

MHKO110015352022



**ORDER BELOW EXH.05 IN  
REGULAR CIVIL SUIT NO. 199/2022  
(Shri.Gangaram Dhondi Nagre Versus  
Shri.Sanjay Dhondiram Yadav)**

This is an application filed by the plaintiff for temporary injunctions, in order to restraining the defendants have not to obstruct possession of the plaintiff in the suit property, as per Order XXXIX, Rule 1 and 2 of Code of Civil Procedure, 1908 (hereinafter for the sake of brevity referred to as “CPC”).

**Brief facts of application are as under :-**

**02.** CTS No. 1019, area admeasuring 61.70 sq. mtrs., (hereinafter for the sake of brevity referred to as the suit property A). Further CTS No. 1018, area admeasuring 61.70 sq. mtrs., (hereinafter for the sake of brevity referred to as the suit property B) along with the cattle-shed standing therein area admeasuring 21 ft X 18 ft., both situated in village Nagaon, Tal. Hatkangale, Dist. Kolhapur (hereinafter collectively referred to as “the suit property” more particularly described in para No. 1 of the application). It is contention of the plaintiff that prior to 60 years, predecessor of the plaintiff constructed cattle shed in the suit property. After death of his predecessor the plaintiff use and possessed the said cattle shed. Further, the plaintiff is cutting grass nearby his shed and same is used for his cattle. Furthermore, sometimes the plaintiff cook food, heat water in chula situated in the suit property. The plaintiff further contended that the defendant No. 2 filed application before Dy. Superintendent Land Record in order to measure the suit property A. However, during measurement boundaries of the suit property A and B was fixed collectively. The plaintiff contended that defendants are not concerned with suit property B. Despite that the defendants obstructed possession of the plaintiff and crated hurdles in

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peaceful possession of the plaintiff. The plaintiffs contended that prima facie case in his favour and balance of convenience also lies in his favour, if injunction will refuse, irreparable loss will cause to him. Hence, he has filed present application.

**03.** Defendant No.1 to 3 appeared and resisted the claim of the plaintiff by filing their joint say at Exh. 14. (hereinafter for the sake of brevity referred to as the defendant.) The defendant contended that the plaintiff is not concerned with the suit property. the predecessor of the defendant constructed shed in the suit property. There is no evidence that the plaintiff or his predecessor constructed shed in the suit property. The plaintiff has not come with clean hands. Hence, he is not entitled for reliefs as prayed. The plaintiff has no locus standee to file present suit. They contended that if injunction is granted irreparable loss caused to them. Hence, they prayed to reject the application.

**04.** Heard Ld. Advocate for the plaintiff and defendants. Ld. Advocate for the plaintiff reiterated his contention of the application. During argument he relied on photographs filed along with list of documents at Exh. 3 and 19. He contended that after perusal of the map it appears that shed constructed in the suit property. The defendant only concerned with suit property "A", in spite that the defendants are claiming owners of entire suit property. He argued that after perusal of the photographs it appears that construction of the shed is old. He argued that since long the plaintiff is in possession. Therefore, title follows the possession is not applicable in present case. Hence, he cannot be evicted without following due process of law. In support of his contention, he relied on judgment of Hon'ble High Court in case of **Govindbhai Ramjibhai Chauhan V/s. Gokulchand Juthalal Agrawal 1996(2)Mh.L.J.** On the other hand, Ld. Advocate for defendants reiterated his contention of say. He argued that it is admitted position that defendants are owner. Hence, it is

settled law that title follows the possession. He placed his reliance on documents filed along with list of documents at Exh.3 and 23. He argued that there is no proof that the plaintiff is in possession. Mere filing of the photographs cannot prove possession of the plaintiff. In order to counter the photographs of the plaintiff he also filed photographs at Exh.23/5. Further, he argued that after perusal of tax receipt name of the defendant appears thereon. It shows that defendants are in possession. He argued that previously also the plaintiff filed suit in respect of Samaj mandir and claimed right thereon. However, injunction application of the plaintiff was rejected. Lastly, he prayed to reject the application.

**05.** The following points arise from my determination, on which I have recorded my findings, with reasons, therefor-

Sr. No.	Points	Findings
<b>1.</b>	Does the plaintiff made out that he has prima facie case ?	<b>... No</b>
<b>2.</b>	Does the plaintiff prove that he will suffer irreparable loss, if injunction is not granted ?	<b>... No</b>
<b>3.</b>	Does the plaintiff further prove that balance of convenience lies in his favour ?	<b>...No</b>
<b>4.</b>	What order ?	<b>...Application is rejected</b>

**06.** It is settled law that in order to grant the injunction application, the court must consider following ingredients :

- a. Prima Facie case.
- b. Balance of convenience.
- c. Irreparable loss.

