



RCS No.44/2018

Jayram+ Vs Ganesh+

CNR No.MHJN090003172018

ORDER

(Below Exh. 05)

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

2] Briefly stated, agricultural lands bearing gat no. 184, admeasuring 29R out of 86R and gat no. 185, admeasuring 31R out of 86R, located at village Roshangaon, Tq. Badnapur, Dist. Jalna (hereinafter collectively 'the suit lands' and separately 'suit land no. 1' & 'suit land no. 2' respectively) are subject matter of the suit.

That suit land no. 1 was originally belonged to Sonabai Jayaji Bakal, which was purchased by father of plaintiff no. 1 Ganpat Asru Bakal in 1967. That after death of Ganpat on 03.12.1999, said land came to his heir i.e. plaintiff no. 1 being son and accordingly mutation entry no. 1385 was taken in 2001. However, it was by mistake recorded 21R instead 29R in revenue record. But the plaintiffs have possessed 29R land, which also admitted by the defendants in RCS No.66/2015.

That suit land no. 2 was purchased by plaintiff no. 2 by registered deed and accordingly mutation entry no.

2060 was taken in revenue record. Thus the plaintiffs are owned and jointly cultivating the suit lands. That the defendants are though adjacent land holders nothing to do with the suit lands. That they taking undue advantage of old age of the plaintiffs are interfering with their possession and cultivation of the suit lands. That on 24.05.2018, the defendants came in the suit land and abused to the plaintiffs. That they also stopped one Nisarbegh Rasulbegh, ploughing the land and beat to the plaintiffs with fist and kick blows. So the plaintiffs had been to Police to lodge report of incident but, police took no action against them. Therefore, the plaintiffs constrained to institute suit and in which filed present application for interim direction to the defendants to not interfere with their possession over the suit lands.

3] In reply of notice, the defendants appeared and filed their common say below Exh. 23. They though admitted that there was settlement taken place in RCS no. 66/2015, denied that they ever obstructed or interfered with the possession of the plaintiff over the suit lands. They specifically stated that defendant no. 1 has purchased land in gat no. 184, admeasures 65R out of 2 acre 5 gunthe through his natural guardian i.e. father from one Lahuji @ Karbhari Sakharam Bakal by

registered deed no. 2856 dated 05.07.1984 for consideration. Accordingly, mutation entry no. 570 was taken in favour of defendant no. 1. He specifically contended that the plaintiffs themselves encroached upon their land by removing ridge/*bandh* situated towards east and north of it and when tried to understand, they beat them. So he had been to police to lodge report against the plaintiffs on 15.06.2013. However, they again removed the *bandh* in May 2015 and also threatened to kill. So he again had been to Police on 19.05.2015 and lodged report against the plaintiffs. But as no change was noticed, the defendant had instituted a suit bearing RCS no. 66/2015 against the plaintiffs. However, both of them ended the dispute by filing a compromise deed on 22.04.2018 in the suit. Thereafter, the defendants came to know that concerned Talathi has illegally increased plaintiffs' 8R land by reducing from their 65R land in revenue record, which was not in the line with the compromise between them. That the defendants nowhere in the deed did agree to give their land to the plaintiffs. Therefore, prayed for rejection of the application with costs.

4] Perused the application, say and documents filed alongwith. Following points arise for my determination to

which I record my findings for reasons given thereunder:

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

REASONS

5] In support of the claim, the plaintiffs have filed on record 7/12 extracts of suit lands, mutations documents (entry no. 754, 1385, certified copies of RCS no. 66.2015 and compromise deed filed in it, a sale deed of suit land gat no. 2 dated 15.06.2011, xerox copies of sale deed of suit land no. 1 dated 29.05.1969, xerox copy of application made u/s 155 of MLR Code, 1966.

On the other hands, the defendants have filed on record registered sale deed no. 2856/84, mutation (entry no. 570) document of the land, certified copies of appeal preferred to District Judge, Jalna and xerox copies of appeal preferred u/s 247 of MLR Code and order passed therein.

6] Heard learned counsels Shri. B. S. Mantri for the plaintiffs and Shri. R. K. Jagtap for the defendants at length.

AS TO POINT NO. 1 TO 3:

These points are interlinked with each other therefore taken for discussion together.

7] At the outset it is apposite to state that the plaintiffs have filed present suit for perpetual injunction and in the meantime there being apprehension of disturbance by the defendants, they have filed present interim application. Hence, it is necessary to see alongwith the settled position of law that whether the plaintiff has prima-facie case as stated, whether the balance of comparative loss caused to the plaintiffs in the case of not passing the order in his favor.

8] 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.

9] Now turning to the facts of the case in hands. The plaintiffs claimed possession over the suit lands. They further claimed that the defendants are adjacent land holders and though nothing with the suit lands, are interfering by taking undue advantage of their old age. So they filed police complaint against them. On the contrary, the defendants denied that they ever interfered with their possession. But disputed that the plaintiffs themselves tried to encroach upon their land by removing the *bandh*.

10] In order to substantiate the claims, the plaintiffs relied on the documents stated supra. Perusing the sale deed dated 15.06.2011, it appears that defendant no. 2 is in possession of suit land no. 2. It appears from the certified copies of the suit, compromise deed and revenue cases that defendant no. 1 had filed a suit bearing RCS no. 66/2015 for perpetual injunction against the plaintiffs, which came to be compromised and accordingly 8R land was increased by reducing it from 65R land possessed by defendant no. 1 in gat no. 184. It appears that defendant no. 1 admitted the possession of the plaintiffs over 29R land in gat no. 184. Thus there is prima facie on record that the plaintiffs possessed the suit lands as claimed. Moreover, the defendants have not disputed their possession as claimed. They specifically

admitted possession of the plaintiffs over 29R land in gat no. 184 by the compromise deed.

11] Ld. counsel for the plaintiffs submitted that there was the compromise and accordingly, concerned Talathi has reduced defendant's 8R land and increased plaintiff's land in gat no. 184. On the contrary, Ld. counsel for the defendants submitted that nowhere stated in the compromise that the defendants agreed to give their land to the plaintiffs. It is true that there is nothing in the compromise deed that the defendants agreed to give their land to the plaintiffs. But it appears from the 7/12 extract of survey no. 78 and the sale deed dated 29.05.1969 that before consolidation, survey no. 78 i.e. gat no. 184 had admeasures 2 acres 15 gunthe land in total and after that the area is shown as 2 acres and 5 gunthe.

12] In such a situation, it appears that the plaintiffs possessed 29R and the defendant 65R land in said gat. The only difference is in the entries taken in the revenue record. These entries need to be corrected based on due process. However, it appears that the concerned Talathi, without properly interpreting the compromise deed, has reduced the area from the defendant's area and added it to the plaintiffs' area in revenue records. Due to this and

the plaintiffs being old age, the defendants are obstructing their possession or there is possibility of it. 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 they 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 lands 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.

Date- 31.03.2022. (H.B.Pardeshi)
Civil Judge (JD), Badnapur.

Certificate

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

Name of Stenographer : Shri. Vishal Dhone (G-III)

Name of Court : Civil Judge (Jr.Dn.) Badnapur.

Upload on date : 01.04.2022.