


MHKO140002932024 	Regular Civil Suit No.79/2024 Narayan Krishna Parit Vs. Ramu Gundu Patil
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ORDER BELOW EXHIBIT- 12
(passed on- 16/07/2024)

1. This is an application for grant of ad-interim ex-parte injunction in respect of **suit property as described in plaint para-1**. In alternative it is prayed to grant status-quo. It is submitted that, the plaintiff has filed present suit for perpetual and mandatory injunction along-with the relief of declaration of ownership. Suit summons and notice issued against the defendants. They appeared and sought time for filing the written statement. The land of defendant is situated towards western side of suit property. The defendants are taking disadvantages carrying out construction by encroaching in the suit property which is owned by the plaintiff. After service of summons the defendants have started construction and trying to complete the sale. Said construction is going on in the suit property and therefore it is necessary to stay the sale. If the construction is completed then it would cause irreparable loss to the plaintiff. Hence, present application.

REASONS

2. At the outset it is mentioned that, the present suit is filed for declaration of ownership, perpetual and mandatory injunction in respect of the agriculture land situated at Tambulvadi, Tal. Chandgad in Gat no.128, old survey no.27/6/B, admeasuring 0 H. 14R. Plaintiff pleaded that, he is owner and possessor of the suit property. Defendants have no concern with the suit property. In-spite of that the defendants are carrying out construction in the suit property by way of encroachment in the suit

property. The plaintiff prayed for removal of said construction by issuing mandatory injunction. Plaintiff also filed an application for temporary injunction below Exh.5. Show cause notice was issued against the defendants and in response the defendants appeared on 03/07/2024 and sought time for filing of written statement. The matter was fixed for appearance on 03/08/2024. Meanwhile, on 15/07/2024 the plaintiff appeared and took the matter on board and filed present application seeking relief of ex-parte injunction. The ld. advocate for plaintiff argued that, there is urgency as the defendants are trying to complete the said construction in the suit property. It is further argued that, if the said construction is not stayed then the very purpose of granting temporary injunction will be defeated.

3. Order 39 Rule 3 of Code of Civil Procedure provides that the Court shall in all case, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party so it is clear in view of aforesaid provision that, issuance of notice is a general rule and granting injunction without notice is an exception. Therefore it is the duty of plaintiff to satisfy the court that if the ad interim ex-parte injunction is not granted then the purpose of granting injunction would be defeated by delay.

4. The Hon'ble Supreme Court in Morgan Stanley Mutual Fund vs Kartick Das (1994) 4 SCC 225 Provided certain guiding principles in relating to the grant of an ad interim injunction., the Hon'ble Supreme Court held that, - *As a principle, ex-parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex-parte injunction are-*

a) *Whether irreparable or serious mischief will ensue to the plaintiff,*

- b) *Whether the refusal of ex-parte injunction would involve greater injustice that the grant of it would involve,*
- c) *The court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented,*
- d) *The court will consider whether the plaintiff had acquiesced for sometime and in such circumstance it will not grant ex-parte injunction,*
- e) *The court would expect a party applying for ex-parte injunction to show utmost good faith in making the application,*
- f) *Even if granted, the ex-parte injunction would be for a limited period of time*
- g) *General principle like, prima facie case, balance of conveniences and irreparable loss would also be considered by the court.*

5. As discussed above in the present suit the plaintiff pleaded about the construction in the suit property and also prayed for removal of sale. Photo copies filed on record along-with present application shows that some construction is going on which is at the base level. It is not completed. The defendants have already appeared but they have not filed their written statement. Whether the plaintiff is lawful possessor of the suit property, whether the plaintiff is entitle for the temporary injunction etc. are the questions for consideration while deciding an application filed below Exh.5. But at this stage prima-facie it appears that, some construction is going on in the suit property. Without going into the merits of the case, I am of the view that, if the ex-parte injunction is granted then no prejudice will be caused to the defendants. As it would help avoiding the further complications and multiplicity of litigation. Whether the defendants carrying out construction in the suit property ?, this issue needs

to be decided after the considering the defense of defendants while deciding application below Exh.5. But till the time to avoid change in the nature of suit property. It would be proper to grant interim relief by way of ex-parte injunction against the defendants. No prejudice or loss will be caused to the defendants as order will be for short period. On the contrary if relief is not granted then irreparable loss will be caused to plaintiff and the purpose of granting injunction would be defeated by delay. Hence, I pass following order.

ORDER

1. Application is allowed.
2. The defendants are hereby temporarily restrained from carrying out construction over the suit property (as described in plaint para.1, 2) till next date or till further order of the Court, whichever is earlier.
3. The plaintiff to comply mandatory provisions as laid down in **Order 39 Rule 3** of the Code of Civil Procedure, that is - to delivered to opposite party, or to send by registered post, the copy of application for injunction together with affidavit, copy of plaint, copies of document on which the applicant relies.
4. Plaintiff to file an affidavit stating that the copies aforesaid have been so delivered or send, in the court today itself or immediately on next day.

Returnable on 26/07/2024.

Date:16/07/2024

[Waman D. Jadhav]
Jt.Civil Judge Junior Division, Chandgad.
[Judge Code- MH3143]