

MHND130006812022

**ORDER BELOW EXH.5 IN R.C.S.No. 165/2022
(Passed on 02.12.2022)**

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 gavthan land towards western side of house property no. 115, Adm.10x27 feet Situated at village Sawargaon (Mal) Tq. Bhokar Dist. Nanded. (Here in after referred as the "suit land").

2] The plaintiff contended that, he is the owner and possessor of the house property no. 115 situated at village Sawargaon (Mal) Tq. Bhokar Dist. Nanded. Towards the west side of house property no. 115 there is open space of gavthan land adm, 10x27 feet i.e suit land. Plaintiff is in possession of the said gavthan land i.e suit land since last more than 35 years. Prior to 16-17 years plaintiff erected wire fencing on the gavthan i.e suit land for security purpose.

3] The plaintiff further contended that, the defendants are the owner of land in gut no. 200 which is adjacent to the suit land from western side. Defendants

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have no concern with the suit land. On 21.06.2022 defendants asked plaintiff to remove wire fencing from suit land. On 24.06.2022 defendants came to the house of plaintiff and abused the wife of plaintiff in filthy language. There after defendants removed wire fencing of suit land. Hence, the plaintiff lodged report to the police station Bhokar but police officers have not taken any action against defendants. 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 land along with the present application.

4] The defendants filed written statement vide Exh.17 and adopted written statement as reply on injunction application by filing pursis vide Exh.19. They have denied all the adverse allegations. Defendants contended that they are the owner of the land in gut no. 200 which is adjacent to the gavthan land from western side. Defendants contended that, the plaintiff is not the owner and possessor of the suit land. Defendants further contended that, there is no remaining land on the western side of suit land. Plaintiff has not filed any documents on record which could show that the sanction in favour of plaintiff regarding use of gavthan land or existence of gavthan land. The plaintiff is trying to encroach on the land of defendants in gut no. 200. The plaintiff has mentioned wrong four corners of suit land. There is no suit land as alleged by the plaintiff is in existence. On the contrary plaintiff encroached over the land of defendants

in gut no. 200 and filed the present false suit against the defendants.

5] The defendants further contended that, plaintiff has not made the Grampanchyat as party to the suit. Which is necessary party. Eventually, they have requested to reject the application.

6] Heard the learned counsel for the plaintiff and the defendants.

7] 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 ?	No.
2	Whether balance of convenience lies in favour of plaintiff ?	No.
3	Whether irreparable loss will be caused to the plaintiff, if the temporary injunction is refused ?	No.
4	What order ?	As per final order.

REASONS

8] The plaintiff has relied upon the documents i.e the certified copy of village form no. 8 issued by

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Grampanchyat office, Sawargaon dated 20.10.2005, certified copy of toch map of agricultural land of defendants issued by T.I.L.R, Bhokar dated 27.06.2022, xerox copy of complaint given to P.S. Bhokar dated 25.6.2022, original copy of N.C. Case dated 25.06.2022, original received copy of complaint given to S. P. Nanded dated 29.06.2022, Original copy of Kachcha Map of suit property, xerox copy of Aadhar card of plaintiff. The contents of application are solemnly affirmed by the plaintiff.

AS TO POINT NO.1 TO 3 :

9] All the points being interconnected are taken together for discussion to avoid the repetition. Plaintiff submitted that he is in the possession of the suit land since last 35 years. He erected wire fencing on suit land for the purpose of security. The suit land is gavthan land. Defendants are interfering and obstructing in the peaceful possession of the plaintiff over the suit land. Defendants removed the wire fencing over suit land. On the other hand defendant submitted that there is no suit land in existence as alleged by Plaintiff. Also Plaintiff is not in the possession of the suit land. Plaintiff is trying to encroach over the property of defendants in gut No. 200.

10] Perused Namuna No. 8 of the Plaintiff's house property which shows that existence of gavthan towards West side of Plaintiff's house. Perused the toch map of gut No. 200 it shows the existence of gavathan towards eastern side of defendants land. Prima facie it shows that there exist gavthan towards Western side of Plaintiff's

house property. But the documents on record are not sufficient to show the exact measurement of gavthan land. Hence, prima facie actual measurement of gavthan land is not clear.

11] Plaintiff came with a case that he is in a possession of suit land since last more than 35 years. It is pertinent to note that Plaintiff is not the owner of the suit land. Suit land being gavthan land belongs to government. When Plaintiff is not the owner of the suit land it is necessary for him to show his actual possession over suit land. But the record depicts that there is no document filed on record by the Plaintiff which could show that Plaintiff is in the possession of suit land.

12] Plaintiff has not made government as a party to the suit. When the suit land belongs to the government in such situation government is in better position to state about the possession of suit land. More over the plaintiff did not file any document on record to show that he is in the possession of the suit land nor the plaintiff has filed any affidavit of adjacent owner of the suit land or any individual person to support the contention of the plaintiff as to his possession over the suit land. Therefore, the contentions of plaintiff that he is the possessor of suit land at this stage appearing to be based upon oral statement not supported by any document.

13] From all above discussion it is clear that plaintiff failed to file any document to bring on record the actual measurement of suit land. Further more there is nothing on record to show the possession of plaintiff over

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suit land. Consequently, after considering all above, I am of the opinion that, prima facie case is not in favour of plaintiff and balance of convenience also does not lies in favour of plaintiff. Certainly plaintiff will not suffer irreparable loss. Therefore, I answer point No.1 to 3 in Negative. In view of findings to the point No. 1 to 3 present application is liable to be rejected. In the result, in answer to Point no.4, I proceed to pass following order.

ORDER

01. Application vide Exh.5, is rejected.
02. Costs in cause.

Place : Bhokar
Date : 02.12.2022

(D. D. Mane)
2nd Jt. Civil Judge Jr. Division,
Bhokar.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file of civil order are word to word as per original order.

Sd/-

P.R. Kharbe

(Jr. Clerk)

2nd Jt. CJJD, Bhokar.