

MHND130006122022



R.C.S.No. 159/2022

Rajeshwar

Vs.

Balaji & Oth.

ORDER BELOW EXH. NO. 05

(Passed on 13/12/2022)

This is an application moved by plaintiff under order XXXIX rule 1 & 2 of Code of Civil Procedure to restrain the defendants and their servant, agent, employees, or anyone claims on behalf of them from causing obstruction and interference in peaceful possession of the plaintiff over the ward No.8 property No. 133 old property No. 04-000203 admeasuring 1247 sq.feet. at Bhokar Tq. Bhokar Dist. Nanded. (Here in after referred as the "suit property").

2] The plaintiff contended that, he is the owner and possessor of suit property. Originally the father of Plaintiff by name Madhavrao khandoji Metkar is the original owner of suit property. On 9.12.1994 the father of Plaintiff died. After that in the year 2020 Plaintiff and his mother filed a miscellaneous civil application (RJE)No.99/2020 in the civil court for heirship certificate. Accordingly civil court issued heirship certificate in the name of Plaintiff and his mother. On the basis of heirship certificate Plaintiff got mutated his name to the suit property in revenue record.

3] Plaintiff further contended that there is constructed house over the suit property. Towards the western side of house there is open space of

20 feet X 20 feet total Admeasuring 400 square-feet. Defendants are trying to encroach over the said 400 square-feet open space by erecting teen shed. On 18.6.2022 at about 5 PM defendants came along with teen and iron pipe with intent to erect teen shed over suit property. At that time Plaintiff and his mother asked the defendants for their activities. At that time defendants assaulted mother of Plaintiff by fist and slaps. So, the Plaintiff along with his mother approached to police station and filed complaint against defendants. But the police officers have not taken any action. Again on 20.06.2022 defendants tried to encroach over open space in suit property. Hence, plaintiff filed the present suit for perpetual injunction to restrain defendants from causing interference in the peaceful possession of the plaintiff over the suit property along with the present application.

4] The defendants filed written statement vide Exh.20 and adopted written statement as reply on injunction application by filing pursis vide Exh.22. They have denied all the adverse allegations against them in the plaint. Defendants contended that Plaintiff and defendants are the heirs of the common ancestor by name Khandoji Metkar. Plaintiff hide this fact from the court. They further contended that suit property is ancestral property of Plaintiff and defendants. Plaintiff having the knowledge of same intentionally hide this fact from the court and obtain heirship certificate on wrong and the concocted facts. They further contended that defendants are in the possession of suit property since long. Also, there is a furniture and other Machinery lying on the suit property belonging to the defendant. Defendants already constructed teen shed over the suit property and enjoying the possession of the same. Plaintiff got mutated his name to the revenue record in Namuna number 8 which is illegal and

without the permission of defendants and other family member. They lastly prayed to reject the present application.

5] Heard the learned counsel for the plaintiff and the defendants

6] Perused the record, following points arise for the determination to which my findings for the reasons are as under:

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether plaintiff proves that, there is prima facie case in his favour?	Yes
2	Whether balance of convenience lies in favour of plaintiff?	Yes
3	Whether irreparable loss will be caused to the plaintiff, if the temporary injunction is refused?	Yes
4	What order?	As per final order.

REASONS

7] The plaintiff has relied upon the documents i.e the copy of namuna No.43 of ward No. 8 property No.133, copy of heirship certificate issued by civil court in Misc. (RJE)No.99/2022, copy of namuna No.8 of ward No. 4 property No.202. Where as the defendants relied on property card issued by Deputy Superintendent of Land Record Bhokar, toch map

of Nagar Bhumapan No. 1546, 1547 and copy of letter given by defendant to municipality, Bhokar.

AS TO POINT NO.1 TO 3

8] All the points being interconnected are taken together for discussion to avoid the repetition. In order to obtain the relief of temporary injunction under order under order XXXIX Rule 1 of the civil procedure code, it is for the Plaintiff to establish that, he has prima facie case for grant of temporary injunction, meaning thereby, he has been in actual possession of the suit property. Secondly that, the balance of convenience lies in his favour and lastly that, he would suffer irreparable loss, if temporary injection is refused.

