



R.C.S.No. 171/2023

Amol Bagal etc. Vs. Balaso Kachare etc.

CNR - MHKO130011922023

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', there are following properties situated at Kagal, Tal Kagal, Dist. Kolhapur.

A) Gat No.10/1 admeasuring area of 1 H. 21 R. out of area 0 H. 30 R. having four boundaries well described in the plaint.

B) 3 HP of Texmo Company A class Monoblock 3 x 2.5 electric motor pump situated towards west side water stream, with 3 inches PVC pipe line having 3 feet depth underground passing through property no. 1(A), having length of 670 feet, having "T" to take the water to the field of the plaintiffs and defendants with easement right.

Above suit properties are well referred in the plaint is subject matter of suit. (hereinafter referred as "suit properties"). The gist of application is to restrain the defendants from causing disturbance to the peaceful use of suit property no. 1(A) and 1(B) owned by the plaintiffs, with some mandatory relief.

3. Defendant no. 1 & 2 filed their say to this application at Exh.11 and specifically denied the contents of Exh. 5.

4. To avoid repetition of facts, brief facts of application and written say are referred in the argument of learned advocates of respective parties.

5. Heard learned advocate Shri. S.V.Potdar appearing on behalf of plaintiffs' and learned advocate Shri. S.M.Savardekar 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' ?	:-No.
2.	Whether balance of convenience lies in favour of plaintiffs' ?	:-No.
3.	Whether plaintiffs' would suffer irreparable loss if injunction is refused ?	:-No.
4.	What order?	:-	Injunction is rejected as alternate efficacious remedy is available to the plaintiffs.

:- DOCUMENTS OF PLAINTIFFS' :-

6. The plaintiffs' relied on following documents filed at Exh.3 & 14 which includes 7/12 extract, sale deed in favour of plaintiffs', death certificate of Balaso Kachare, Cash Memo purchase bill of 3 HP Texmo Motor, Challan, Quotation and granting letter of MSEB, report of motor testing, notice of plaintiffs' advocate, notice reply of defendants, electricity bill, N.C. report, Sanction letter of MSEB dated 17/05/2004, receipt of electricity connection, testing receipt of Kadam Trading Company, purchase receipt of Texmo Company motor etc.

-: DOCUMENTS OF DEFENDANT :-

7. The defendants relied on following documents filed at Exh.16 which includes, demand letter of motor pump electricity bill to MSEB dated 09/03/2021, 15/11/2021, 18/02/2022, 24/10/2022 & 04/05/2023, electricity bill paid on 30/03/2021, 28/12/2021, 30/03/2022, 30/12/2022 & 30/10/2023 etc.

Facts and Argument on behalf of plaintiffs' :-

8. According to plaintiffs', suit property Gat no. 10/1 is earlier owned by defendant's predecessor i.e. Balaso Kachare. Defendant no. 1 is wife and defendant no. 2 is son of deceased Balaso Kachare. It is averred that, from the East side of property the plaintiffs' have purchased 0.30 R. land by way of registered deed no.2744/2003 on 22/08/2003. According to plaintiffs', towards West side of property purchased, there is water stream. Further, the suit property is purchased by the plaintiffs' with right to installed the electric motor with pipe line to take water from that stream. It is averred that, since then the plaintiffs are using such pipe line with their ownership and possession. It is averred that, towards West side of property purchased, there is 3 HP Texmo Motor installed adjacent to water stream. Further, the electricity connection is in the name of predecessor of defendants vide consumer no.1010318195. Further, after payment of MSEB dues the connection is started. It is averred that, since registered sale deed the plaintiffs have installed PVC pipe line having length of 670 feet. Further, it is underground having 3 feet depth and the plaintiffs' are irrigating the suit property by using the said pipe line by taking water from water stream.

