

R. C. S. No. 68/2014.**Pandit vs Bhimrao****ORDER BELOW EXH. 5.**

1. In the instant application, plaintiff has prayed for the relief of temporary injunction against defendants as per O.XXXIX R.1 & 2 of C.P.C.

2. Heard ld. Counsel for plaintiff. He submitted that 1 H 51 R land of gat no. 60 and 40 R land of gat no. 59 of village Talikhed Tq. Nilanga, Dist. Latur is the subject matter of the suit (Hereinafter, it has been referred as suit property only for convenience). Gat no.60 has been formed from 3 acre land of sy. no. 16/A and 30 R land of sy. no. 16/C. Gat no.59 has been formed from 40 R land of sy. no. 16/C. On 18-2-83, plaintiff purchased 3 acre land of sy. no. 16/A from defendant no.1. On 18-2-84, he purchased 30 R land from sy. no. 16/A from defendant no.4. On 11-8-03, he purchased 40 R land of gat no. 59 from Uttam Ekonde Patil. Rivulet is passing through sy. no.16/A. Due said rivulet, sy. no.16 divided in two parts. Plaintiff is having 2 acres 20 R to the eastern side of rivulet. He is having 20 R land to the western side of rivulet. He is also having well in the suit property and he installed electric motor and pipeline. With its help, he is providing water in gat no. 59 & 60. The suit property is in exclusive possession of plaintiff. In spite of this, defendants obstructed his possession over suit property. Hence, he has filed suit for perpetual injunction. It will require much time. Hence, defendants be temporary restrained from obstructing possession of

plaintiff over suit property.

3. Per contra, ld. Counsel for defendants no. 1 to 3 submitted that father of defendant no.1 i.e. Ramrao Patil was having 15 acres 37 R land in sy. no. 16/A. After his death, said property entred in the name of defendant no.1. In 1980-81, he sold 10 acres land of sy. no. 16/A to Raosaheb Deshpande. On 18-2-83, he sold 2 acres 10 R land and 3 acres land of sy. no.16/A to Dattatraya Khalangare and plaintiff. After sale of said land, defendant no.1 remained in possession of 32 R land of sy. no.16/A. Defendant no.1 has purchased 25 R land of sy no. 16/C from Deorao Patil. He was having land in sy. no. 16/A and 16/C. In the scheme of consolidation, gat no. 56 to 60 and 104 came to be allotted sy. no. 16 & 28. Sy. no. 28 was ancestral property of defendant no.1. Gat No. 104 has been allotted to the land of sy. no.28 and 16. Said land is towards the western side of the land of plaintiff. The rivulet is passing through the land of defendants. Defendants are having land in eastern and western side of rivulet. Application is false. Hence it be dismissed.

4. Ld. Counsel for plaintiff has relied on the rough map attached to plaint. It shows that rivulet is passing through gat no. 59 and 60. To the western side of rivulet, plaintiff is claiming 20 R land. He is claiming 2 acres 20 R land to the western side of rivulet. Land is situated to the western side of rivulet in gat no.60 is disputed by both the parties. Who is in possession of said land ? It is the crux of the present matter.

5. Plaintiff has produced 7/12 extract of sy. no. 16/A (Exh.14). It shows that 15 acres 37 R land is situated in sy. no. 16/A. It was initially standing in the name of defendant no.1 along with other co-holders in year 1982-83. Sale deed (Exh. 4/1) shows that on 18-2-81, plaintiff purchased 3 acres land of sy. no.16/A from defendant no.1. Sale deed (Exh. 4/2) shows that on 18-2-84, plaintiff purchased 30 R land of sy. no.16/C from defendant no.1.

6. 7/12 extract of gat no.60 (Exh.8) shows that 1 H 42 R land stands in the name of plaintiff. Defendant has produced extract of consolidation. It shows that gat no.60 has been formed from sy. no. 16/1/A area 1 H 1 R. and 16/2B area 50 R. From said sy no., gat no.60 has been formed. Its area has been shown as 1 H.

