

ORDER BELOW EXH- 5

This is an application filed by the plaintiffs under Order 39, Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunction restraining the defendants from obstructing cultivation of the suit property.

2] It is case of the plaintiffs that they are owners and in possession of the agricultural land bearing Gut No. 4/1/1 admeasuring 0.60 hector situated at *Mauze* Harankhuri, Tal. Dhadgaon, Dist. Nandurbar. (hereinafter referred as the suit property). The plaintiffs are cultivating the suit property. On 25.05.2017, the defendants illegally entered into the suit property and threatened the plaintiffs to dispossess from the suit property. Therefore, the plaintiffs constrained to file the present suit for perpetual injunction.

3] The defendants appeared and filed their written statement at Exh. 14. They denied all the contentions raised by the plaintiffs. It is defence that grand father of the defendants was owner of the suit property. On 04.05.1983, father of the plaintiffs illegally mutated his name over the suit property. On 10.02.2017, the plaintiffs dispossessed the defendants from the suit property. Therefore, the defendants have filed suit for possession and declaration vide R.C.S. No. 16/17. The plaintiffs are not owner of the suit property.

4] Perused the application, say and record of the case. Heard learned advocates for both the sides.

5] Considering above facts and circumstances, material on

record and arguments of both the parties, following points arise for my determination and I recorded findings thereon with reasons stated below,

Sr. No.	Points	Findings
1	Whether there is a prima facie case in favour of the plaintiffs ?	No
2	Whether the balance of convenience is in favour of the plaintiffs ?	No
3	Whether the plaintiffs will suffer irreparable loss, if an order of temporary injunction would not be passed as prayed ?	No
4	What order ?	Application is rejected.

REASONS

6] Learned advocate for the plaintiffs argued that the plaintiffs are cultivating the suit property since long. He submitted that there is prima facie case and balance of convenience in favour of the plaintiffs. They will suffer irreparable loss, if injunction is not granted. Hence, he prayed to allow the application.

7] Learned advocate for the defendants strongly opposed the application. He submitted that defendants are owner of the suit property and they have filed suit for possession of the suit property. Therefore, there is no question of interference by the defendants. Hence, he prayed to reject the application.

AS TO POINT NOS. 1 TO 3 -

8] Point nos.1 to 3 are interrelated, therefore, they are being discussed together.

9] In support of their case, the plaintiffs have filed copy of 7/12 extract and mutation entry of the suit property.

10] On perusal of record it appears that the defendants have filed suit for recovery of possession of the suit property vide R.C.S. No. 16/2017 before this court. This fact is not denied by the plaintiffs. Therefore, it is clear that the defendants have filed the said suit prior to filing of the present suit. The defendants are trying to recover possession of the suit property by legal recourse. Moreover, mutation entry Exh. 159 shows that the suit property was allotted to father of the plaintiffs by father of the defendants. The defendants denied ownership of the plaintiffs over the suit property. Therefore, it is clear that the plaintiffs have filed the present suit as counter attack. There is no mentioning about the boundaries of the suit property. It appears that some portion of the suit property Gut no. 4/1/1 is in possession of the defendants. In such circumstances, in absence of boundaries and specific demarcation of the suit property, I am of the opinion that it is not just and proper grant relief of temporary injunction.

11] Considering above discussion, I am of the opinion that there is no prima facie case in favour of the plaintiffs. Therefore, they are not entitled to temporary injunction. Hence, I recorded finding in negative to point nos. 1 to 3 and proceed to pass the following order.

ORDER

The application Exh. 5 is rejected.

Date:– 05.10.2017

(M. B. Patil)
C.J.J.D., Dhadgaon.