9. According to plaintiffs', they are cultivating the suit property. Further, they have fertile the unfit land which is having area of 10 Guntha. According to plaintiffs', defendants are also using

the said pipe line. Further, the right to installed the suit property no. 1(B) is granted by the predecessor of defendants and defendants have no ownership upon pipe line. Further, during life time of predecessor of defendants, no complaints were raised by Balaso or defendants. It is averred that, Balaso died on 20/05/2014, even since thereafter also the plaintiffs are using suit property no.1(A) and 1(B) as per their rights.

10. According to plaintiffs', electricity connection is in the name of the defendants and due to selfish nature defendants are taking the disadvantage of the said facts, as part of it, in the month of June-2023 defendants started to obstruct the plaintiffs' while utilizing the property while taking the water from suit property no. 1(B). It is averred that, defendants are claiming their rights upon the said pipe line illegally. According to plaintiffs', they have rights in the suit property to up lift the water from West side water stream since the date of sale. Further, for that respect the plaintiffs' have shown the documents pertaining to their rights to the defendants. However, defendants refused to respond it. It is averred that, on 05/06/2023 the defendants raised the dispute, hence, the plaintiffs' lodged the report. However, only non-cognizable offence is registered against defendants. Further, the defendants also lodged the false report against this plaintiffs'.

11. According to the plaintiffs', they are owner of that said pipe line and the predecessor of defendants permitted to them to take water from that pipe line. However, the defendants in the month of June-2023 started the obstruction while taking water from water stream and also removed the motor pump installed adjacent to water stream. It is averred that, if the motor pump is not installed, the plaintiffs' may suffer irreparable loss. Further, the property including

the pipe line and electric motor pump is owned by plaintiffs'. Hence, by way of this application it is prayed to direct the defendants to install the motor at earlier place as well as not to obstruct the plaintiffs' from taking water from water stream through pipe line.

12. Learned advocate relying upon above facts, sale deed and other relevant documents argued that, the connection and quotation is in the name of predecessor of defendants. However, plaintiffs are owner of 3 HP motor pump. It is averred that, plaintiffs' are taking water since date of sale deed. It is submitted that, they have easementary rights to take water from water stream through land of defendants. It is argued that, till the life time of predecessor of defendants, no dispute was raised by the defendants. It is argued that, if the obstruction is continued by the defendants, they may suffer irreparable loss, as they could not irrigate their land. It is argued that, the sale deed and rights involved therein establishes the prima facie case of plaintiffs. Further, no inconvenience would cause to the defendants, if application is allowed in favour of plaintiffs', hence, argued to allow the application.

Facts & Argument on behalf of Defendant no. 1 & 2 :-

13. This application is opposed by the defendant no. 1 & 2 submitting their say below Exh.11. It is submitted that, the contentions of application are false and suit properties are not well described with four boundaries by the plaintiff. It is additionally submitted that, the suit property Gat no. 10/1 is earlier owned by predecessor of defendants and said is ancestral property of defendants. It is contended that, from suit property East portion of 30 R. is sold by predecessor of defendants to the plaintiffs vide registered sale deed and rest of all the portion is in possession of defendants. Further, these defendants left the road admeasuring 15

feet width x 150 feet length to proceeds towards East to west side and towards Eastern side of road, (adjacent to North side) there is property of plaintiffs'. It is averred that, electricity connection is in the name of predecessor of defendants and they have installed 3 HP electric motor with 3 inches PVC pipe line having length of 700 feet. It is submitted that, these defendants are irrigating their crops by utilizing the above accessories and the plaintiffs' have no concern with these accessories. It is submitted that, on 28/06/2023 plaintiffs have issued false notice to the defendants to claim the ownership upon electric motor pump and pipe line and they also illegally entered in the property possessed by defendants. Further, these defendants have properly replied that notice. Even then, the plaintiffs are trying to disturb peaceful possession of these defendants and used the filthy language.

14. It is submitted that, defendant no. 2 has lodged the report against these plaintiffs'. However, the dispute being civil in nature, the report is not registered. Therefore, these defendants instituted R.C.S.No.164/2023 for proper relief claiming injunction against these plaintiffs. It is submitted that, the plaintiffs' are not approached before this Court with clean hand. Further, the plaintiffs' suppressed the material facts. Therefore, the plaintiffs' are not entitled for equitable relief, accordingly, urged to reject the application.

