

**R.C.S.No. 164/2023**

Smt. Sugandha Kachare etc. Vs. Amol Bagal etc.

CNR - MHKO130011542023**ORDER PASSED BELOW EXH.05****(Dt. 07/02/2024)**

1. This application is filed by the plaintiffs' against defendants, under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure (in short 'CPC').
2. According to the plaintiffs', land Gat No. 10/1 admeasuring area of 1 H. 21 R. out of area 0 H. 91 R. situated at Mouje Kagal, Tal. Kagal, Dist. Kolhapur is subject matter of this application (hereinafter referred as "suit property"). The gist of application is to restrain the defendants from causing disturbance to the peaceful possession of the plaintiffs', till the decision of suit.
3. Defendant no. 1 & 2 filed their say to this application at Exh.12 and specifically denied the contents of Exh. 5.
4. Heard Shri. S.M.Savardekar learned advocate appearing on behalf of plaintiffs' and learned advocate Shri. S.V.Potdar appearing on behalf of defendants. From the pleading of learned Advocates of parties with documents on record, following points arise for determination, and this Court, recorded the reasons with finding as stated below :-

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether prima facie case lies in favour of plaintiffs' ?	:-Yes.
2.	Whether balance of convenience lies in favour of plaintiffs' ?	:-Yes.
3.	Whether plaintiffs' would suffer irreparable	:-Yes.

	loss if injunction is refused ?		
4.	What order?	:-	Injunction Allowed.

:- DOCUMENTS OF PARTIES :-

5. The plaintiff relied on following documents filed at Exh.3 & 15 which includes 8-A extract, 7/12 extract, electricity bill demand letter dated 09/03/2021, 15/11/2021 18/02/2022, 24/10/2022 & 04/05/2023, electricity bill paid on 09/03/2021, 28/12/2021, 30/03/2022, 30/12/2022 & 30/10/2023 etc.

6. Whereas defendants place their reliance on documents filed in R.C.S.No. 171/2023.

:- REASONS :-

As to Points No. 1 to 3 :-

7. Points no. 1 to 3 are interrelated with each other, thus, to skip repetition they are discussed together.

8. Admittedly, one another suit vide R.C.S.No. 171/2023 is pending between parties wherein the pleading of these plaintiffs being defendants in that matter is similar and pleading of defendants in this matter being plaintiffs' in that matter is similar. According to plaintiffs, there is no proof of ownership of pipe line with the defendants. Moreover, in the sale deed there is no reference as to use of pipe line by the defendants. Apart to that, there is no agreement between parties for use of pipe line of plaintiffs for water way. Admittedly, in this matter electricity connection, quotation is in the name of plaintiffs predecessor. Further, electricity bills of MSEB are appearing to be paid by the plaintiffs in this matter. Thus, considering the reasons discussed in R.C.S.No. 171/2023, unless the due procedure is followed by the defendants in this matter, the

plaintiffs possession is required to be protected.

9. Apart from that, there are certain rights and liabilities are laid down in section 49 of Maharashtra Land Revenue Code which are not followed or availed by the parties. Thus, without following those rights and liabilities, if the injunction is refused that may cause inconvenience to the plaintiffs. Thus, prima facie quotation in the name of plaintiffs predecessor of electricity bills paid by the plaintiffs indicates that, the plaintiffs is enjoying the property and accessories. Therefore, if any obstruction is caused to the plaintiffs possession and accessories that may cause inconvenience resulting into irreparable loss. As this Court in R.C.S.No. 171/20223 held that, there is alternate efficacious remedy available to the defendants in this matter rejecting the injunction of defendants (being plaintiffs in R.C.S.No.171/2023), the plaintiffs in this matter have prima facie case. Consequently, point no. 1 to 3 are answered in the affirmative and for point no. 4 following order is passed.

ORDER

1. The application (Exh. 5) is allowed.
2. Defendants are temporarily restrained from causing disturbance to the plaintiffs possession, otherwise than due procedure of law, (as stated in R.C.S. No.171/2023) till further order.
3. Pendency of this suit would not operate as bar for proceeding under section 49 of Maharashtra Land Revenue Code.
4. No order as to costs

Kagal.
Date:- 07/02/2024

Sd/-
(B. D. Gore)
Civil Judge Junior Division,
Kagal.