

Manmath vs. Bhimashankar

Common order passed below Exh.05 and Exh. 19.

Application at Exh No. 5 is filed by plaintiff under order 39 rule 1 and 2 of CPC against defendants in respect of Gat No. 105 for temporary injunction..

2. Application at Exh. No. 19 filed by defendants against plaintiff under order 39 rule 1 and 2 of CPC in respect of Gat No. 106 for temporary injunction.

3. In short plaintiffs case is as under:-

The plaintiff No. 1 and 2 are husband and wife. They have owned agricultural land in Gat No. 105 situated at Kininawre, Tq. Ausa which is mentioned in paragraph No. 4 of Exh. No. 5. The Gat No. 105 is owned by plaintiff. That property is ancestral property. The plaintiff No. 1 and 2 partitioned that property. The effect of partition effected in record as per mutation entry No. 6 dated 14.8.1990. Previously Gat No. 105 is survey No. 39/2. In consolidation scheme survey No. 39/2 is converted into Gat No. 105 in the year 1988. Names of plaintiff recorded in revenue record. The plaintiffs are owner of well in Gat No. 105. They have taken electricity connection in the name of plaintiff No. 1. They have possessed well alongwith landed property of Gat No 105. Defendants are adjoining land holders. Their land is situated on western side of plaintiffs property. Defendants are obstructed to the possession of plaintiff. They are told plaintiff that they are owner of well which is situated in plaintiffs land. Therefore plaintiff have filed present suit for perpetual injunction. By way

of present application plaintiff prayed the temporary injunction against defendants. Plaintiff lastly prayed for allowing application.

4. Defendants have filed their written statement at Exh. No. 17 alongwith counter claim. According to defendants they are owner of land in Gat No. 106. Well which is stated by plaintiff is situated in Gat No. 106. They are also owner of that well. They have taken water from that well. The Gat No. 106 is owned by them. They denied that plaintiff is owner of that well. They admitted that plaintiff is owner of Gat No. 105 But they denied that well is situated in Gat No. 105. According to defendant the plaintiff has falsely mutated their name in revenue record of well. In consolidation scheme the plaintiffs are made false record. The electricity connection is present on well. The defendants have taken enjoyment of that well since 30 to 35 years. The connection of electricity received in the name of plaintiff No. 1. That time defendants have paid half share of money to plaintiff. The plaintiff has received water from that well with the consent of defendants. They lastly prayed for rejection of application.

5. The defendants have filed application at Exh. No. 19 for temporary injunction against plaintiff. According to defendants they are the owner of Gat No. 106 which is situated on the western side of Gat No. 105. The defendants have filed application of measurement of Gat No. 106. The Cadastral surveyor as per R.E. No. 1808/2018 dated 16.5.2018 has measured land from Gat No. 106. In that measurement the Cadastral surveyor has found that well is situated in Gat No. 106. Therefore defendants asked plaintiff. But plaintiff has flatly refused request of defendants. The well is ancestral well. It was owned by defendants.

Therefore defendants are owners of that well and Gat No. 106. The plaintiffs are wanted to commit the obstruction to the defendants possession. Therefore defendants have filed counter claim and prayed perpetual injunction against plaintiff. By way of present application defendants are prayed temporary injunction against plaintiffs that is not to obstruct to their possession over land from Gat NO. 106 and well. They lastly prayed for allowing application.

6. The plaintiffs have filed their written statement to the counter claim of defendants at Exh. No.22. According to plaintiffs they are owner and possessor of Gat No. 105. The well is situated in Gat No. 105. They denied all allegations, prayer and pleading of defendants. They denied that well is owned by defendants. They denied that defendants have paid money for taking electricity connection. They denied that defendants are used water from that well. They denied that defendants have measured Gat No. 106 through Cadastral Surveyor and surveyor found that well is situated in Gat no. 106. They lastly prayed for rejection of application.

7. Heard learned Advocate Shri. S. H. Patel for plaintiff and S. T. Shinde for defendants.

8. Following points are arises for my determination in respect of Exh. No. 5 to which I have given my findings thereon along with my reasons.

Sr.No.	Points.	Findings
1.	Whether the plaintiffs are prima facie case for grant of temporary injunction as prayed for?	Yes.

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| 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. |

9. Following points are arises for my determination in respect of Exh. No. 19 to which I have given my findings thereon along with my reasons.

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

Reasons

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

As to point No.1 in respect of Exh. No. 5 and Exh. 19.

11. According to plaintiff they are the owner and possessors of Gat no. 105. According to defendants they are owners and possessors of Gat no. 106. Both the parties are admitted that plaintiff are owners of land

from Gat No. 105 and defendants are owner of Gat no. 106. On perusing 7/12 extract of Gat No. No. 105 it appears that the plaintiffs are owners of land from Gat No. 105. On perusing affidavits of defendants it appears that defendants are the owners and possessors of Gat No. 106. The plaintiffs are contended that the well is situated in Gat No. 105 other hand the defendants are pleaded that the well is situated in Gat No. 106. The crux of matter is well (in short the “disputed well”.)

12. The plaintiffs are pleaded that disputed well is situated in Gat No. 105. On perusing 7/12 extract of Gat No. 105 it appears that the plaintiffs are owners of Gat No. 105. On perusing Exh. No. 49 it appears that the Gat No. 105 made from survey No 39/2. The name of plaintiff No. 1 is shown in Exh. No. 49. In consolidation scheme the survey no. 39/2 was converted into Gat No. 105. From these evidence prima facie it comes on record that Gat No. 105 made from survey No. 39/2 and it is owned by plaintiffs.

