

MHKO150004602016



R.C.S. No. 99/2016
Shankar vs. Dhondiba

ORDER PASSED BELOW EXH. 5

This is an application filed by plaintiff for temporary injunction under order XXXIX Rule 1 and 2 of the Code of Civil Procedure Code, 1908.

2. Suit property – Suit property mentioned in paragraph no.1 of present application. (In short "suit property")

3. In short case of the plaintiff is as under-

According to plaintiff, the 14 R. land was situated in Gat No. 85. He has constructed his house in Gat No. 85. The 700 Sq.ft. area constructed by him that is suit property. The plaintiff's father has constructed house suit property. The house was recorded in the name of plaintiff. The defendants have not concerned with suit property. The defendants have owned their property in Gat No. 83 and 84. Their name was shown in 7/12 extract. The defendants have try to commit encroachment and to construct construction in the by-lane (bol) situated in suit property. According to plaintiff, his name was not recorded in the 7/12 extract of Gat No. 85. But he has possessed suit property. The defendants have try to commit encroachment. He requested defendant for not committing encroachment. But defendants have refused request of plaintiff. Therefore, plaintiff filed present suit for perpetual injunction.

4. By way of present application, the plaintiff prayed temporary injunction that is restraining defendants from causing obstruction to his peaceful possession. He lastly prayed for allowing application.

5. The defendant no. 1 appeared and filed his written statement at Exh. 15. He denied all allegation and pleading. According to him, the plaintiff is not owner and possessor of suit property. The plaintiff is not owner of land situated in Gat no. 85. The Gat No. 84 was owned by defendants. The Gat No. 84 and 85 are adjoining lands. The Grandfather of defendant has constructed house in Gat No. 84 in the year 1955 to 1960. The disputed lane (bol) was not possessed by plaintiff. They denied right, title and interest of plaintiff. They lastly prayed for rejection of application.

6. The defendant no. 2 fails to file written statement. Therefore, suit proceeded without written statement.

7. Heard learned Advocate Shri. S. R. Powar for plaintiff. None appeared on behalf of defendant.

8. The following points are arises for my determination and I have given my findings thereon are as follows.

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

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

REASONS

As to point No. 1 to 3-

10. The plaintiff pleaded that, he is not owner of land situated in Gat No. 85. He has constructed his house that is suit property which was situated in Gat No. 85. Thus, it is clear that the plaintiff is not owner of property situated in Gat No. 85. The plaintiff pleaded that, his name was recorded in village Grampanchayat record. He has produced village Grampanchayat record.

11. On perusing 7/12 extract, it appears that, the name of plaintiff is not mutated in Gat No. 85. It means, he is not owner of Gat No. 85. The village Grampanchayat extract shows that, the name of plaintiff, recorded as house no. 55. On perusing the village Grampanchayat extract, it appears that, the house milkat number was shown in extract. It is pertinent to note that, there is no Gat number mentioned in village Grampanchayat extract. There is no boundaries of suit property mentioned in village Grampanchayat record. Further, the village Grampanchayat record and extract is used for collecting of tax for the Grampanchayat. The village Grampanchayat extract can not conclude the ownership and possession of plaintiff over the suit property. Because the record shows that, the land on which the plaintiff has constructed house is not owned and possessed by plaintiff.

12. The measurement of property was completed and the measurement extract was produced by plaintiff. The measurement map shows that, the house which was situated in Gat No. 85 was possessed by owner of Gat No. 83. And another house which was situated in Gat No.

85, was possessed by owner of Gat No. 86. The map shows that, the house of defendants also situated in Gat No. 85. The plaintiff pleaded that, the defendants have owned land in Gat No. 83. It means, the defendants are owner of Gat No. 83. The land from Gat No. 85 was also possessed by defendants. The measurement map shows that, defendant also possessed 43 sq.meter area from Gat No. 85. The owner of Gat No. 86 is also possessed 75 sq.meter area from the Gat No. 85. These evidence prima-facie shows that, the defendants also possessed land from Gat No. 85 along with plaintiff. But there is no evidence in respect of boundaries and possession of plaintiff and defendant.

13. Considering all above discussion, I am coming to conclusion that, the plaintiff is not owner of Gat No. 85. The village panchayat extract not conclude the ownership and possession of plaintiff. The defendants have also possessed some land from Gat No. 85. Therefore, the plaintiff fails to prove his right title interest over the suit property. The plaintiff fails to establish prima-facie case. The balance of convenience not lies in favour of plaintiff. If application rejected then, no irreparable loss would be caused to the plaintiff. The application needs to be rejected. Hence, I answer point 1 to 3 in negative and in answer to point no. 4, I pass following order,

Order

1. The application is rejected.
2. Considering peculiar circumstances no order as to cost.

Place - Ajara.
Date - 17/12/2021.

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

Certificate

I affirm that the contents of this P. D. F file Judgment/order are same, word to word, as per the original Judgment/order.

Name of the Stenographer	Mrs. Y.S.Chavan.
Name of Court	C.J.J.D. Ajara
Judgment/order Dictated on	17-12-2021
Judgment/order typed on	17-12-2021
Judgment/order signed by the P. O. on	17-12-2021
Judgment/order uploaded on	20-12-2021