

ORDER BELOW EXH. 05.

This is an application filed by plaintiff u/o 39 rule 1 and 2 of C.P.C., restraining the defendants from breaking northern side bandh of suit property adm. 1 H. 83 R land in gat no. 23 and not to damage the crop of plaintiff in the said gat number and also not to break bandh towards west and north side of suit property adm. 1 H. 42 R land in gat no. 34 and not to obstruct in the peaceful possession over the said property till the final disposal of the suit. In brief, the case of applicant is under ;

2. Plaintiff no.2 is son of plaintiff no.1. Defendant no.1 is real brother of plaintiff no.1. Defendant no. 2 and 3 are children of defendant no.1. In the year 1983 partition has been taken place in between defendant no.1 and his brothers. Mutation entry no. 42 has been effected to that effect. In the year 1990 plaintiff no.1 has purchased 1 H. 83 R land in gat no. 23 from one Nagbhushan Annarao Patil. On 30.4.1999 plaintiff no.2 has purchased 17 R land in gat no. 34. The plaintiffs are in possession over the said suit properties.

3. The suit properties are adm. 1 H. 83 R land in gat no.23 and 1 H. 42 R land in gat no. 34 /1 situated at village Mandurki Tq. Chakur which is more particularly described in para no.4 of the application. The defendants are started to demolished the bandh towards northern side of the gat no. 23 and obstructing to the peaceful possession over the suit property of the plaintiff. Hence, the plaintiff constrained to file the present application.

4. The defendants have resisted the application by filing their say at exh. 24. They denied the contentions in the application. In brief, according to defendants, they did not obstruct to the plaintiff. They filed suit bearing RCS No. 29/2014 against the plaintiffs and in that suit temporarily injunction against the present plaintiffs. The plaintiff has filed the present suit by showing the boundaries of the said property in the present case and in order to defeat the said suit, the application is filed. Hence, it is prayed to reject the application.

5. From the rival contentions of both the parties, following points arise for my determination and I have recorded my findings thereon for the reasons stated in the later part of the order.

Sr. No.	P O I N T S	F I N D I N G S
1.	Whether the plaintiff has prima-facie case ?	...In the affirmative.
2.	Whether the balance of convenience lies in favour of the plaintiff ?	...In the affirmative.
3.	Whether the plaintiff will suffer irreparable loss, if the injunction is refused ?	...In the affirmative.
4.	What order ?	...As per final order.

R E A S O N S

AS TO POINT NOS. 1 TO 4 :-

6. Plaintiff as well as defendants have filed some documents in the case, which will be discussed at the appropriate stage.

7. The counsel of the plaintiff argued that plaintiff no.1 and

defendant no.1 are real brother inter se. 1 H. 25 R land in gat no. 34/1 has been received by plaintiff no.1 in the partition. And 17 R land in gat no. 34/1 is purchased by plaintiff no.2. The copy of 8/A extract is filed and copies of 7/12 extract are also filed. The suit properties of RCS No. 29/2014 and in the present case are different. Therefore, the said order has no concerned to the present suit. The defendants are misusing the said order and trying to damage the suit property. The plaintiffs are in possession in suit property. Hence, it is prayed to allow the application.

8. The learned counsel of the defendants argued that the present the suit came to be filed to defeat suit RCS No. 29/2014. The boundaries in the present suit are the same of RCS No. 29/2014. Therefore, it is prayed to reject the application.

9. Perused the entire record of the case. It is necessary to see the boundaries of the suit property in the present case and in the suit of the earlier suit bearing RCS No. 29/2014. On perusal of copy of plaint at exh. 27 it appears that the suit properties are gat no. 6, 18, 34 and 10, but in the present case the suit properties are gat no. 23 and 34. In the present case it is the contention of the defendants that the boundaries of the suit properties are incorrect. But it is material to see that the defendants did not mention in their written statement how the boundaries of the suit properties are incorrect.

10. The learned counsel of the defendants has invited my attention towards description of the suit properties in the RCS No. 29/2014. According to him, 47 R land in gat no. 34/2 are towards west side and towards east side of that land there is 27 R land of defendants.

The said two lands are in two pieces. In between said two land there is one piece of land. Considering the situation mentioned by learned counsel of the defendants it appears that the lands of defendants are in two pieces and they are not adjacent. On the contrary in between two pieces of land there is land of plaintiff. The defendants in their W.S. at para no. 4 admitted that land of defendant is adjacent to the land of plaintiff.

11. On perusal of copy of 7/12 extract at exh. 13 it appears that the plaintiff no.1 is in possession of land adm. 1 H. 25 R in gat no. 34/1 and on perusal of copy of 7/12 extract exh. 14 it appears that the plaintiff no.2 is in possession of land adm. 17 R in gat no. 34/4. On perusal of mutation entry no. 41 at exh. 10 it appears that plaintiff no.1 has purchased 1 H. 83 R land in gat no. 23 and mutation entry has been sanctioned to that effect.

12. In the present case it is the case of defendants that at the time of partition no equal land has been allotted to the sharer. But at this stage the said contention has no important. The defendant did not give how the boundaries of the suit properties are incorrect. The boundaries in the present case and earlier suit are not the same. Therefore, the submissions of the learned counsel of defendants appears no force.

13. From the aforesaid discussion, it prima facie appears that plaintiffs are in possession over suit property. The plaintiffs have prima facie case. Balance of convenience lies in favour of plaintiffs and irreparable loss will cause to the plaintiffs if injunction is not granted.

Hence, I answer issue no. 1 to 3 in the affirmative. The application is liable to be allowed. In the result, I proceed to pass the following order.

ORDER

1. The application Exh. 5 is allowed.
2. The defendants are hereby temporarily restrained from causing any type of obstruction including breaking of bandh etc. to the plaintiffs over the suit property mentioned in para no.4 of the application till final disposal of the suit.
3. Costs in cause.
4. Dictated and pronounced in the open court.

Place : Chakur.
Date : 20.07.2016.

[**A. R. Gunnal**]
Civil Judge, J.D., Chakur.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. File Order are same, word to word, as per the original Order.

Name of the Stenographer :-

Name of the Court :- Civil Judge, J.D., Chakur.

Date of Order :- 20/07/2016

Order signed by the
Presiding Officer on :- 20/07/2016

Order uploaded on :- 20/07/2016