the enjoyment and possession of the plaintiffs over the suit properties. They specifically contended that there was a 20 feet wide cart way going through the *bandh* of the suit properties and in use of the defendants since long. But the plaintiffs have taken away said *bandh* and closed their road and thereby intended that the defendants would sell their lands and leave the village. They tried to understand the plaintiffs. But plaintiff no. 1 threatened them to leave the village, saying nothing will happen to him, he is a lawyer. The suit has been filed with intention to cause them loss, therefore prayed that the application be rejected with cost.

(....3....)

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5] Following points arise for my determination to which I record my findings for the reasons given thereunder:

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Do the plaintiffs prove that he has prima-facie case?	...Yes.
2)	Do the plaintiffs prove that balance of convenience tilts in his favour?	...Yes.
3)	Will the plaintiffs suffer irreparable loss if injunction is refused?	...Yes.
4)	What order?	<u>Application is granted.</u>

REASONS

6] In support of the contentions, the plaintiffs have filed on record 7/12 extract, copies of application made to Tahsildar and PI, Ghansawangi, copies of FIR and complaint and photos of a fallen pole. On the other hands, the defendants copies of FIR, copy of application made to Tahsildar and photos of common *bandh*.

7] Heard learned counsels for both sides at length and perused record.

(....4....)

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AS TO POINT NO. 1 TO 3:

These points are interlinked with each other, therefore taken for discussion with a view to avoid repetition of reasoning.

8] At the outset it is apposite to state that the plaintiff has filed present suit for relief of perpetual injunction and in the meantime there being apprehension of interference in the peaceful enjoyment of the suit land, he has filed present interim application. Hence, it is necessary to see alongwith the settled position of law that whether the plaintiff has prima-facie possession over the suit land as stated, whether the defendants tried to obstruct his peaceful enjoyment and possession.

9] It is to note here that formal proof of the documents, which otherwise is necessary at the time of deciding a suit in that strict sense is not necessary while considering the documents concerned at the time of consideration of the prayer for temporary injunction. Also public documents can be considered at the time of temporary injunction as well as at the time of disposal of suit without formal proof.

10] Now turning to the facts in case in hands. The plaintiffs contended that the defendants have their

adjacent land owners and trying to encroach and interfere their peaceful possession and enjoyment of the suit properties. Per contra, the defendants contended that they had 20 feet wide cart way going through the plaintiff's field, which is taken away by the plaintiffs. The plaintiffs are threatening them to leave the village.

11] It is to note here that the plaintiff's possession over the suit properties is not disputed by the defendants. It is not disputed that there is dispute between them over areas of the land or on common *bandh*. It is not disputed that the poles were installed on the *bandh*. It is not disputed that both parties have lodged report and made complaints against each other. The plaintiffs contended that the defendants have removed a pole installed and burnt a tree on common *bandh*. In order to show the interference, the plaintiffs have filed photos on record. These photos show that a fencing pole was fallen on the earth and something was burnt. From these it can be inferred that the lawful possession of the plaintiffs over the suit properties is interfered and they have apprehension of dispossession at the hands of the defendants.

(....6....)

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12] Even if it is assumed that the plaintiffs have taken away the *bandh/way* as alleged but the defendants have no authority to take law into their hands and interfered with the lawful possession of the plaintiffs over the suit properties. In such circumstances, the plaintiffs have prima facie case and also, balance of convenience tilts in their favour and if injunction is not granted as sought, it seems to me that the plaintiffs will suffer loss. Hence, in cumulative effect of above all discussion, I have answered point no. 1 to 3 in favour of the plaintiffs and in answer to point no. 4, the following order:

ORDER

- 1] The application (Exh.5) is allowed.
- 2] The defendants or anybody else on their behalf are hereby temporarily restrained from causing any interference to the peaceful possession and enjoyment of the plaintiffs over the suit properties till final disposal of the suit.
- 3] Needless to mention that this order shall not cause any impression over the Court at the time of final decision of the suit claim.
- 4] Both the parties are directed to proceed with the suit without any unnecessary adjournment.

(H.B.Pardeshi)

Date- 26.02.2020.

Civil Judge (JD), Ghansawangi.

(...7...)

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Certificate

I affirm that, the contents of this PDF are same words for words, as per the original judgment.

Name of Stenographer : Smt. K. Y. Patil.(G-III)

Name of Court : Civil Judge (JD), Ghansawangi.

Upload on date : 26.02.2020.