

MHKO110007212021



Reg.Civil Suit No.85/2021

(CNR No.MHKO110007212021)

ORDER BELOW EXH.5

01. The plaintiff has filed this application under Order 39 Rule 1 and 2 and Section 151 of The Code of Civil Procedure.

Suit Property –

Gat No.342 total admeasuring area 0 H 32 R situated at Mouje Hingangaon, Tal. Hatkanangale, Dist. Kolhapur having following four boundaries -

- | | | |
|---------------|---|--|
| Towards East | - | Gat No.339 belonged to Shri. Gholap |
| Towards West | - | Gat No.422 of defendant No.1 and 2 and
Gairan Land of Gat No.424 |
| Towards South | - | Plaintiff's land of Gat No.343 and Gat
No.422 of defendant No.1 and 2 |
| Towards North | - | Gat No.341 of Shri. Bhangade |

Open land out of Gat No.342 total admeasuring area 32 R and also Western Southern road is subject matter of suit.

(For the sake of brevity the above mentioned property is hereinafter referred as '**Suit property**'))

Brief facts of the case of plaintiff are as under :

02. The plaintiff has submitted that, the Gat No.342 is ancestral property of plaintiff and defendant No.3. The said property is partitioned in the year 2000 and ½ area from the Southern side was allotted to the

defendant No.3 and ½ area from Southern side was allotted to plaintiff. Accordingly they are in possession of the respective property. The plaintiff and defendant No.3 have kept some portion open for taking the material from the Gat No.342. The defendant No.1 and 2 are not having any concern with the suit property. However they are trying to obstruct the plaintiff from using the said open land kept for road by the plaintiff. The defendants have kept wooden logs and thorny fence on the said road. At the time of carrying on 03/03/2021 and also at the time of ploughing sugar cane crops on 31/03/2021, the defendant No.1 kept the wooden logs and thorny fence on the said road and flowing water on the said road to obstruct the plaintiff. They obstructed the plaintiff from using the said road. Hence plaintiff is having apprehension that, defendants will obstruct the plaintiff from using the said road. The plaintiff submitted that, he has prima facie case, balance of convenience lies in his favour. He submitted that, if temporary injunction is not granted against the defendants, then he will cause obstruction to the enjoyment of the said road. Hence he prayed to issue temporary injunction against the defendants.

03. The defendant No.1 and 2 have filed their say at **Exh.11** and denied all the contentions made in the application. The defendants have submitted that, defendants are having their land at Gat No.422 situated at village Hingangaon, Tal. Hatkanangale. They further submitted that, Gat No.341, 340, 342, 343, 344 are situated towards Eastern side of the Gat No.422. They further submitted that, Gat No.424 and 423 are situated towards Western side of Gat No.422. They further submitted that, Gat No.422 is situated between Gat No.424 and 342. Therefore Gat No.342 is in adjacent to Gat No.424.

04. The defendants further submitted that, there is no road going through the Gat No.342 to 424. The plaintiff in collusion with the Gaon Kamgar Talathi has prepared false map and submitted it in the Court and he is not having right to prepare the map. The plaintiff do not came with

clean hands. He has suppressed material facts. The plaintiff is not having prima facie case, balance of convenience does not lie in favour of plaintiff. They submitted if temporary injunction granted against them, they will suffer irreparable loss. Hence they prayed to reject the application.

05. Heard Ld. Counsels for both sides at length. From the rival contentions, following points arise for my determination and I have recorded my findings thereon for the reasons stated below.

<i>Sr. No.</i>	<i>Points</i>	<i>Findings</i>
1	Whether plaintiff is having prima facie case ?	<i>In Affirmative</i>
2	Whether balance of convenience lies in favour of the plaintiff ?	<i>In Affirmative</i>
3	Whether plaintiff will suffer irreparable loss if injunction is not granted as prayed ?	<i>In Affirmative</i>
4	What order ?	<i>Application is Allowed with Costs.</i>

