

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 against the defendant. Plaintiff claiming temporary injunction against all defendants to stop excavation work and not disturb his peaceful possession over the property particularly mentioned in plaint para No.1. (hereinafter referred as an “suit property” for sake of brevity).

02. Plaintiff contended that suit property is ancestral property. Plaintiff predecessor Shri Keraba get suit property by government in 27-10-1961. Plaintiff Nos.1 to 4 are legal heirs of Shri Keraba. Therefore after death of Keraba plaintiff Nos.1 to 4 names entered into the 7 x 12 extract of the suit property. Except plaintiff Nos.1 to 4 there was no any legal heir of Shri Keraba. Plaintiff further contended that 2 hector portion of suit property he sell to the plaintiff Nos.5 to 8. Plaintiff executed registered agreement to sale bearing registration No.3798/2012 in favour of plaintiff Nos.5 to 8. It was decided between plaintiff Nos.1 to 4 and plaintiff Nos.5 to 8 that after sanction by the government plaintiff will execute sale deed in favour of plaintiff Nos.5 to 8. Therefore plaintiff Nos.5 to 8 are added as a party in this suit. Plaintiff deleted the name of defendant No.4 therefore he not claimed any relief against him.

03. On 22-09-2018 without any authority defendant will started excavation work in suit property. They not taken previous sanction or pay any royalty. Plaintiff requested defendant to stop excavation work. But defendant not listen to plaintiff and carry out the work. Therefore plaintiff approached to Shiroli M.I.D.C. police station on 22-09-2018 and Tehsildar, Hatkanangale on 03-10-2018 to file complaint against the defendant. But both the authorities are not taken any action against the defendant because dispute is of civil nature. Hence plaintiff have no option unless knock the door of the court. By way of this application plaintiff claiming temporary injunction to stay excavation work & not disturb peaceful possession of plaintiff over the suit property.

04. In spite of due service of suit summons all the defendants failed to appear and file their say. Therefore suit will proceed ex-parte against all the defendant.

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

S.N.	<u>Points for determination</u>		<u>Findings</u>
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
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R E A S O N S

As to Point No.1 :

06. 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.

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

08. On perusal of 7 x 12 extract at Exh.3/1 it reveals that plaintiff having prima facie title over the suit property. I carefully gone through the document at Exh.3/2 i.e. Tehsildar order Kabuliyat Treasury challan, document at Exh.3/3. i.e. possession receipt of circle officer, 3/4 payment of receipt, 3/5 suit property kabjepatti panchanama. It reveals that predecessors of plaintiff got suit property by government grant. After considering the above mentioned document plaintiff prima facie establish his title over the suit property. As per the law title follows the possession. Considering the case in hand plaintiff's pleading supported with

documentary evidence to hold that he is having title over the suit property. Hence, I answer point No.1 in affirmative.

09. **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 has also be compared the prejudice likely to be caused to other side if injunction is granted. In this point I already discussed in point No.1 that plaintiff having title over the suit property. Defendant illegally start excavation work over the suit property.

10. Considering the case in hand police and Tehsildar Hatkanangale not take cognizance of plaintiff's complainant. To support this pleading plaintiff filed on record document which is at Exh.3/6 (complaint given to the police) and 3/7 (complaint given to the Tehsildar). It reveals that plaintiff before knock the door of court he approach to the concern authority. But they not take any cognizance because dispute is of civil nature. After considering the document on record it reveals that defendant obstruct to the plaintiff and disturb the peaceful possession over the suit property. This application supported with affidavit. Therefore, considering the document on record pleading of plaintiff one can safely come to conclusion that due to act of defendant mischief will caused to plaintiff. Therefore balance of convenience lies in favour of plaintiff. Hence I answer point No.2 in affirmative.

As to point No.3 :-

11. As discussed above point due to act of defendants mischief will caused to plaintiff. Moreover it is pertaining to note here that act of defendant irreparable loss caused to plaintiff which cannot be compensate in terms of money. Therefore if injunction is not granted, then irreparable loss caused to the plaintiffs. Hence, I answer point No.3 in affirmative.

As to Point No.4 :-

12. After considering the above discussion and document on record on this count come to conclusion that there is prima facie case to plaintiff. Balance of convenience lies in his favour & if injunction refused then irreparable loss caused to him. Hence I answer point No.4 and proceed to pass following order ;

O R D E R

01. Application (Exh.5) is allowed.
02. The defendant Nos.1 to 3 and 5, 6 hereby restraining from causing obstruction and interference to the possession of the plaintiffs over the suit property by doing any kind of excavation over the suit property till the final decision of suit.
03. Cost in main cause.

Sd/-

Date - 16/05/2019

(Smt. Pankaj Rajput)
2nd Jt. Civil Judge Jr. Division,
Peth Vadgaon

CERTIFICATE

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

Name of the Stenographer	Sau. J.J. Kamat
Name of Court	Smt. Pankaj Rajput 2 nd Jt. CJJD, Peth Vadgaon
Date of dictation	16-05-2019
Order signed by the PO on	17-05-2019
Order uploaded on	18-05-2019