

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, AUSA, DIST.
LATUR.

(Presided over by N. B. Rathod)

REG. CIVIL SUIT NO. 848/2022
Madhukar Vs. Nagnath + 3

ORDER BELOW EXH. 5
CNR No : MHLA-1400-2079-2022

This is an application filed by the plaintiff for grant of temporary injunction praying thereby to restrain the defendants from obstructing the plaintiff from taking water of his share from the common/disputed well and bore-well mentioned in para 2-A to C.

2] Perused the pleading of the applicant/plaintiff. The defendant no.1 and 2 appeared in the matter but failed to file reply. Hence, the suit is proceeded without their reply. The defendant no. 3 and 4 failed to appear in the matter. Hence, the suit is proceeded ex-parte against defendant no. 3 and. 4.

3] Considering the matter before the Court, following points arise for my determination I have recorded my findings thereon along with my reasons as under ;

SN	POINTS	FINDINGS
1.	Does the plaintiff prove that prima facie case is made out in his favour?	..Yes
2.	Does the plaintiff prove that balance of convenience lies in his favour?	..Yes
3.	Does the plaintiff prove that if injunction is not granted, then irreparable loss will be caused to him which cannot be compensated in terms of money?	..Yes
4.	What order ?	...As per final order (Application is partly allowed)

:: REASONING ::

4] The record has been carefully and thoroughly perused. The submissions of learned advocate Shri. A. T. Birajdar for the plaintiff have been heard at length. None appeared for the defendant no.2 for hearing/argument.

AS TO POINT NO.1 TO 3 :-

5] While considering an application for the injunction, it is well settled principle that, the court must look into : (i) Prima Facie, (ii) Balance of Convenience and (iii) irreparable injury. Likewise, in Colgate Palmolive (India) Ltd. Vs. Hindusthan Lever Ltd. AIR 1999 SC 3105, the Hon'ble Supreme Court of India observed that the other considerations which ought to weigh with the Court hearing the application or petition for grant of injunctions are ;

- (i) Extent of damages being an adequate remedy;
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to injury that may be suffered by the defendants by reason therefore;
- (iii) the Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;
- (iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible;
- (v) the issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;
- (vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise”.

6] With the above guidelines, I am taking into consideration the application for consideration with the aid of 3 pillars of golden rule of temporary injunction. The Plaintiff has submitted that agricultural land bearing Gut no. 52 was ancestral property of parties to the suit. Said land was partitioned and the plaintiff got his share in said property and he is in possession of his share. There is common well and common bore-well in land Gut no. 52. Said common well and common bore-well is situated in the share of/land of defendant no.3. The plaintiff and defendant no.1 and 3 are having 1/3 common share in said disputed well and bore-well. The defendant no. 1 to 3 have obstructed and opposed the plaintiff from taking water of his share from disputed well and bore-well. There is no water for animals of the plaintiff and it is difficult for him to cultivate his land without water. Accordingly, he prayed to grant temporary injunction till disposal of the suit.

7] Admittedly, on careful perusal of document placed on record i.e. copy of partition deed it is clearly shown that the land Gut no. 52 was partitioned in between three brothers i.e. plaintiff and defendant no. 1 and 3. In said partition deed it is clearly mentioned that “there is one well and bore-well and plaintiff and defendant no. 1 and 3 are having their common share therein.” The learned advocate for plaintiff argued that the defendants are obstructing the plaintiff from taking water of his share from disputed well and bore-well. The plaintiff has given complaint to the police station AUSA and he has also given letter to the learned Tahsildar, AUSA. On careful perusal of said complaint given by the plaintiff it is clearly established that there is

obstruction to him at the hands of defendants. As per copy of partition it is established prima-facie it is shown that the plaintiff is having 1/3 share in common well and bore-well situated in Gut no. 52.

8] Another submission of plaintiff is that the defendant no. 1 has digged new bore-well adjacent to the disputed bore-well and he is also having 1/3 share in water of new bore-well of defendant no.1. The defendant nos.1 to 3 refused to give 1/3 share of water from new well on 15.06.2022. He has submitted that he is entitled for 1/3 share in water of new bore-well. Here it is pertinent to note that as per the theory of the plaintiff the defendant no.1 has digged new bore-well in his share. Hence, prima-facie it is shown that the defendant no. 1 will have the authority and right to take water from his new bore-well.

9] After partition the defendant no.1 has digged new bore-well. Hence, the submission of plaintiff that he is also entitled for 1/3 of water in new bore-well is not highly appreciable and considerable. The record and documents filed on records established that the plaintiff is only having 1/3 share in disputed well and bore-well as per partition dated 4.12.2003. Hence, definitely he is entitled to take 1/3 water from common well and bore-well. Accordingly, I hold that the plaintiff has established priam-facie case in his favour in respect with the common well and common bore mentioned in para 2-A and 2-B of the plaint/this application.

10] Further, the balance of convenience is also lies in favour of the plaintiff. The plaintiff has specifically mentioned that there is no water for his cattle's/animals and it is very difficult for him to cultivate his land without water. Hence, under such fact and circumstances of the case it is clearly shown that if the application is rejected then irreparable loss would be caused to the plaintiff than the defendants

and if the application is allowed then also no irreparable loss would be caused to the defendants. Accordingly, I answered **point no.1 to 3 in affirmative.**

AS TO POINT NO. 4 :-

11] In view of my findings in **affirmative to the point nos.1 to 3** along with my reasons and after evaluating all prose and cons, I proceed to pass the following order :-

:: O R D E R ::

- i. Application (**Exh. 5**) is hereby partly allowed.
- ii. The defendants, their agents or any other persons are hereby temporarily restrained from obstructing the plaintiff from taking 1/3 share of water from disputed common well and common bore-well mentioned in Para 2-A (परिच्छेद क्र.२ - अ) and Para 2-B (परिच्छेद क्र.२ - ब) of the plaintiff till further order.
- iii. The relief which is not specifically granted are deemed to be rejected.
- iv. Costs in cause.

(Dictated and pronounced in open Court.)

Date : 12.01.2023
Ausa

(N. B. Rathod)
2nd Joint C.J.J.D., Ausa.