

MHKO150001302023



**R.C.S. No. 17/2023**  
Suraj vs. Dnyandev

**ORDER PASSED BELOW EXH. 05**

This is an application filed by plaintiff under order XXXIX rule 1 and 2 of C.P.C. against defendant no. 1.

2. Suit property -

Suit property mentioned in paragraph no. 1 of present application.

(In short “suit property”)

3. In short plaintiff's case is as under :

According to plaintiff, the defendant no. 3 is original owner of suit property. He has taken non-agriculture permission in respect of Gat No. 60 and lay out plan was prepared by Government authority. The plots was created in Gat No. 60. The plot no. 22 that is suit property is created in Gat No. 60. After creating plots and after non-agriculture permission, the plaintiff has purchased suit property by registered sale deed dated 22.03.2011 from defendant no. 3. The non-agriculture permission was granted to the defendant no. 3 on 09.03.2011. In this circumstance, the plaintiff is owner and possessor of suit property. The defendants are not concern with suit property.

4. The defendant no. 3 has sold out plot no. 21 to the defendant no. 2 by registered sale deed dated 17.05.2014 vide R.E.No. 532/ 2014. Thereafter, the defendant no. 2 has sold out plot no. 21 in favour of defendant no. 1 by registered sale deed dated 31.01.2022 vide R.E. No.

249/2022. According to plaintiff, the defendant no. 3 has sold out defendant no. 2 plot no. 21, thereafter, defendant no. 2 sold out plot no. 21 to the defendant no. 1. But, the defendants have mentioned the boundaries of plot no. 23 in their sale deed. By taking disadvantage of that fact, the defendant no. 1 has try to make construction by committing encroachment in the suit property. Therefore, plaintiff requested defendants for not obstructing to his possession and for not tried to commit encroachment. But, the defendants have refused the request of plaintiff. Therefore, plaintiff has filed present suit for perpetual injunction.

5. By way of present application, plaintiff prayed for temporary injunction that is restraining defendant no. 1 from causing obstruction to his peaceful possession over the suit property till disposal of present suit. He lastly prayed for allowing application.

6. The defendant no. 1 has appeared and filed his written statement at Exh. 14. He denied all allegation, pleading and prayer of plaintiff. According to him, the description of suit property is not sufficient and the suit property is not properly identified. He denied that, the plaintiff is owner of suit property. He denied the possession of plaintiff over the suit property. According to defendant no. 1, he has not committed any encroachment over the suit property. He has purchased plot no. 21 from defendant no. 2. The defendant no. 2 has purchased plot no. 21 from defendant no. 3. The non-agricultural order was passed on 09.03.2011. That order was implemented on 27.05.2011. The order was recorded in sub-register office vide R.E. No. 532 on 07.05.2014. The plaintiff is not concern with plot no. 21. The defendant no. 1 has try to make construction on plot no. 21. The plaintiff's sale deed dated 22.03.2011 vide R.E. No. 287/2011 is void ab-initio. He lastly prayed for rejection of application.

7. Heard learned advocate Shri. S. S. Injal for plaintiff and advocate Shri. S. A. Patil for defendant no. 1.

8. Following points are arises for my determination to which I have given my findings thereon along with my reasons.

SR. NO.	POINTS	FINDINGS
1.	Whether the plaintiff is prima-facie case for grant of temporary injunction as prayed for?	Affirmative
2.	Whether balance of convenience lies in favour of plaintiff?	Affirmative
3.	Whether the plaintiff would suffer irreparable loss, if temporary injunction is refused?	Affirmative
4.	What order?	As per Final order.

### **REASONS**

9. Prima- facie case, balance of convenience, and irreparable loss are the three ingredients for temporary injunction.

#### **As to point No. 1 to 3 -**

10. The plaintiff pleaded that, he has purchased the suit property from defendant no. 3. Both the parties have admitted that, the defendant no. 3 is original owner of suit property, plot no. 21 and plot no. 23. The plaintiff has produced his sale deed on record. On perusing the N. A. order passed in respect of Gat No. 60 which was attached with the sale deed of plaintiff, it appears that, the Tahasildar Ajara has granted N.A. order on 09.03.2011. The plots have been created in Gat No. 60. The plot no. 21 to 23 was shown in that order. The plot no. 22 shown on the southern side of plot no. 21 and plot no. 23 was shown on the southern side of plot no. 22. On perusing the boundaries which was mentioned in N. A. order lay out and sale deed it appears that, the boundaries of plaintiffs are rightly mentioned in sale deed. The sale deed executed for consideration amount and the ownership and possession was transferred in favour of plaintiff.

Thus, from the evidence of N.A. order and sale deed, it comes on record that, the plaintiff is owner and possessor of suit property. Hence, prima-facie I conclude that, the plaintiff has proved his possession and ownership over the suit property.

