

MHKO070006952021



ORDER BELOW EXH. 5 IN RCS No. 116 / 2021

Hanmant Ajit Raut Vs. Sunil Bapu Ghulande & 9 oth.

This is an application under Order XXXIX Rule 1 and 2 of C.P.C. restraining defendants from obstructing peaceful possession of plaintiff over land Gut No. 1664, admeasuring 41-R, of village Danoli, Tq. Shirol, (more particularly described with boundaries in paragraph No. 2 of application and hereinafter referred to as "suit property" for the sake of brevity).

02] Contentions of plaintiff, in short, are as under.

20.50-R land each (total 41-R i.e. suit property) was owned by Abbas Babalal Patel and Gulab Babalal Patel respectively. Plaintiff agreed to purchase it, inducted into possession thereof and cultivating it. Later on, he purchased it vide registered Sale Deeds dated 18.08.2020 and 20.01.2021. Recently he is cultivating sugarcane in suit property. Lands of defendants are adjacent to suit property. Initially they were intending to purchase suit property but could not succeed. With ill intention of grabbing suit property, they started obstructing his peaceful possession over suit property. There is approach road to suit property from common bandh of land Gut No. 1702 and 1665. They started blocking said road and disturbing his way towards suit property. They also started disturbing

boundary marks between suit property and abutting land Gut No. 1653. They are also using coercive measures and threatening him. They, by hook or crook, are intending to grab the suit property and therefore by every possible way disturbing his peaceful possession over suit property as well as blocking the access to suit property. He approached police as well as revenue authorities, but none of them taken any action against defendants. Lastly on 01.06.2021, defendants obstructed him from using common way towards suit property as well as threatened and abused him. Therefore, as a last resort, he filed this suit for perpetual injunction, and in meantime requesting for temporary injunction restraining defendants from disturbing his peaceful possession over suit property.

03] Defendant Nos. 1 to 7 filed written statement at Exh. 15, defendant No. 8 filed written statement at Exh. 35, and defendant Nos. 9 and 10 filed written statement at Exh. 22. They all have resisted the claim of plaintiff. Their cumulative contentions, in short, are as under.

Contentions of plaintiff are denied in toto. His ownership and possession over suit property is also specifically denied. Their alleged coercive actions, their intentions etc. are false, imaginary and baseless. They are peace loving and law abiding citizens ; defendant No. 8 is Head Constable and serving at Mumbai ; and as such there is no question on their part to indulge into such sort of illegal activities. Lands Gut No. 1653 and 1702 are owned by defendant Nos. 1 to 7 and father of defendant No. 8, whereas lands Gut No. 1658 and 1660 are

owned by defendant Nos. 9 and 10. They all as well as other villagers and agriculturists are using the common road located on bandh of land Gut No. 1702 and 1665, therefore there is absolutely no question of creating any hurdle on said approach road by defendants. As plaintiff is not at all into possession of suit property, the suit is false, baseless and without any merit. Land Gut No. 1650 is government land and plaintiff is illegally cultivating it and also mining it. He has illegally extracted rubble from it and blocked the access of defendant Nos. 1 to 7 to their land Gut No. 1653 which was available to them from southern bandh of land Gut Nos. 1650 to 1652. Land owners of Gut No. 1651 and 1652 also obstructed said way. Therefore, defendant Nos. 1 to 7 approached Tahsildar Shirol, and said proceeding is still pending. Defendant Nos. 8 to 10 are not at all concerned with said dispute. However, due to dispute between plaintiff and defendant Nos. 1 to 7, plaintiff has brought this false and baseless suit. Plaintiff is not coming with clean hands. There was no cause of action as alleged by him. In the end, defendants denied entire contentions of plaintiff and requested to reject the application with compensatory cost.

04] To substantiate his version, plaintiff relied upon his pleading as well as numerous documents filed with list at Exh. 3, 26 and 39. He has also filed on record affidavits at Exh. 27 to 29 and Exh. 40. Defendants have also relied upon their pleadings. Defendant Nos. 1 to 8 have also filed numerous documents alongwith list at Exh. 31 and 37, and also filed an affidavit at Exh. 41.