**- REASONS -**

**As to Point No. 1:-**

**07.** Point No. 1 is related to prima facie case. A word prima facie case is not defined in Code of Civil Procedure, 1908. However, in various judgments of Hon'ble Supreme Court it held that a word prim facie means a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. After perusal of the pleading of the plaintiff, it is specific case that the plaintiff is in possession of the suit property. On the contrary the defendants claimed that they are in possession.

**08.** In aforesaid backdrop it is necessary to mention that present application is for interim injunction, the scope of the interim injunction is limited purpose. It is settled law that while considering the interim application, the court cannot finally adjudicate dispute between parties or adjudicate title of the parties. The court only concern with the prima facie case. Further object of the interim injunction is to save the subject matter of the suit till final adjudication of the suit. In present suit, after considering the documents on record, it is admitted position that the defendants are owner of the suit property A. However, it is specific case of the plaintiff that though defendants are owner of the suit property A, but since last more than 60 years he is in possession. On the contrary, the defendants took defense that being owner of the suit property they are in possession of the suit property.

**09.** It is settled law that while deciding temporary injunction application, factum of possession would be only the relevant factor. In this background in present suit the plaintiff only filed photographs. Except photographs the plaintiff failed to file any other documents to show that he is in possession. It is own case of the plaintiff that since last 60 years he is

in possession. In this situation the plaintiff failed to bring any single documents other than photographs. On the other hand, the defendants filed tax demand notice standing in their name. The Ld. Advocate for the plaintiff objected to said tax demand notice. According to him, they are only demand notice. Therefore, it is necessary to mention that though they are demand notice, but at this stage it is sufficient to show that name of predecessor of defendants entered into Grampanchyat record in respect of the suit property. Further, the plaintiff did not challenge said tax notice before any authority.

**10.** Considering the aforesaid discussion cumulatively, it appears that the plaintiff prima facie failed to prove that he is in exclusive possession in the suit property. Moreover, the plaintiff failed to bring any document in order to show that he is in possession. Further, it is admitted position that shed in existence in the suit property. However, there is no documentary evidence to show that said shed was constructed by the predecessor of the plaintiff. Hence, it safely concludes that plaintiff has no prima facie case. Accordingly, I recorded my answer to point No. 1 in negative.

**As to Point No. 2 and 3:-**

**11.** Point No. 2 and 3 are related to balance on convenience and irreparable loss. As these two points are related to each other, hence in order to avoid repetition of discussion, I discuss them together.

**12.** According to settle principles of law, the plaintiff must be proved that balance of convenience lies in his favour and irreparable loss cause to him if injunction is refused. In present case it is contention of the plaintiff that defendants are disturbing possession of the plaintiff. However, in support of the contention the plaintiff did not file any documents. He contended that he went on police station, but he failed to file any written complaint. Mere apprehension and oral contention of the plaintiff is not

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suffice to grant injunction in favour of the plaintiff. On the contrary in discussion of para No. 1, I already held that there is no prima facie evidence that the plaintiff is in possession. Further, it is admitted position that the defendants are owner of the suit property A. In this situation, if injunction is granted against true owner defiantly inconvenience will cause to the defendants. Further, there is no prima facie evidence that irreparable loss will cause to plaintiff. Per contra, if injunction will grant it will deprive to the defendants to enjoy their property. Hence, irreparable loss will cause to defendants. Further, I have gone through **Govindbhai (supra)**, in which the Hon'ble Supreme Court held that if trespasser in settled possession can seek temporary injunction to protect his possession. However, in present suit the plaintiff prima facia failed to prove that he is in settled possession. Hence, ratio laid down in **Govindbhai (supra)** is not applicable to facts of present case. Accordingly, I recorded my answer to point No.2 and 3 in negative.

**AS to Point No. 4:-**

**13.** Considering the aforesaid discussion, it can not be held that the plaintiff has prima facie case in his favour, irreparable loss cause to him and balance of convenience also lies in his favour. Therefore, the plaintiff is not entitled to injunctions as prayed. Accordingly, I pass the following order- :

**- ORDER -**

Application (Exh. 5) is rejected.

Date:-16.03.2023

( S.D.Shirsat )

02<sup>nd</sup> Jt Civil Judge Jr.Dn.Pethvadgaon