REASONS

06. In support of his contentions, the plaintiff has filed certified copy of Gat No.342 situated at Mouje Hingangaon, Tal. Hatkanangale, Dist. Kolhapur at **Exh.3/1**, certified copy of 8-A extract of Khate No.1599 at **Exh.3/2**, certified copy of Mutation Entry No.1240 at **Exh.3/3**, certified copy of map of Gat No.342 at **Exh.3/4**, Sugar Cane receipt of Sharad Co-Operative Sugar Factory Ltd. Narande at **Exh.3/5**, certified copy of 7/12 extract of Gat No.422 belonged to defendant No.1 and 2 at **Exh.3/6**. The plaintiff has also filed consolidation extract of Gat No.342 of Mouje Hingangaon at **Exh.16/1**, consolidation extract of Gat No.341 of Mouje Hingangaon at **Exh.16/2**, consolidation extract of Gat No.422 of Mouje Hingangaon at **Exh.16/3**, consolidation extract of Gairan Gat No.424 of Mouje Hingangaon at **Exh.16/4**, map of Gat No.342 (R.S.No.104/4/1) at

Exh.16/5, map of Gat No.422 (R.S.No.121) at **Exh.16/6**, map of Mouje Hingangaon at **Exh.16/7**. The plaintiff has also filed map of Gat No.342 (R.S.No.104/4/1) and Gat No.422 (R.S.No.121) at **Exh.20/1**. The plaintiff has also filed photographs of road situated in Gat No.342 at **Exh.23/1 to 23/3**.

07. On the other hand, in support of their contentions, the defendant No.1 and 2 have filed map of Gat No.422 situated at Mouje Hingaon, Tal. Hatkanangale, Dist. Kolhapur at **Exh.10/1**, 7/12 extract of Gat No.422 situated at Mouje Hingaon, Tal. Hatkanangale, Dist. Kolhapur at **Exh.10/2**. The defendants have also filed online copy of map of suit property at **Exh.25/1**.

AS TO POINT NO.1 TO 3 -

08. The point No.1 to 3 are co-related to each other, hence I have taken them together for discussion.

09. The Ld. Counsel for the plaintiff has submitted that, plaintiff and defendant No.3 have kept some portion out of the suit property open for taken materials from Gat No.342 through vehicles. The defendant No.1 and 2 were not having any concern with the suit property, however they are causing obstruction to the plaintiff from using said open land. The defendants are keeping wooden logs and thorny fence in the said open land and therefore the plaintiff prayed for issuance of temporary injunction against the defendants.

10. The Ld. Counsel for the plaintiff has relied upon ***Ram Narain Agarwal and another v/s. Delhi Development Authority and others [AIR 2000 DELHI 206]*** wherein it is observed by the Hon'ble Supreme Court that,

*Civil P.C. (5 of 1908), O.39, Rr.1, 2 – Interim injunction –
Entitlement to – Development authority sought to be*

restrained from interfering with additions/alteration and repair work in property in suit – No uncontrovertible evidence placed by respondent authority to show that suit land falls within property acquired – No averment that plaintiffs were continuing in possession of land by resisting efforts of authority to take possession of suit property – Refusal to grant relief of injunction to plaintiff would have effect of completely non-suited him – Interest of justice requiring that pending final decision in suit, status quo should be maintained – Ad interim injunction earlier granted, confirmed by Court.

The Ld. Counsel for the plaintiff has also relied upon **SHAMRAO GANPAT CHINTAMANI v/s. KAKASAHEB LAXMAN GORDE [2008(2) Mh.L.J.819]** wherein it is observed by the Hon'ble High Court that,

(a) Civil Procedure Code, O.39, RR. 1 and 2 – Temporary injunction – Grant of – At the stage of temporary injunction Court can refer to documents which are produced on record without formal proof.

Prima facie case, balance of convenience and irreparable loss are the factors which require to be taken into consideration by the Court while considering the application for temporary injunction. At the stage of temporary injunction, Court can refer to documents which are produced on record without formal proof. At that time the trial Court has to take into consideration the documents which are established in accordance with the provisions of the Indian Evidence Act and proved on formal proof. While considering the prima facie case, in case of temporary injunction the Court has to record a finding as to whether

the plaintiff has established prima facie possession over the suit property.

The affidavits which are filed on record, have to be read in consonance with the pleadings of the plaintiff, pleadings of the defendant, document of sale, certification of the mutation and other material which is produced on record.

The Ld. Counsel for the plaintiff has also relied upon **VIVEKANAND RAGHUNATH NAIK GAONKAR v/s. VINAYAK NILBA NAIK GAONKAR and others [2008(4) Mh.L.J.774]** wherein it is observed by the Hon'ble High Court that,

Civil Procedure Code, O.8, R. 5(1) – Averments in the plaintiff – When averments are not specifically denied by the defendant they must be treated as admitted.

