

MHKO150002882020

R. C. S. No.36/2020**Mrs. Anuradha Ghevde & Anr.***Versus***Smt. Sushila Kamble & Ors.****Common Order below Exhibit 5 & 8.**

(Passed on 04/12/2020)

01. The plaintiffs have filed these applications for grant of temporary injunction against the defendants No.1 and 2 restraining them from obstructing their ingress in suit property i.e. land in block No.867/3 and from causing obstruction to their peaceful possession over the suit properties and from making construction in gat no. 867/3..

Relevant facts of the plaintiff's present application are as under : -

02. The properties situated at village Uttur, Tal. Ajara, Dist. Kolhapur as sufficiently described in the para No.1 of plaint are hereinafter referred to as 'Suit Properties'. The suit properties at Sr.No.1 Block No.867/2 and 2) block No.867/3 are owned by plaintiffs whereas gat no. 1013 is owned by defendants. Plaintiffs have filed this suit for demarcation of boundaries between them and the defendants and for permanent injunction. It is the specific claim of the plaintiff that block No.867/2 is owned and possessed by plaintiff No.2 whereas on the southern side of it is block No.867/3 which is owned and possessed by plaintiff No.1. Out of these to lands block No.867/2 has been approved as Non-agricultural by competent authority and is leased to a Petrol Pump owner Mr. Sanjay Kesarkar.

03. According to plaintiffs both block numbers are adjacent to each other whereas land in block No.1013 is on the south-west corner of block No.867/3. Plaintiff No.1 is taking sugarcane and fruits in her field and she is using way for her ingress to approach her land from the Ajara Kolhapur road. In block No.1013 defendants No.1 and 2 have their house and towards the northern side of it, is the way in question which is adjacent to block No.867/2 on north and block No.867/3 on eastern side. It is further averred by the plaintiff that on 07/03/2004 he got the land in block No.867 measured according to occupancy but the same is not got recorded by the concerned officials in the record. The land in block No.1013 is owned by Kamble family. In a civil suit No.208/2000 the land was partitioned by decree dated 04/06/2007 and the names of respective parties were recorded to the revenue records. Accordingly, Dnyandev, the predecessor of defendants No.1 to 3 built house in block No.1013. Dnyanadev died two years before. Thus, the defendants are nowhere related to block No.867/2 and 867/3. Despite being the facts defendants No.1 and 2 are obstructing the ingress of plaintiff No.1 by putting stones since 22/04/2020 and raising disputes on count of eastern and northern boundaries of block No.1013 and also trying to destroy the sugarcane and fruit garden. When plaintiff on 01/05/2020 asked them to resolve the matter mutually they started encroaching upon block No.867/3 on 01/06/2020. Hence, the plaintiffs are constrained to file this suit for demarcation of boundaries, declaration and permanent injunction against defendants. The present application is filed against defendants No.1 and 2 restraining them from obstructing the ingress of plaintiffs in suit property i.e. land in block No.867/3 and from causing obstruction to their peaceful possession over the suit properties and also

from making construction in suit property gat no. 867/3.

04. In the meantime defendants on 15/08/2020 started to erect 30 feet long on north-south side and on east-west side 25 feet wide construction in the way of ingress of plaintiff No.1 in block No.867/3. When the Petrol Pump owner tried to intervene they did not pay any bid to him. Hence, the plaintiffs have filed application below Exhibit 8 for temporary injunction for restraining the defendants No.1 and 2 from raising construction in block No.867/3. The construction, if raised, will cause heavy loss to plaintiffs if the approach road is closed for ingress. The plaintiffs have proved their case prima facie and they will be sufferers of irreparable loss, the balance of convenience also tilts in their favour. Hence, they have prayed that the application be allowed.

05. In support of his claim plaintiff has examined his PoA holder Mahadev Sakharam Patil and placed reliance upon documentary evidence viz. 7/12 extracts of suit properties, maps, measurement map, lease deed, decree of Civil Court in RCS No.208/2000.

06. Defendants No.1 and 2 have filed their written statement-cum-reply vide Exhibit 36 and have strongly resisted the application. They have strongly denied about the dispute of boundaries between suit properties. They have also denied about any ingress of plaintiff No.1 to approach her land through block No.1013. They submitted that block No.1013 which is solely owned and under occupancy of defendants is situated on the south-western side of block No.867/2 of plaintiff. Block No.867/2 is on the southern side and block No.867/3 is on the eastern side of the block No.1013. Taking disadvantage of the same plaintiffs

have prepared this concocted suit to harass the defendants.

07. Defendants are cultivating this land since their partition and plaintiffs have no concern with it. Plaintiffs are using political and financial influence to grab the land of defendants. There is an approach road available for plaintiff No.1 from behind the petrol pump but despite that plaintiff has filed this suit and misleading the Court. Defendants have no dispute if the plaintiffs want to get their land measured. But they deny the road shown in suit map. As stated by the plaintiffs the measurement No.4/23 was never conducted with the notice to defendants or their consent so the same has no legal effect. Defendants are raising construction in their own land and they have every right to enjoy their property. They have also submitted that if the Court finds this construction an encroachment, the same will be removed at their expenses. The suit is barred by law of limitation, it is based on the false statements and concocted averments. The plaintiffs have not approached the Court with clean hands.

08. It is further contended that there is no prima facie case in favour of plaintiff, the defendants will be the sufferer of irreparable loss, if the injunction is granted. The balance of convenience tilts in favour of defendants. Hence, the application be rejected with costs.

