

Regular Civil Suit No. 520 / 2017
Balasaheb Khajure Vs. Balasaheb Ghodke
& ors.
CNR No. MHLA14-001306-2017

ORDER BELOW EXH. 45

This is an application filed by plaintiff against defendant nos.1 to 3, under Order XXXIX Rule 1, 2 of the Code of Civil Procedure.

2) Say of defendant nos.5 to 9 is at Exh.50. Defendant No.1 and 2 have filed their say.

3) Agricultural land Gat No. 94 to the extent of 95 R is situated at village Killari, Tq. Ausa, Dist. Latur is subject matter of suit and this application (hereinafter referred as 'the suit property').

4) Heard Adv. Shri S.G. Patil for plaintiff. Defendants and their advocates are absent for argument.

5) Considering contentions of both parties and documents filed on record, following points arise for determination and findings recorded thereon with reasons are as under :-

Sr.No.	POINTS	FINDINGS
1.	Whether plaintiff is having prima facie case?	... No
2.	Whether balance of convenience lies in favour of plaintiff ?	... No

3. If injunction refused, will plaintiff suffer irreparable loss ? ... No
4. What order? As per final order

REASONS

AS TO POINT NOS.1 TO 3 :-

6) These points are interconnected with each other, therefore to avoid repeated discussion, they are being discussed together.

7) It is submitted on behalf of plaintiff that, defendants have encroached over suit property and started construction thereon therefore, they be restrained from any type of construction over suit property. But defendants have denied said facts. According to them, previously application of temporary injunction was rejected on merits. Therefore, similar application on same ground is not maintainable and same be rejected.

8) Present suit has been filed for declaration of ownership with perpetual injunction. Plaintiff has claimed ownership and possession over suit property. It is his contention that, suit property allotted in partition to him. But, defendants unauthorisedly started construction thereon. Perused entire record of the suit. It shows that, previously application of temporary injunction (Exh.5) was rejected on merits on 22-3-2018. Plaintiff has filed present similar application on same ground. It shows that, he has not challenged the order passed below (Exh.5). Issues framed at (Exh.40) on 16-4-2018. But,

plaintiff has not lead his evidence. Therefore, similar application on same ground is not maintainable and plaintiff again cannot claim equitable relief of temporary injunction against defendants when he has already failed to prove his prima-facie case. Therefore, balance of convenience is not lies in his favour. If temporary injunction is not granted against defendants, plaintiff will not suffer irreparable loss. Therefore, I answer point nos.1 to 3 in the affirmative and to point no.4, I pass following order :-

ORDER

- 1} Application Exh.45 is rejected.
- 2} Costs in cause.

Ausa
6th July, 2019

(D.M. Zate)
Civil Judge Junior Division,
Ausa.