15. Relying upon above facts, the learned advocate of defendants argued that, the quotation and electricity bill are in the name of defendants of predecessor. There is no reference of use of pipe line and electric motor pump in the sale deed executed in favour of plaintiffs'. It is argued that, there is no agreement between defendants and predecessor of plaintiffs' and predecessor of

defendants in respect to use of pipe line. It is argued that, the suit property is not well described. Rather, the plaintiffs' by suppressing material facts trying to disturb the peaceful possession of plaintiffs. Hence, these defendants filed another suit claiming injunction against these plaintiffs'. It is argued that, in want of proper documents in favour of plaintiffs', the plaintiffs' have no prima facie case, balance of convenience. Thus, no irreparable loss would cause to the plaintiffs'. Hence, argued to reject the suit.

:- REASONS :-

As to Points No. 1 to 3 :-

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

17. Perused the record. Heard learned advocate of both the parties. Admittedly, ownership of plaintiffs' is not disputed to the extent of 0.30 R. land which is adjacent to the property of defendants. Plaintiffs' and defendants both are claiming their respective rights upon electric motor pump and upon underground pipe line. So far as dispute relating to electric motor pump is concern, the plaintiffs' vide pursis Exh. 12 submitted that, their electricity motor pump is handed over by the defendants and relief in respect to electricity motor pump is waived. Be it so, so far as contentions of plaintiffs are concern that they are taking water from West side water stream by way of underground pipe line, which is install in the field of defendants, they have not filed on record any proof in respect to ownership of pipe line, alike ownership of electric motor pump. Further, there is no agreement executed between predecessor of plaintiffs' and defendants in respect to taking water from (alleged common) pipe lines.

18. So far as contents of plaintiffs are taken into consideration, the said pipe line is installed back in the year of 2003. Admittedly, both are claiming the pipe line is of PVC in nature. Considering, the duration of installation of pipe line possibility that it may become obsolete due to passage of time cannot be ruled out. Further, the plaintiffs' have not filed on record any affidavit of witness of adjacent owner claiming that, they are utilizing the pipe line since 20 years. Beside that, though the electric motor is in the name of predecessor of plaintiffs', however, the electricity connection is in the name of predecessor of defendants and further there is no proof with the plaintiffs' that, they are paying electricity bill in proportionate manner with defendants.

19. In want of such facts only on the basis of ownership of electric motor pump, it cannot be said that, the plaintiffs' have prima facie case. Apart to that, for taking water from adjacent land owner, the plaintiffs' have alternate efficacious remedy available under section 49 of Maharashtra Land Revenue Code. Now, considering the contentions of plaintiffs' as to obstruction at the hands of defendants, the plaintiffs' can fully exercise his rights under section 49 of Maharashtra Land Revenue Code by moving appropriate application to appropriate authority, if the defendants are not permitting to utilized the pipe line to the plaintiffs. Apart to that, there are certain rights of defendants also referred in the section 49 of Maharashtra Land Revenue Code. Thus, granting injunction would deprive the defendants to exercise that right. Thus, without following those rights and liability, if injunction is granted in favour of plaintiffs that may cause inconvenience to the defendants. Further, considering duration of pipe line as alleged by the plaintiffs possibility of obsolescence of PVC pipe line cannot be ruled out. Hence, in want of agreement, want of document as to ownership of pipe line, want of

electricity bill in the name of plaintiffs, the plaintiff failed to prove the prima facie case. Further, plaintiffs also not assessed the irreparable loss in terms of money at this stage due to obstruction by the defendants. Further, alternate efficacious remedy is also available to plaintiffs. Consequently, point no. 1 to 3 are answered in the negative and for point no. 4 following order is passed.

ORDER

1. The application (Exh. 5) is rejected.
2. This order being passed on prima facie grounds, would not affect the rights of parties under section 49 of Maharashtra Land Revenue Code.
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.