



Vimal Waghmare + Ors

Vs.

Balu Kamble + Ors

ORDER BELOW EXH. 5

1.] Perused contents of the application supported with affidavit of plaintiff and say filed by defendants. Heard both the learned advocates for the parties at length.

2.] This is an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction restraining the defendants from constructing over gat no.24 which is one of the suit properties during pendency of this suit.

3.] Present suit is filed claiming partition and perpetual injunction against the defendants. It is the case of the plaintiffs that the suit property no.1 in para 1 of the plaint i.e. Gat no.24, at village Ambavade, Tal-Panhala, area 0.27.30R out of 0.54.60R more specifically described in the application is their and defendants parental and joint family property. Defendants are in possession and occupation of the suit property. Plaintiffs further stated that the defendants are constructing on one of the suit properties which are not yet partitioned. Hence they are constrained to file the present application as the defendants have denied their rights over the suit property.

4.] Defendants have presented their say at Exh.17 and thereby contested to the prayer of temporary injunction made by the plaintiffs. Vide their say they contended that the suit properties are their parental

properties and are not joint family properties. They further contended that the plaintiffs have not come before this court with clean hands and have suppressed the material facts.

5.] Heard learned advocate Shri. P. D. Patil for the plaintiffs and learned advocate Shri. G. G. Nanivdekar for the defendants.

6.] In view of rival pleadings and contentions of both the parties following points arise for my determination. I have noted my findings on all points for reasons mentioned below:-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Do plaintiffs prove that they are having prima facie case ?	In affirmative
2.	Whether the balance of convenience lies in favour of the plaintiffs ?	In negative
3.	Do plaintiffs prove that they will suffer irreparable loss by refusal of temporary injunction?	In negative
4.	What order?	Application is rejected

REASONS

7.] AS TO POINT NO.1 to 3 :- As point nos. 1 to 3 are hinge upon the same pivotal hence, to avoid the repetition of facts point nos. 1 to 3 are clubbed together for discussion. Before deciding the application one needs to look into the provision of law.

Law:

In Indian legal system the law of injunction is mainly governed

by Order 39 and sections 36 and 42 of the Specific Relief Act. Section 94(c) of the Code of Civil Procedure also gives supplemental provision for grant of temporary injunction. It is also settled that there is no bar in granting injunction or supplementary orders under section 151 of the Code of Civil Procedure for compliance of injunction in just cases.

Temporary Injunction is a provisional remedy that is invoked to preserve the subject matter in its existing condition. Its purpose is to prevent dissolution of the plaintiff's rights. The main reason for use of a temporary injunction is the need for immediate relief. Grounds of temporary injunction provides that temporary injunction may be granted by the court when:

- i. Property in dispute is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of the decree.
- ii. Where defendant threatens or intends to remove or dispose of his property with a view to defraud creditors.
- iii. where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to the property in dispute.
- iv. Defendant is about to commit breach of peace or contract or otherwise (O.39 R.2)
- v. Where the court is of opinion that interest of justice, so required.

Thus, burden is on the plaintiff praying for the relief. Mere proof of one of the above conditions does not entitle a person to an order of temporary injunction.

8.] From the present application it is observed that to prove the prima facie case plaintiffs need to show that there is prima facie right and

infracton of such right is a condition precedent for grant of temporary injunction. However it should not be confused with a case proved to the hilt. In deciding prima facie case this case should be guided by the plaintiff's case as revealed in the plaint, affidavits or other materials produced by him. In order to support the claim of temporary injunction the plaintiffs have filed 7/12 extract of the suit property. Upon perusal of proceeding of this suit; it appears that the claim of plaintiffs is supported by land revenue records. The plaintiffs have thus succeeded to show their right and interest in the suit property. By this way, the plaintiffs have made out a prima facie case. Hence point no.1 is answered in affirmative. Now considering the balance of convenience and irreparable loss, as per plaintiffs the suit property is ancestral property that means all the plaintiffs and defendants are co-sharers till partition takes place. Considering the nature of suit property and as parties are joint owners, no injunction can be issued against the co-sharers. Parties been co-sharers and joint owners are found equally responsible for the interest and liabilities. If the nature of suit property is changed which is not seen at this stage, the same may affect the parties equally. At this stage one need to look into the disturbance of possession at the hands of defendants if injunction is to be granted. The application does not show any incidence of actual obstruction to the possession of plaintiffs over the suit property prior or after filing the instant application. Plaintiffs have admitted the possession of the defendants over the suit property. From the entire record it is nowhere seen that there is an actual interference with the possession of plaintiffs and irreparable loss to them. Hence, I answer point nos. 2 and 3 in negative.

9.] AS TO POINT NO 4 :- I, thus find no imminent danger to right of plaintiffs in respect of the suit property. In such a situation, it cannot be said that the plaintiffs would suffer an irreparable loss and also that the

balance of convenience goes in favour of the plaintiffs. As reasoned above mere proof of one of the above conditions does not entitle a person to an order of temporary injunction. With these observations, I have replied as above. Hence, I draw the conclusion that plaintiffs are not entitled to seek a relief of temporary injunction against the defendants. With this conclusion I proceed to pass following order.

ORDER

- i) The application at exh.5 is hereby rejected.
- ii) No order as to costs.
- iii) Parties to proceed with the suit.

Date :- 12/02/2024

(K.J.Khomane)

Civil Judge Junior Division, Panhala