09. In support of his claim defendant has filed affidavit of witness Sushila Kamble and Usha Kamble.

10. Perused the application, say filed by the defendants, the case laws placed on record and the other documents produced on record. Heard respective learned Advocates of either sides.

11. Following points arise for determination to which findings are recorded against each of it with reasons thereto as under :-

Sr No	Points	Findings.
1.	Whether the plaintiffs have made out a <i>prima facie</i> case in their favour ?	In the affirmative.
2.	Whether the balance of convenience tilts in favour of plaintiffs ?	In the affirmative.
3.	Does the plaintiff prove that they would suffer an irreparable loss, if, injunction is not granted ?	In the affirmative
4.	What order ?	Application is allowed

REASONS

12. The plaintiffs to substantiate their claim have placed reliance upon documents like 7/12 extracts of suit properties, maps, measurement map, lease deed, decree of Civil Court in RCS No.208/2000.

13. As against this, the defendants No.1 and 2 have placed reliance upon documents like the

As to points No.1 :-

14. While deciding the present application, the plaintiffs have to satisfy this Court on the following factors i) whether the plaintiffs have a *prima facie* case, ii) whether the balance of convenience is in favour of the plaintiffs and iii) whether the plaintiffs would suffer an irreparable injury if their prayers for temporary injunction is not granted.

15. The first rule is that the plaintiff must make out a *prima facie*

case in support of the right claimed by him. It is a condition precedent that there is existence of a prima facie right and that there is infraction of such a right. It is the contention of plaintiff that they are owners of gat no. 867/2 and 867/3. Defendant are owners of gat no. 1013. These facts about ownership of gat numbers are not denied by defendant also. It is the contention of plaintiffs that gat no. 867/2 and 867/3 are adjacent to each other and also they are adjacent to Uttur Ajara Road. Plaintiffs have leased some portion of gat no. 867/2 for petrol pump. It is the contention of plaintiffs that they have ingress to gat no. 867/3 from Ajara Kolhapur Road. But defendants have denied this fact. It is the contention of defendants that gat no. 867/3 is not adjacent to Ajara Kolhapur Road and Gat no. 867/3 have ingress from Gat no. 867/2. It is also contented by defendant that at the time of making construction of petrol pump plaintiffs have tried to encroach over gat no. 1013. But no complaint had been lodged by defendant.

16. Both plaintiffs and defendants have contended that they have fruit garden in their land. On perusal of 7/12 extract of gat no. 1013 it is seen that there is no entry of fruit garden in gat no. 1013. Per contra 7/12 extract of gat no. 867/3 reveals the existence of fruit garden in it. Hence, the submission of defendant about fruit garden in his gat no. 1013 is not trustworthy.

17. According to defendants they had no notice of measurement in year 2004. But on perusal of record it is seen that defendants have come in possession in year 2008 by compromise decree. Hence, the question of issuing notice to present defendants in 2004 does not arise.

18. On perusal of pleadings and pursis at exh. 37 it is seen that defendants have submitted that they will remove the construction if the

constructed portion come in the gat no. 867/3

19. Also, in view of judgment of Shamrao Ganpat Chintamani .Vs. Kakasaheb Laxman Gorde reported in 2008 (2) Mh.L.J. 819 at the stage of temporary injunction Court can refer to the documents which are produced on record without formal proof. On perusal of map at exh.3/6; prima facie it is seen that both the gat no. 867/2 and 867/3 are adjacent to each other and adjacent to Ajara Kolhapur Road. Also, considering the submission of defendant about removing of construction after measurement prima facie proves that defendants are not firm about their land. In such circumstance it is not desirable to give permission for construction to defendant. It will create trouble in the future. Advocate for plaintiffs has relied on the judgment of Maharwal Khewaji Trust (Regd.) Faridkot vs Balder Dass reported in 2005(1) Mh.L.J. 1043 in which Hon'ble Apex Court held that "The Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceeding. It is also held that it is not proper to permit the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property." In this case also defendant have given undertaking of removal of construction if it came in the field of plaintiffs. The reason mentioned for construction of not satisfactory for granting permission for construction. Therefore, the facts of this case are squarely applicable to case in hand.

20. Hence, in view of above stated reasons plaintiffs have made out prima-face case. Hence, I answer as to point No.1 in affirmative.

As to point No.2:-

21. Plaintiffs have prima facie proved that defendant are obstructing for their road and also making construction over suit property without obtaining necessary permission. Hence, balance of convenience lies in favour of plaintiffs. Hence, I answer as to point No.2 in affirmative.

As to point No.3:-

22. Plaintiff has prima facie proved that defendants are making construction over suit property without permission of respective authority. If construction of defendant will complete plaintiffs will suffer irreparable loss. Hence, I answer as to point No.3 in affirmative.

As to Point No.4:-

23. In view of affirmative findings to point No.1 to 3 plaintiffs are entitled for temporary injunction against defendant No.1 and 3. Hence, the following order.

ORDER

1. Application Exhibit 5 and 8 are allowed with costs.
2. Defendants and/or their agents are hereby temporarily restrained from causing obstruction to ingress in suit property i.e. land in block No.867/3 and from causing obstruction to their peaceful possession over the suit properties and from making construction in gat no. 867/3 till final decision of suit.

Place : Ajara.
Date : 04/12/2020.

(D. T. Patil)
Civil Judge Jr. Division, Ajara.