12. On perusing Exh. No. 49 it appears that in consolidation scheme the survey no. 39/1 was converted into Gat No. 106. Gat No. 106 was owned by father of defendant No. 1. From the evidence of Exh. No. 49 and affidavits of defendants prima facie it comes on record that defendants are owners of Gat No. 106.

13. Both the parties are claimed their ownership and possession over the disputed well. The plaintiffs are pleaded that disputed well is situated in Gat No. 105. The defendants are pleaded that the well is situated in Gat No 106. On perusing Exh. No 48 which is map provided by Dy.S.L.R. Office AUSA it appears that well shown in the Gat No. 105. Gat

No 106 is situated on western side of Gat No 105. From the evidence of Exh. Ho 48 prima facie it comes on record that disputed well is situated in Gat No 105. On perusing Exh. No. 48 it appears that there is no well shown in that map in Gat No. 106. Therefore prima facie it comes on record that there is no well situated in Gat no. 106

14. In pleading of defendant which is at Exh. No. 17, the defendants are pleaded that plaintiffs are falsely made record in consolidation scheme and shown area of Gat No. 105 is falsely. It means defendants are stated that there is mistake committed in consolidation scheme. The consolidation scheme is prepared in the year 1988. The present suit is filed after the laps of 30 years from the consolidation scheme. The defendants are not produced any record which is shows that they are tried for correction of consolidation scheme record. The presumption is in favour of entries recorded in consolidation scheme and maps. Admittedly that presumption is rebuttable but in the case of hand defendants have not produced any evidence which is shows that the record was falsely made or falsely prepared in consolidation scheme.

15. The defendants pleaded that the electricity connection is taken in the name of plaintiff No. 1. They have paid their half share amount. Other than their oral contention they have not produced any evidence which is prima facie show that they are paid half share amount to plaintiff. Other hand plaintiff have produced various electricity bills which is shows that the plaintiff has used that electricity connection which is present on disputed well and it was paid by plaintiff. From these evidence prima facie it comes on record that the disputed well is situated

in Gat No. 105. There is no evidence before me which is prima facie shows that the disputed well is situated in Gat No. 106.

16. The defendants in their written statement pleaded that they have measured their Gat No. 106 through Cadastral surveyor as per R. E. No. 1808/2018 on 16.5.2016. The Cadastral surveyor has found that the disputed well is situated in Gat No. 106. But other than oral statement defendants have not produced any evidence. The map which is prepared by Cadastral surveyor in R.E. No. 1808/2018 also not produced before me. Other than their oral contention there is no evidence which is shows that disputed well is situated in Gat No. 106. Both the parties are produced various affidavits of persons which is stated in favour of them. It is settled law that the documentary evidence is prevails over the oral evidence. Therefore this is not fit case to considered the affidavits of persons. Considering all above discussion I found that plaintiff has prima facie established that they are owners of Gat no. 105 and disputed well situated in Gat No. 105. The defendants have failed to prima facie establish that the disputed well is situated in Gat no. 106. But they are established that they are owners of Gat No. 106. Therefore I answer point No. 1 in respect of Exh. 5 in affirmative and point No. 1 in respect of Exh. No. 19 in negative.

As to point No.2 in respect of Exh. No. 5 and Exh. 19.

17. In answer to point No. 1 I found that the disputed well is present in the Gat No. 105. Defendants have failed to establish that the disputed will is situated in Gat No. 106. Considering the balance of convenience in my view it is in favour of plaintiff because plaintiff established that they are the owners of Gat No. 105 and disputed well

situated in Gat no. 105. Other hand defendants are failed to establish that disputed well is situated in Gat No. 106. The defendants are pleaded that well is situated in Gat no. 106. In Cadastral surveyor report their land continued till the well. But defendants not produced any evidence therefore the balance of convenience lies in favour of plaintiff. The defendants only orally stated that the plaintiffs are obstructed to their possession over the land of Gat No. 106 as well as over the disputed well. But defendants have fails to establish that the disputed well is situated in Gat No. 106 and the land of Gat No. 106 is continued till disputed well. The defendants pleaded that the plaintiffs has made false record in consolidation scheme. But not produced any evidence which is prima facie shows that the plaintiffs have made false record in consolidation scheme. Considering these circumstances in my view the balance of convenience is not lies in favour of defendants. Therefore I am coming to conclusion that the balance of convenience is in favour plaintiff. Therefore I answer point no. 2 in respect of Exh. 5 in affirmative and point No. 2 in respect of Exh. No. 19 in negative.

As to point No.3 in respect of Exh. No. 5 and Exh. 19.

18. Considering all above discussion I am coming to conclusion that plaintiffs have prima facie established their case, their possession over the Gat No. 105 and disputed well. Therefore temporary injunction needs to be granted in favour plaintiff. If the application is rejected there will be irreparable loss caused to plaintiff. Defendants are failed to establish that the disputed well is situated in Gat no. 106 and the land of Gat No. 106 continued till well. They are fails to establish that plaintiffs have falsely

made record in consolidation scheme. Therefore in my view there is no irreparable loss caused to defendants if application Exh. No. 19 is rejected. Hence, I answer point No.3 in the affirmative in respect of Exh. No. 5 and point No. 3 in respect of Exh. No. 19 in negative 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 application Exh. No. 19 is rejected.
3. The defendants are temporarily restrained from causing obstruction over the peaceful possession of plaintiff over the Gat No. 105 situated at Kininawvare and well situated in Gat no. 105 till disposal of suit.
4. No order of cost.
5. This order be kept alongwith Exh. 5. And copy of this order be kept alongwith Exh. No. 19.

Date : 05/02/2019

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