7. Ld. Counsel for plaintiff also relied on the map (Exh. 4/9). It shows that rivulet is passing through the land of gat no. 59 & 60.

8. Relying on this evidence, ld. Counsel for plaintiff claimed possession over suit property as well as 20 R land situated to the western side of rivulet.

9. Per contra, ld. Counsel for defendants attention towards boundaries mentioned in sale deed Exh.4/1 and 4/. Said sale deed show that plaintiff has purchased land from defendant no.1. Four boundaries of the sale deed Exh. 4/1 shows

that land of defendant no.1 was situated to the western side after sale of 3 acres land. Sale deed (Exh.4/2) shows that after sale of 30 R land of sy. no. 16/C, land of defendant no.1 is situated towards western side. This sale deed also shows that rivulet is situated to the western side. Thereafter, land of defendant no.1 is situated.

10. These sale deed is admitted to both parties. Plaintiff has purchased 30 R land of sy.no. 16/C from defendant no.1. These sale deed clearly shows that towards western side of sy. no.16/C, rivulet is situated and thereafter land of defendant no.1 is situated. From this 30 R land and 3 acer land of sy. no. 16 A gat no. 60 has been fromed. It means that plaintiff has no prima facie land to the western side of rivulet.

11. If at all plaintiff has purchased a land to westen side of rivulet, then it was not necessary to mention rivulet and land of defendants no. 1 to the western side of 30 R land purchased by plaintiff by virtue of sale deed. 18/02/1984 (Ehx. 4/2)

12. Extract of consolidation (Exh. 55/3) shows that gat no.104 has been formed from the area of sy. no.28 and 16. It shows that 32 R area of sy. no.16/Kh and 25 R area of sy. no. 16/1/A and 1 H 8 R area of sy. no. 28/9 has been included in gat no. 104. It prima facie shows that defendant no.1 is also having land of sy. no. 16 in gat no.104.

13. In these circumstances, it is difficult to accept that

plaintiff is having prima facie possession over the land of western side of rivulet.

14. Ld. Counsel for plaintiff submitted that 40 R land of gat no.59 is in possession of the plaintiff. Plaintiff has purchased said land from Uttam Ekonde on 11/08/2003. By virtue of said sale deed, plaintiff is in possession of said property.

15. Plaintiff has produced sale deed dtd 18-8-03 (Exh.59). It shows that plaintiff has purchased 40 R land of gat no.59 from Uttam Ekonde. Plaintiff has produced M.E. No.511.(Exh.9). It shows that in the said mutation entry, name of plaintiff is recorded in the record of 40 R land of gat no.59.

16. However, plaintiff has not produced 7/12 of gat no.59. Sale deed (Exh. 59/1), shows that the area of gat no. 59 is 1 H 21 R. land. It is also clear from consolidation extract (Exh.55/3). It shows that there are other co-holders in gat no 59.

17. However, plaintiff has not produced 7/12 of gat no.59. He suppressed material document. He has withheld best possible evidence. Plaintiff has not produced the map to show the exact location of his 40 R land in gat no.59. There are other co-holders in gat no.59. Unless and until the boundaries of 40 R land in gat no.59 is demarcated, it is not possible to pass executable order of injunction.

18. In these circumstances, this court is of the view that

plaintiff failed to prove his prima facie possession over said land. No doubt he is in possession of land as per sale deeds. However he failed to show exact location by producing appropriate map of his land. He has suppressed 7/12 extract of gat no.59. Therefore, this court is of the view that balance of convenience does not lie in favour of plaintiff. In this circumstances order of injunction is passed, then there will be much hardship to the defendants. Hence, plaintiff is not entitled for the relief of temporary injunction. In the result, this court pass the following order.

ORDER

Application is rejected.

Sd/-

(S. R. Tamboli)

Date : 05-03-2015.

Civil Judge Senior Division, Nilanga.