9] perused record in the light of argument advanced by both the parties. On perusal of record, it is noticed that is the case of Plaintiff that he is the owner and possessor of suit property on the basis of heirship certificate. He contended that suit property belongs to his father and after the demise of his father he became owner and possessor of suit property. On the other hand, defendants came with the case that the suit property is ancestral property of Plaintiff and defendants. As such defendants are in possession of the suit property since long.

10] Plaintiff filed the heirship certificate on record issued by civil court in miscellaneous RJE No. 99/2020. Also, Plaintiff filed copy of Namuna No. 43 of ward No. 8 issued by Municipalty Bhokar. On perusal of these documents it is clear that name of Plaintiff appears in the column of ownership. On the other hand, defendants argued that mutation of property in the revenue records neither creates nor extinguishes title to

the property nor has it any presumptive value on title. In support of this submission defendant relied on the judgment of Hon'ble Supreme Court in special leave petition No. 13146/2021 **Jitenra singh vs The state of M.P** in which the Supreme Court held that as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose.

11] Now it is settled law that revenue records does not confer title on a person whose name appears in the record of rights. Entries in the revenue records have only fiscal purpose. In the present case Plaintiff is claiming his possession over the suit property. The name of Plaintiff appearing in the revenue record is prima facie suggest the possession of Plaintiff over suit property. Also, the Plaintiff filed the heirship certificate on record. Defendant contended that Plaintiff obtained the heirship certificate on the false fact. But there is nothing on record which would show that defendant challenged the heirship certificate issued in the name of Plaintiff and his mother.

12] It is the contention of the defendants that suit property is ancestral property of Plaintiff and defendants and they are in the possession of suit property since long and they have constructed the teen shed over suit property. Defendants have not filed any document on record to show that the suit property is ancestral property and defendants are in the possession of the suit property since long. It seems that contention of defendants regarding the possession over suit property is oral and not supported by documents. Also, the contention of defendant regarding the nature of suit property as ancestral property seems to be oral not supported by documents. On the contrary Plaintiff filed the documents in

support of his contention regarding possession over suit property. In such circumstances I'm of the view that Plaintiff prima facie established his possession over the suit property. As such Plaintiff has made out the prima facie case in his favour. Accordingly, I answer point No.1 in the affirmative.

13] Defendants contended that Plaintiff falsely obtain the heirship certificate from the court. But the record shows that defendants have not challenged the heirship certificate till the date. Furthermore, the defendants have filed the documents on record -viz. property card issued by Deputy Superintendent of Land Record Bhokar and toch map of Nagar Bhumapan No. 1546, 1547 to show that suit property is ancestral property. These documents are unable to show that the suit property is ancestral property. On the contrary the Plaintiffs contention is based upon documents regarding the possession of suit property. In such circumstances at this stage balance of convenience lies in favour of Plaintiff. Accordingly, I answer point No. 2 in affirmative.

14] The Plaintiff has established prima-faice his possession over suit property. If the interference of the defendants over the suit property is not restrained then it will be result into the deprivation of using suit property to the Plaintiff. Consequently, it will cause loss to the Plaintiff. Therefore, if the temporary injunction at these stages not granted it will cause irreparable loss to the Plaintiff. Accordingly, I answer point No. 3 in affirmative.

15] In the result after considering all above discussion, I am of the opinion that prima facie case lise in favour of the Plaintiff and balance of convenience also lies in favour of Plaintiff. Certainly, Plaintiff will suffer irreparable loss. In view of findings to point number 1 to 3 present

application is liable to be allowed. In the result, in answer to point numbers 4, I proceed to pass following order.

ORDER

1. The application vide Exhibit 5 is allowed.
2. The defendants are hereby temporarily restrained from causing interference and obstruction over the suit property till decision of the suit.
3. costs in cause.

(D. D. Mane)

Place : Bhokar

2nd Jt. Civil Judge Jr. Division,

Date : 13.12.2022

Bhokar.

CERTIFICATE

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

Name of the Stenographer : P.R. Kharbe (Jr. Clerk),

Court Name : 2nd Jt. C.J.J.D. Bhokar

Date : 13-12-2022

Order signed by the

Presiding Officer on : 13-12-2022

Order uploaded on : 13-12-2022