05] On this backdrop, heard learned Advocate Shri D.B.Patil for plaintiff and learned Advocate Shri B.D.Patil for defendant Nos. 1 to 8. Considering pleadings, documents on record and argument advanced on behalf of both the sides, following points arise for my determination and I record findings thereto for reasons discussed thereafter.

POINTS	FINDINGS
(1) Whether plaintiff is having <i>prima facie</i> case ?	→ In the negative
(2) Whether balance of convenience lies in favour of plaintiff ?	→ In the negative
(3) Whether plaintiff will suffer irreparable loss in case of failure of the remedy ?	→ In the negative
(4) What order ?	→ Application is rejected.

REASONS

As to Point Nos. 1 to 3 :-

06] At the very outset, it is seen from written statements of all defendants that they have specifically denied ownership and possession of plaintiff over the suit property. On this backdrop, it is seen from documents at Exh. 3/3 and 3/4 that plaintiff purchased entire suit property vide registered Sale Deeds dated 18.08.2020 and 20.01.2021 respectively. It is further seen from document at Exh. 3/1 that name of plaintiff is also recorded as owner and possessor of the suit property. As such, *prima facie*, to that extent, I

do not find any substance in contentions of any of the defendants.

07] From the Sale Deed dated 20.01.2021 filed by plaintiff at Exh. 3/4, it is further seen that land Gut No. 1653 of "Ghulande" is located towards southern side of some part of the suit property. It is specific contention of defendants that lands abutting to suit property are owned and possessed by defendants, more particularly land Gut No. 1653 and 1702 are owned by defendant Nos. 1 to 7 and father of defendant No. 8, whereas lands Gut No. 1658 and 1660 are owned by defendant Nos. 9 and 10. From 7/12 extract of land Gut No. 1653 filed by plaintiff at Exh. 3/2, it is seen that names of defendant Nos. 1 to 7 are recorded as owners and possessors of said land. Plaintiff has filed on record village map at Exh. 3/5 which is showing exact locations of suit property as well as its abutting lands. Defendants have filed on record another village map at Ex. 31/13 which encompasses greater area and showing exact locations of suit property as well as its abutting lands.

08] On juxtaposing versions of both the sides on the basis of both the said maps, it is clearly seen that land of defendant Nos. 1 to 7 bearing Gut No. 1653 is located towards southern side of the suit property with a common bandh running east-west between both the lands. Although, defendant No. 8 is contending that his father is also co-owner of land Gut No. 1653, on perusal of 7/12 extract of that land filed at Exh. 3/2 by plaintiff, it does not appear so from revenue record. Insofar as lands Gut Nos. 1658 and 1660 owned by defendant Nos. 9 and 10, it is clearly seen from both these maps that neither both these lands are adjacent to the suit property nor share common boundaries with suit property.

09] It is the contention of defendant Nos. 9 and 10 that they are unconcerned with the present suit, as the real controversy is between plaintiff and defendant Nos. 1 to 7 insofar as approach way towards land Gut No. 1653 is concerned. From the written statement of defendant Nos. 1 to 7 at Exh. 15, said version of defendant Nos. 9 and 10 appears to be correct. Therefore, I do not find substance in contentions of plaintiff insofar of alleged overt acts by defendant Nos. 9 and 10 are concerned.

10] It is further contention of defendants that plaintiff is illegally mining rubble from nearby government land Gut No. 1650 and while doing so disturbed the approach way of defendant Nos. 1 to 7 towards land Gut No. 1653, and as such real controversy involved in the matter is of the approach way towards suit property. They have also submitted that under the garb of present suit and protection from this court, plaintiff want to continue his illegal activities. From the written statement of defendant Nos. 1 to 7 at Exh. 15, it is clearly seen that they have approached Tahsildar Shirol for the purpose of approach way to their land Gut No. 1653 which was allegedly available to them from bandh of lands Gut No. 1650, 1651 and 1652, and alleged disturbances therein caused by plaintiff and others. Insofar as this particular aspect is concerned, plaintiff has not uttered a single word in his pleading nor tried to bring on record any factual aspect to that regard. When defendant No. 1 to 7 have made this proposition in written statement at Exh. 15, it was incumbent upon plaintiff to explain about the said proceeding between him and said defendants pending before Tahsildar Shirol or to bring on record any document to that effect.