The Ld. Counsel for the plaintiff has also relied upon **JIGEESHA THAKORE v/s. DILIP SUMANLAL SHAH and others [2016(6) Mh.L.J.374]** wherein it is observed by the Hon'ble High Court that,

(a) Civil Procedure Code, O.39, RR. 1 and 2 – Temporary injunction – Grant of - Nuisance – Feeding of birds by defendant by placing a tray below her balcony window causing nuisance to other members of Society – A person cannot use his premises for causing nuisance to his neighbours or other residents – Balance of convenience in favour of plaintiffs – Irreparable loss and comparative hardship would be caused to plaintiffs if the injunction is not granted – Injunction as granted by trial Court upheld.

(b) Civil Procedure Code, S.9-A and O.39. RR. 1 and 2 – Continuing nuisance – Cause of action for removal of such nuisance continues day-to-day – Suit filed by plaintiffs

seeking injunction to restrain defendants from feeding birds outside their balcony window by installing a metal tray is not belated.

11. Relying upon the ratio laid down in cases *Cited Supra* and provisions as mentioned in Order XXXIX Rule 1 and 2 of The Code of Civil Procedure, at the time of deciding the application for temporary injunction prima facie case, balance of convenience and irreparable loss, these are the factors needs to be taken into consideration. Admittedly at the stage of deciding application for temporary injunction, Court can refer documents on record without their formal proof.

12. In the present suit, documents on record shows that, Gat No.342 is owned by the plaintiff and defendant No.3 and as per partition in the year 2000, ½ area from Southern side of Gat No.342 was allotted to the defendant No.3 and ½ area out of the Gat No.342 was allotted to the plaintiff. Thereafter the plaintiff and defendant No.3 are in possession of their respective share in the suit property.

13. The documents on record prima facie shows that, the defendants are having their separate land in Gat No.422. Further prima facie it reveals that, the entire Gat No.342 is belonged to the plaintiff and defendant No.3 and defendants are not having any concern with the suit property. As per the contentions of plaintiff, plaintiff and defendant No.3 are taking away materials or goods from the Gat No.342 from some portion of the said Gat number which was kept open for the said purpose. It prima facie seen that, plaintiff and defendant No.3 are using some open land for taking away their materials out the said Gat number.

14. As per the contention of plaintiff, Gat No.422 is situated towards Southern Western side of Gat No.342. The defendants also submitted that, Gat No.342 is situated towards the Southern side of Gat

No.422. It seen that, Gat No.342 is adjacent to Gat No.422. The plaintiff came with the specific incidents that, on 03/03/2021 and 31/03/2021, the defendants obstructed the plaintiff from carrying out the sugar cane crops and also at the time of ploughing his land. As it is stated earlier that, defendants are no where concern with the property of plaintiff. If the plaintiff has kept some portion for carrying material from his land, then defendants have not any right to cause any obstruction for the same. As the defendants are adjacent to the land of plaintiff, the apprehension of causing obstruction at their hands will not be denied. Hence the plaintiff is having prima facie case. Balance of convenience lies in his favour. If defendants are not restrained from causing obstruction, then irreparable loss will be caused to the plaintiff. Hence, I answer issue No.1 to 3 in affirmative.

AS TO POINT NO.4 -

15. Considering the findings of point No. 1 to 3, the application deserves to be allowed with costs. Hence, I pass the following order-

ORDER

- 1] The application is hereby allowed with costs.
- 2] The defendant No.1 and 2 are hereby restrained from causing obstruction to the plaintiff from carrying out sugar cane crops and other material from the suit property till the final decision of the present suit.
- 3] The defendant No.1 and 2 are hereby restrained from causing any encroachment, pouring of water, putting thorny fence and wooden logs on the suit property till the final decision of the present suit.

Date : 27/10/2021

(J. S. Gaikwad)
Civil Judge Jr.Dn., Peth-Vadgaon

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original judgment.

Name of the Stenographer	Sou.K.S.Gaikwad
Name of the Court	J.S.Gaikwad, Civil Judge Junior Division, Peth-Vadgaon
Date of Dictation	27/10/2021
Judgment signed by the P.O. on	27/10/2021
Judgment uploaded on	27/10/2021