

O R D E R (below Exh.5)

01. This is an application filed by plaintiff for temporary injunction under Order 39 Rule 1 & 2 of Code of Civil Procedure, 1908 (hereinafter referred to as C.P.C. for sake of brevity). Plaintiff filed this suit for injunction and removal of encroached portion particularly described in the plaint para No.1 (hereinafter referred to as an “suit property” for sake of brevity).

02. It is the case of plaintiff that suit property is purchased by himself and other co-sharers by way of registered sale deed No.6512/2007. By way of sale deed plaintiff having peaceful possession over the suit property. Before sale deed since more than 20 years plaintiff having possession over the suit property. Plaintiff is cultivating the suit property and taking crops like sugarcane, grapes, soyabean etc. Plaintiff No. 2 is having 0-Hector 46-R area in suit property. Due to economical crises he sold his share Out of 46-R area he sold 0-H 30-R area by making it non agricultural land and sold it to different persons by registered sale-deed. Plaintiff having 1-Hector 20-R area which is in his exclusive possession.

03. Defendant Nos.1 & 2 having there property towards northern side of suit property i.e. 0-H 27.5-R. Defendant No. 1 and 2 acquire this properties by registered sale-deed No. 6512/2007. Further he contended that predecessors of defendant Nos.3 & 4 Shri Abhay Bhimrao Chougule make exchange on dt.21-05-2015

between plaintiff and co-sharers. Shri Abhay Chougule sold his share to defendant Nos.3 and 4. Further defendant Nos.5 & 6 purchase the property from predecessors of defendant Nos.1 & 2 Shri Ramchandra Dattatraya Chougule's share i.e. 10-R out of 27.5 R. Therefore defendant Nos.1 to 6 having their property towards the Northern side of Gat No.77 i.e. Sawarde Khochi road admeasuring area 37.5-R. Plaintiff is having possession over the 1 H. 20 R agricultural land towards the southern side.

04. Plaintiff in month of June 2018 measure his land. Thereafter plaintiff came to know that in his 1-H 20-R area towards the Northern side all the defendant encroached from eastern side up to 15 feet. The encroached portion shown in yellow colour in map which is attached with plaint.

05. Plaintiff sent legal notice to defendant on dt.30-06-2018 by Adv. Shri D.M.Jadhav and requested him to remove the encroached portion. Defendant neither reply nor complied. Hence the suit. Due to act of defendant plaintiff will suffer inconvenience. Hence by way of this temporary application plaintiff claim relief of injunction against defendant.

06. In spite of due service of suit summons defendant Nos.3, 4, 5, 6 not appeared in the court. Therefore suit proceeded ex-parte against them and defendant Nos.1 and 2 appeared but they failed to file their written statement. Hence no w.s. order

passed against them.

07. Considering the pleadings of plaintiff following points arise for my determination and I have recorded findings against each of them with reasons stated below:

S.N.	<u>Points for determination</u>		Findings
1.	Does the plaintiff prove that he has prima facie case ?...	..	In affirmative
2.	Whether balance of convenience lies in favour of plaintiff ?	..	In affirmative
3.	Whether plaintiff will suffer an irreparable loss if temporary injunction is refused ?	..	In affirmative
4.	What order ?	..	Application is allowed

R E A S O N S

08. Prima facie case means existence of circumstances justifying the trial of the questions of facts and law raised in the litigation. Merely because plaintiff has filed a suit for injunction, does not mean that there is prima facie case in favour of the plaintiff. It is also well settled that in order to make out a prima facie case, plaintiff need not establish his title. The plaintiff is required to prima facie establish that in the event of non-interference by the court there will be irreparable injury and substantial loss would cause to him.

09. I have heard the learned advocate Shri V.B.Patil for plaintiff at length.

As to Point No.1 :

10. Plaintiff by way of this application seeking relief that encroached portion should not be sold and new construction not to be carried out on suit property. Plaintiff produced the map on record Exh.3/4 (समजुतीचा नकाशा). In that map yellow coloured portion shows the encroached area i.e. 7 guntha. As per the measurement report defendant Nos.1 to 6 encroached 15 fit. Further plaintiff produce on record measurement map at exh. 33/1.

11. Plaintiff produced 7 x 12 extract of Gut No.779 at Exh.3/1, Extract 8-A property No.779, 648 at Exh. 3/2 and 3/3 which show the name of plaintiff. These are the public document. Therefore plaintiff prima facie proved that he is having title over the suit property. Plaintiff produced copy of Sale-deed registration No. 6512/2007 at Exh. 3/13. As per the legal rule title follow the possession.

12. Further it is pertaining to note that plaintiff before knocking the door of court he send legal notice to defendants to which all defendants neither replied nor complied. The copy of said notice and postal acknowledgment produced on record which is at Exh. 3/5 to 3/12. While deciding T.I. application need to see that whether there is prima facie case or not. After perusal of document on record and this application supported with the affidavit one can safely come to conclusion that plaintiff is having prima facie case in his favour. Hence, I answer point No.1 in affirmative.

13. **As to Point No.2**

In arriving at the balance of convenience the court has to weight the mischief likely to be caused to the plaintiff if the injunction is refused. At the same time it also has to be compared the prejudice likely to be caused to other side if injunction is granted.

14. Considering the act of defendant and important document on record i.e. report of surveyor it reveals that defendants encroached 15 fit towards the North-South of Gut No.779. If defendant sell encroached portion then multiplicity in proceeding cannot be ruled out. Whether encroached portion is legal or illegal it will be decided at time of final hearing. As mentioned above considering the act of defendant mischief will caused to plaintiff cannot be unseen. Hence I answer point No.2 in affirmative.

As to point No.3 :-

15. When balance of convenience lies in favour of plaintiff therefore due to act of defendant plaintiff will suffer irreparable loss which cannot be compensate in terms of money. Plaintiff produced the document i.e. public notice at Exh.26/1. In that notice name of defendant Nos.3 and 4 mentioned .As per the submissions made by the advocate for plaintiff they are proposed purchaser. If the defendant No. 3 and 4 complete the transaction

than damage will be caused to the plaintiff which cannot be compensate in terms of money. Therefore if injunction is not granted than the irreparable lose will be caused to the plaintiff. Therefore as mentioned above multiplicity in proceeding cannot be ruled out. Considering the entire record of the proceeding can be seen that defendants have failed appear before this court and make out their defense. Hence I answer point No.3 in affirmative and answer point No.4 pass following order ;

ORDER

01. Application (Exh.5) is allowed.
02. All the defendants hereby restrained from transfer and carry out construction on encroached area of suit property i. e. 15 fit area (7 R) (more particularity property mention in plaint para no. 1) till final decision of the suit.
03. Cost in main cause.

Sd/-

(Smt. Pankaj Rajput)

2nd Jt. Civil Judge Jr. Division,
Peth Vadgaon

Date - 30/05/2019

CERTIFICATE

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

Name of the Clerk	Shri. Vijay G.Todkar
Name of Court	Smt. Pankaj Rajput 2 nd Jt. CJJD, Peth Vadgaon
Date of dictation	30-05-2019
Judgment signed by the PO on	30-05-2019
Judgment uploaded on	01-06-2019