

MH LA110000812020



RCS No.88/2020
Limbraj Vs. State of Mah.
& Ors.

Order below Exh.5 in RCS No.88/2020

This is an application filed by plaintiff under Order XXXIX Rule 1 and 2 CPC for granting temporary injunction restraining the defendants from obstructing or disturbing to his peaceful possession over the suit property, described in para No.1 of the plaint. The contents of application in short are :- That the plaintiff has filed this suit for perpetual injunction. Plaintiff is the owner and possessor of Gram panchayat property No.3365 and 3366 out of land Sy.No.116 of Aurad(Sh.) having portion of plot Nos.6 and 7 to the extent of East-West 14 fts. and North-South 44 fts i.e. total area adm. 57.24 sq.mts. (hereinafter to be referred as 'suit property'). The suit property was purchased by plaintiff vide registered sale deed dated 06/07/2006 registered at Sr.No.3721/2006. Plaintiff has mutated his name in Gram panchayat record and he is in actual possession of the suit property. Plaintiff has obtained construction permission from Gram panchayat on 01/08/2016 and he is regularly paying N.A. taxes and G.P. tax regularly. The four boundaries of the suit property are as under :-

Towards East:- Land of Shrikrishna Biradar,

Towards West:- Land of Vyankat Bhingole,

Towards North:- 20 fts. road and

Towards South:- Latur-Bidar Road.

2. That one Dilip Kashinath Katte, R/o. Aurad (Sh.) had filed RCS No.222/2012 against plaintiff and others seeking the relief of mandatory and perpetual injunction. He contended that plaintiff has committed encroachment over State Highway and has carried out construction on the statutory barred area. In the said suit plaintiff has filed his WS and denied the contentions made by Dilip Katte. The said suit came to be dismissed and it was held that the present plaintiff has not made any encroachment nor violated any rules and regulations in respect of State Highway. Dilip Kashinath Katte has not challenged the said judgment and therefore, it has attained finality.

3. Plaintiff is doing his business and is getting lucrative returns and thus, the ill wishers of Aurad (Sh.) are making false contentions regarding encroachment by plaintiff with various forums. That one Bhagwat Bondge has filed W.P.No.3625/2017 before Hon'ble Bombay High Court, Bench at Aurangabad claiming similar relief. The present plaintiff was not party to the said petition and the petitioner therein has purposefully concealed the fact of the dismissal of RCS No.222/2012. The petitioners had made wrong submissions before Hon'ble High Court and got the order dated 15/07/2019 directing the Superintendent of Land Records to measure Sy.Nos.108 and 116.

4. As plaintiff was not party to the said writ petition, the Superintendent of Land Records has not issued notice to the plaintiff for the process of measurement. Plaintiff was not present at the time of alleged measurement and the measurement map clearly shows that the plaintiff has not committed any

encroachment. Despite this, plaintiff received notice dated 08/01/2020 from defendant Nos.5 and 6 asking him to demolish the suit property bearing No.3365 within seven days from its receipt. This itself shows that some ill motivated persons are managing the Government authorities. Thus, the plaintiff is under apprehension that some disgruntled souls may compel the defendants to take illegal action against the plaintiffs.

5. The plaintiff is lawful owner and possessor of suit property. The construction over suit property is carried out after obtaining prior permission from the concerned authority. The plaintiff is regularly paying the taxes. Therefore, the plaintiff has prima facie case and the balance of convenience also lies in his favour. In case, if the defendants succeeds in demolishing the construction over the suit property then irreparable loss will be caused to him. Hence, the application.

6. Defendant Nos.3 to 6 appeared but failed to file its say. Hence, the suit proceeded without WS/say of defendant Nos.3 to 6. Defendant Nos.1 and 2 have filed its WS/Say at Exh.36 and denied the contents of plaint and application in toto. The contents of its WS/Say in short are:- The plaintiff has not issued mandatory notice under Section 80 (c) CPC before institution of this suit. Thus, the suit is liable to be dismissed on this count. The plaintiff has no authority to claim any relief against these defendants and even this Court has no jurisdiction to try and decide the present suit. The action in respect of the subject matter of this suit came to be initiated vide order dated-15/07/2019 passed by Hon'ble

Bombay High Court, Bench at Aurangabad in W.P.No.3625 /2017.

7. That in the measurement carried out by Dy. Superintendent Land Records Office, Nilanga it came to fore that the plaintiff has committed encroachment to the extent of 85.06 Sq. Mts. on the Panand going from Aurad to Kotmal. The said Panand is in existence on the village map of Sy. Nos.108 and 116. That as per the orders issued by Tahsildar, Nilanga the office of Dy. Superintendent Land Records, Nilanga has submitted its report after following due process of law. That after receiving necessary directions from Collector, Latur the Tahsildar, Nilanga had constituted a committee to complete the task of measurement of the said Panand, of which Dy. Superintendent Land Records, Nilanga was also a member. On these and other grounds defendants have requested to reject the application with costs.

8. After going through application and documents on record, following points arise for determination to which I have recorded my findings thereon, for the reasons stated thereunder.

Sr.No.	Points	Findings
1	Whether plaintiff has <i>prima facie</i> case in her favour ?	In Affirmative.
2	Whether balance of convenience lies in favour of plaintiff ?	In Affirmative.
3	Whether plaintiff will suffer irreparable loss, if injunction is not granted ?	In Affirmative.
4	What order ?	As per final order.