11. The advocate for defendant submitted that, the boundaries and description of suit property is not properly mentioned. On perusing sale deed and N.A. order it appears that, the boundaries of suit property was properly mentioned. Further, on perusing the sale deeds of defendants and N. A. order attached with that sale deeds it appears that, the boundaries of plaintiff's property is rightly mentioned in plaint. Therefore, I am not found any substance in the argument of advocate for defendant no. 1 that is description and boundaries of suit property was not properly identified.

12. The advocate for defendant no. 1 further submitted that, the N. A. order was passed on 09.03.2011. The implementation of N. A. order was effected in 7/12 extract vide mutation entry no. 744 dated 30.06.2011. In this circumstance, the plaintiff's sale deed is executed prior to implementation of N.A. order. And the N.A. order dated 09.03.2011 is not final. On perusing the N.A. order it appears that, the N.A. order is finally passed on 09.03.2011. Thereafter, some changes was created and additional amended order was issued on 27.05.2011. On perusing the amended order dated 27.05.2011 which was attached with the sale deeds of defendant, it appears that, there is no change in respect of suit property that is plot no. 22. The change is not in respect of suit property. Thus, from the N.A. order it appears that, the change is not in respect of suit property and it was change in respect of plot no. 20 and other some plots which was not connected with the present matter.

13. The advocate for defendant no. 1 submitted that, the implementation was effected on 7/12 extract on 30.06.2011. Therefore, the sale deed of plaintiff is not legal one. On perusing the record it appears that, the N. A. order is finally passed on 09.03.2011. The mutation entry

was effected on 30.06.2011. The mutation entry is not defect the N.A. order. The N.A. order was finally passed on 09.03.2011. It means, the N.A. order is comes in effect on 09.03.2011. The mutation entry was effected on 30.06.2011. Mere non taken mutation entry on 7/12 extract can not defect the sale deed. The title of suit property was transferred by way of sale deed. The sale deed executed after passing N.A. order. In this circumstance, I am not found any substance in the argument of advocate for defendant no. 1.

14. The advocate for defendant no. 1 further submitted that, the Manjulabai has not given consent to the plaintiff's sale deed. The defendant no. 1 is third party and there is no record produced by defendant no. 1 which shows that, the Manjulabai has challenged the sale deed of plaintiff. In this circumstance, I am not found any substance in the argument of advocate for defendant no. 1 that there is no consent of Manjulabai for executing sale deed.

15. On perusing the sale deed executed by defendant no. 3 in favour of defendant no. 2 it appears that, the plot no. 21 is mentioned in that sale deed. On perusing the boundaries it appears that, the boundaries was mentioned in respect of plot no. 23. Thus, from the sale deed which was executed by defendant no. 3 in favour of defendant no. 2 dated 17.05.2014 vide R.E. No. 532 it appears that, the sale deed shows that, the plot no. 21 was transferred. But, the boundaries of plot no. 23 was mentioned in sale deed.

16. On perusing sale deed which was executed by defendant no. 2 in favour of defendant no. 1 dated 31.01.2022 vide R.E.No. 249/2022 it appears that, the plot no. 21 was transferred by defendant no. 2 in favour of defendant no. 1. The boundaries shows that, it was in respect of plot no. 23. Thus, from the sale deeds of defendants it comes on record that, the plot no. 21 was transferred and the boundaries was mentioned in respect of plot no. 23. It is settled position that, the boundaries are the prevails over the plot number.

17. The plaintiff on affidavit stated that, the defendants have try to make construction by committing encroachment. The advocate for defendant submitted that, the plaintiff has not established that, the defendant no. 1 has committed any encroachment. For showing obstruction, it is not necessary to prove case by evidence. It is necessary to establish obstruction in the hands of defendant no. 1. Therefore, I am not found any substance in the argument of advocate for defendant.

18. Considering all above discussion, I am coming to conclusion that, the plaintiff has prima-facie proved his ownership and possession over the suit property. The plaintiff has made out prima-facie case. The balance of convenience lies in favour of plaintiff. Therefore, if application rejected, then definitely irreparable loss will be caused to the plaintiff. In this circumstance, I answer Point No. 1 to 3 in affirmative. The application needs to be allowed. Hence, in answer to Point No. 4, I pass the following order,

### **ORDER**

1. The application is allowed.
2. The defendant no. 1 is temporarily restrained from making any type of construction and obstruction to the peaceful possession of the plaintiff over the suit property till disposal of present suit.
3. Considering peculiar circumstances, there is no order as to cost.

Date : 19.04.2023.

(S. P. Jadhav)  
Civil Judge J.D., Ajara.