

Order passed below Exh.05.

Jagdamba vs. Sarpanch

This is an application filed by plaintiff under order XXXIX rule 1 and 2 of CPC.

2. Suit properties mentioned in paragraph No. 3 of present application. (in short suit property)

3. In short plaintiffs case is as under:-

The plaintiff has filed present suit for perpetual injunction. The plaintiff is registered trust under Maharashtra Public Trust Act. The plaintiff has run Library. Defendants are Sarpanch, Deputy Sarpanch and Gramsevak of Grampanchayat Kharosa. The plaintiff run Library since last 35 years. The trust registered on 24.7.1984. The plaintiff trust has needed property for conducting library. The Grampanchayat Kharosa has allotted suit property to plaintiff for conducting library. Since year 2012 the plaintiff is in possession of suit property and run library. Defendants are tried to obstruct the plaintiffs possession. The plaintiff wanted to repair the library building, but defendants are obstructed in repairing library. Therefore plaintiff trust filed present suit for perpetual injunction. By way of present application plaintiff wanted temporary injunction restraining defendants for causing obstruction to his possession and for repairing library building. Plaintiff lastly prayed for allowing application.

4. The defendants are appeared and filed their written statement at Exh. No. 13. Defendants denied all allegations, pleadings and prayer of plaintiff. They denied that the plaintiff is in possession of suit property. They admitted that plaintiff has run library since 30 to 35 years. The plaintiff is registered trust. The

plaintiff has not run library in suit property. The Grampanchayat has not allotted suit property to plaintiff. The resolution not passed as per rules. By collusion plaintiff alongwith board members of grampanchyat in the year 2012 has prepared false resolution. The grampanchyat has having record. The record of Grampanchyat and resolution which is produced by plaintiff are doubtful. As per section 55 of Maharashtra village panchayat Act grampanchayat has no right to allot suit property in favour of plaintiff. As per section 59 of village Panchayat Act the jurisdiction to decide dispute is hold by Collector and this court has no jurisdiction. They lastly prayed for rejection of application.

5. Heard learned advocate Shri. M. P. Shaikh for plaintiff and Shri. V. M. Vagdare for defendants.

6. Perused record, application and written statement.

7. Following points are arises for my determination to which I have given my findings thereon along with my reasons.

Sr.No.	Points.	Findings
1.	Whether the plaintiff is prima facie case for grant of temporary injunction as prayed for?	Yes.
2.	Whether the balance of convenience lies in favor of the plaintiff?	Yes.
3.	Whether the plaintiff would suffer irreparable loss, if temporary injunction is refused?	Yes.
4.	What order?	Application is allowed as per final order.

Reasons

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

As to point No.1 to 3.

9. The plaintiff's case is the suit property was given by Grampanchyat for conducting library in village Kharosa. On perusing copy of trust registered certificate it appears that the plaintiff trust is registered under Maharashtra Public Trust Act and its number is F565 at ACC office Latur. From the evidence of certificate it comes on record that the plaintiff is registered trust.

10. On perusing 8-A extract which is produced by plaintiff it appears that the plaintiff has possessed suit property. On perusing resolution No. 4 and 7 passed by Grampanchyat dated 26.5.2012 it appears that the members of Grampanchyat has called meeting. They are agreed to give suit property for using in favor of plaintiff. The resolution was passed by majority. From the evidence of resolution passed by Grampanchyat Kharosa prima facie it comes on record that suit property given to plaintiff for using and conducting library. Considering these evidence prima facie it appears that the plaintiff has having suit property and possessed suit property.

11. The advocate for defendant Shri. V. M. Vagdare submitted that the plaintiff trust has not passed resolution for filing present suit. Therefore the secretary has no right to file present suit. It is admitted that the plaintiff has not produced any resolution but at this stage the defendants has admitted that Shri. Vilas Patil is secretary of plaintiff trust. Therefore the tenability of present suit can be considered at the time of final hearing. At this stage in my view it is not necessary to decide the question of maintainability of present suit.

12. The advocate for defendant further submitted that as per resolution passed on 26.5.2012 the required quorum was not

present and subject of plaintiff's suit property is not mentioned in subject list. On perusing resolution passed dated 26.5.2012 it appears that the 3 and 9 members are present and they are passed resolution. The resolution is completed on that day. Considering these circumstances in my view the quoram of that meeting was completed. In resolution it is mentioned that the subject which is come before meeting can be considered in that meeting. Therefore in my view it is not necessary to mention subject in subject list.

13. Advocate for defendant further submitted that section 55 of Maharashtra Village Panchayat Act provided that without permission of Chief Executive Officer, Grampanchyat has no right to lease, sale or transfer the property in favour of plaintiff. Therefore the resolution is illegal one. At this stage and deciding temporary injunction application for deciding the legality of resolution which is provided under section 55 of Maharashtra Village Panchayat Act it is necessary to given opportunity to both the parties. At this stage it is not necessary to decide the question of legality of resolution.

14. The advocate for defendant further submitted that as per section 59 of Village Panchayat Act the dispute in respect of Grampanchyat property is needs to be decided by collector and this court has no jurisdiction to tried and entertain the dispute between plaintiff and defendant. On perusing section 59 prima facie it appears that claims to property of Grampanchyat can be decided by collector. In present case plaintiff has not claimed his ownership over the suit property. He has wanted to protection in temporary basis. Considering these all circumstances I am not found any substance in the argument of defendant. The objection which is taken by advocate for defendant is necessary to decide at the time of final haring. This stage is not fit to decide that objections.

15. Considering all above discussion I am coming to conclusion that the plaintiff has possessed suit property as per resolution passed by Grampanchyat Kharosa dated 26.5.2012. Therefore the plaintiff has established prima facie case. The balance of convenience is in favour of plaintiff. If application rejected then definitely irreparable loss will be caused to plaintiff. The application needs to be allowed. If application is allowed then no irreparable loss will be caused to defendants. Hence I answer point no. 1 to 3 in the affirmative and in answer to point No.4, I proceed to pass the following order.

O R D E R

1. The application Exh. No. 5 is allowed.
2. The defendants themselves or their agents or servants are temporarily restrained from causing obstruction to plaintiff's possession over the suit property without following lawful procedure, till final disposal of this suit.
3. No order of cost.

Date : 22/04/2019

(S. P. Jadhav)
Jt. Civil Judge J.D., Ausa.