11] Vide his pleading, it is the contention of plaintiff that

defendants are obstructing his way from common bandh over land Gut Nos. 1702 and 1665 towards suit property, however has not uttered a single word about earlier proceedings between him and defendant Nos. 1 to 7 in respect of other approach road towards suit property. Even if said version of plaintiff is considered by keeping aside abovesaid discussion for a while, on juxtaposing it with the map at Exh.31/13, it is seen that when defendant Nos. 1 to 7 were not having approach road towards their land Gut No. 1653 from bandh of Gut Nos. 1650 to 1652, alternate approach to them is from the bandh of land Gut No. 1702 and 1665. Thus, if defendant Nos. 1 to 7 caused obstructions by stalling stones and wooden logs on bandh of Gut Nos. 1650 and 1702, they will be ultimately blocking their own alternative approach way towards their land Gut No. 1653. In the given set of circumstance and more particularly on the background of dispute between the parties before Tahsildar Shirol, said act of defendant Nos. 1 to 7 appears to be illogical, far away from the reality and thus unacceptable.

12] On perusal of documents filed by plaintiff at Exh. 3/6, 26/2, 26/3, 39/3 and 39/7, it is seen that the main emphasis of plaintiff is in respect of approach road towards the suit property. However, for the reasons discussed above, I do not find any substance in said contention of plaintiff.

13] Insofar the alleged threats and overt acts by defendants against possession of plaintiff over the suit property, other documents filed by plaintiff are also verified. On perusal of photographs filed on record by plaintiff at Exh. 26/1, 39/5 and 39/6, it is not crystalised that defendants have caused any damage to the standing crop of plaintiff over the suit property. On this

backdrop as well as for earlier discussion, I also do not find substance in oral contention of plaintiff and his witnesses regarding alleged threats and overt acts of defendants.

14] From all the abovesaid discussion, I am of the view that plaintiff has concealed material facts while approaching this court. More particularly, after written statement of defendants on record, he kept silence and failed to explain about earlier disputes going between him and defendant Nos. 1 to 7. It transpire that plaintiff is maintaining silence on this aspect as per his convenience. No doubt, it is his sweet choice, but this particular conduct of plaintiff raised reasonable doubt in my mind about his approach with clean hands.

15] Injunction is an equitable relief. One who seeks equity must do it at first instance. From all the abovesaid discussion and more particularly from the conduct of plaintiff about concealment of material facts as well as earlier disputes between him and defendants, I am of the view that plaintiff is not entitled for the relief. No doubt, defendants have denied the ownership of plaintiff over the suit property, however this single aspect compared with rest of the aspects emerging from record disentitles plaintiff from exercise of discretion in his favour.

16] Thus, for the abovesaid reasons and discussion based on circumstances appearing through record, I am of the view that plaintiff has failed to establish all the three cardinal principles of law to exercise discretion in his favour. As a result, I recording findings accordingly to point Nos. 1 to 3.

As to Point No. 4 :-

17] In view of all the abovesaid, I am of the opinion that the application is liable to be rejected. Thus to conclude and answer point No. 4, I proceed to pass following order.

ORDER

- 1) Application is rejected.
- 2) Interim orders in the light of this application passed earlier stands vacated.
- 3) Cost to be in the cause.

Civil Court Jaysingpur
Date :- 13.10.2021

Sd/-
(**Anand D. Karbhajan**)
Jt. Civil Judge (Junior Division),
Jaysingpur, Tq. Shirol, Dist. Kolhapur

दा ख ला

दाखला देण्यात येतो की, सदर पी.डी.एफ. फाईलमधील मजकूर हा मुळ आदेशाप्रमाणेच आहे.

लघुलेखकाचे नाव :- सौ. पुनम प्रशांत माने
न्यायालयाचे नाव :- दिवाणी व फौजदारी न्यायालय, जयसिंगपूर,
ता. शिरोळ, जि. कोल्हापूर.
आदेश जाहीर केल्याची तारीख :- १३/१०/२०२१
न्यायाधिशांनी स्वाक्षरी केल्याची तारीख:- १३/१०/२०२१
आदेश अपलोड केल्याची तारीख :- १३/१०/२०२१