REASONS

9. I have heard learned Adv. Shri. M.R.Jagtap for plaintiff

and learned AGP Shri. K.V.Pandharikar for defendant Nos.1 and 2. Also perused documents filed by plaintiff.

As to Point Nos.1 to 4 :-

10. As point nos.1 to 3 are inter-related with each other, I am discussing them jointly. Learned advocate Shri M.R.Jagtap appearing for plaintiff submitted that plaintiff is the owner and possessor of the suit property described in para no.1 of the plaint on the basis of registered sale deed. He further submitted that after obtaining necessary construction permission from the local authority i.e. defendant no.1, he carried out construction over the suit property. Plaintiff is regularly paying G.P. taxes and he is a law abiding citizen. He further submitted that, on the basis of Writ Petition no.3625/2017 filed by one Mr.Bhagwat Bondage, the defendants are disturbing the peaceful possession of the plaintiff over suit property.

11. He drawn my attention towards the notice dated 08/01/2020 issued by defendant nos.4 to 6 filed at list **Exh.4/1**. He further submitted that no notice was ever issued to plaintiff regarding the alleged measurement work and the plaintiff has serious apprehension that under the guise of showing action taken by it to the Hon'ble Bombay High Court, Bench at Aurangabad, the defendants may demolish the structure of plaintiff standing on the suit property. He further submitted that the documents filed by plaintiff clearly shows that the *prima facie* case is in his favour and the balance of convenience also tilts in his favour. He submitted that in case if the application is not allowed then serious injury,

which cannot be compensated in terms of money, will be caused to plaintiff. At last, he requested to allow the application.

12. On the other hand, Ld. AGP Shri. Pandharikar appearing for defendant nos.1 and 2 submitted that, after carrying out the measurement work of entire survey Nos.108 and 116 situated at village Aurad Shahajani, it came to know that the plaintiff has committed encroachment on the Panand road going from village Aurad to Kotmal. He further submitted that, the plaintiff was very well aware regarding the existence of said Panand and despite this, he carried out construction over suit property. He further submitted that, the illegal construction carried out by plaintiff by committing encroachment over the Panand cannot be protected by injunction order and requested to reject the application which sans any merit.

13. Perused application, say filed by defendant nos.1 and 2 and the documents filed by the parties. Also considered rival submissions of both the Learned advocates. Record shows that, plaintiff has filed this suit for perpetual injunction restraining the defendants from disturbing his peaceful possession over the suit property, described in para No.1 of the plaint. The suit is proceeding without W.S. of defendant Nos.4 to 6, who has initiated action against plaintiff. Plaintiff has filed some documents at list Exh.4, which includes the original sale deed of the suit property, 8-A extract issued by defendant No.6, the notice dated 08/01/2020 issued by defendant Nos.4 to 6.

14. From the documents filed by plaintiff it is clear that plaintiff is the owner of the suit property and alleged construction

carried out on it was done so after obtaining requisite permission from defendant no.6. The tax receipts filed by the plaintiff further shows that he is paying tax to the concerned gram panchayat and all these documents clearly shows that the concerned gram panchayat is very well aware regarding the construction carried out by plaintiff over suit property. It will not be out of context to mention here that despite this, the defendant Nos.4 to 6 who have appeared in the suit has chosen not to file its say on record. Thus, an adverse inference can be drawn against defendant Nos.4 to 6 and it can be held that the contents of application including the allegations are admitted by it.

15. Defendant Nos.1 and 2 have though contested the claim of plaintiff by filing its WS/say but have not filed any document on record which would show that the encroachment, as alleged, is committed by plaintiff. Record shows that plaintiff has filed construction completion certificate dated 05/04/2017 at list below Exh.47/4 issued by defendant No.5 which shows that defendant Nos.4 to 6 have satisfied itself regarding the legality of construction which was being carried out by plaintiff over suit property. As observed earlier, from the documents filed by the plaintiff it can be seen that he is lawful owner and possessor of the suit property and is regularly paying tax to defendant No.6. It is pertinent to note that till date of filing of the suit or prior to it defendant Nos.4 to 6 has never issued any notice regarding alleged encroachment, until Mr.Bhagwat Bondage has preferred W.P No.3625/2017 in the Hon'ble Bombay High Court, Bench at

Aurangabad.

16. The apprehension of plaintiff that the defendants may initiate any action against him seems to be reasonable because the notice dated 08/01/2020 filed by plaintiff at list below Exh.4/1 clearly shows that defendant Nos.4 to 6 have asked him to remove the alleged encroachment within seven days from its receipt. It seems that an opportunity of hearing was never given by defendants to plaintiff. Thus, it is necessary to protect the lawful possession of plaintiff over suit property. For these reasons, I hereby held that plaintiff has *prima facie* case and the balance of convenience also tilts in his favour. In case, if injunction is not granted then plaintiff will have to suffer irreparable loss because the construction which is carried out by him after obtaining requisite permission will be demolished by defendants by taking law in its hands and the plaintiff will be thrown away on road. In the result, I answer point nos.1 to 3 in affirmative and for point no.4, I pass following order:-

Order

1. Application is allowed with costs.
2. Defendants are hereby temporarily restrained from obstructing or disturbing the peaceful possession of plaintiff over suit property, described in para No.1 of the plaint, in any manner whatsoever till decision of suit.

Date: 17/07/2023

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.