

ORDER BELOW EXH. 5

(Passed on 12-10-2021)

The plaintiffs have filed present suit for permanent injunction. They have filed present application under Order 39 Rule 1 & 2 of the Code of Civil Procedure for temporary injunction against defendants. Defendants have contested the claim by filing their say below Exh. 27.

2. Heard learned advocate for both the parties. Perused the record along with say of defendants.

3. It is the contention of the plaintiff that they are owner of Field Survey No. 10, admeasuring area 0.11 H.R. Defendant Nos. 3 and 4 are owner of Survey No. 9 admeasuring area 0.03 H.R., situated at Mouza Wadamba, P.C. No. 32, Gat Gram Panchayat Wadamba, Tah. Ramtek, Dist. Nagpur. Defendant Nos. 1 and 2 have no concern with these field properties. In the month of December,2020 the names of defendant Nos. 1 to 3 came in the list of beneficiaries of Gharkul Yojna. They have not obtained permission from the local authority and not taken consent from the neighbors. Defendant Nos. 1,2 and 4 have started to dig pits on land Survey No. 10 which is exclusive property of plaintiffs.

4. Plaintiffs have requested to the defendants to stop the work and show demarcation of their field. But defendants have not given attention and continued their work. Plaintiff No. 1 had approached to Gram Panchayat Wadamba and filed complainant against defendants to stop their illegal work. Gram Panchayat Wadamba has conducted meeting and directed to defendant Nos. 2 and 4 to measure the land and to stop the construction till measurement. Defendant Nos. 1 and 2 are trying to trespass into the field Survey No. 10 of the plaintiffs.

5. On 18/01/2021 plaintiffs have applied for the measurement of the Survey No. 10 they had paid requisite fees. The defendant Nos. 1 and 2 again started digging pits by trespassing in the field of the plaintiffs. Therefore, plaintiffs have filed written complaint to the Gram Panchayat Wadamba. The Gram Panchayat Wadamba has conducted a spot inspection and directed the defendants to stop their illegal construction work till the proper measurement of S. No. 10 and S. No. 9. On 03/02/2021 defendant Nos. 1 and 2 have again started work of digging pits over the suit properties. Their work is without sanction and illegal. Hence, it needs to be stop.

6. The plaintiffs are the owner of Survey No. 10. Therefore, they have each and every right on suit property. The defendants wanted to grab the land of plaintiffs. They are trying to construct house upon the same. If defendants have constructed houses on that land plaintiffs will suffer irreparable loss. The balance of convenience lies in favour of plaintiffs. Defendants have no *prima-facie* case and balance of convenience in their favour. Defendant Nos. 1 and 2 have no right title, or interest on Survey No. 9 or 10. Defendant Nos. 1 and 2 are not in possession of suit land. Therefore, they will not suffer any irreparable loss. It is necessary to restrained defendants from entering, trespassing and constructing anything upon the suit property. Hence, this application be allowed.

7. On the other hand, defendants have filed their reply to this application below Exh. 27. They have denied contention of plaintiffs and stated that defendant Nos. 3 and 4 are owner of Survey No. 9. The defendants have carried on constructions in their own area. Plaintiffs have no *prima-facie* case and balance of convenience in their favour. If temporary Injunction is granted defendants will suffer irreparable loss as

they are carrying out constructions with the due permission of sanction authority.

8. They have specifically pleaded that defendant Nos. 1, 2 and 4 were having old houses on Survey No. 9 since last more than 80 years. Survey No. 9 is on Western side of Survey No. 10. Defendant Nos. 1, 2 and 4 have dismantled the old construction in January 2021 as it was in dilapidated condition and started new construction thereon.

9. Defendant Nos. 2 and 4 got Gharkul from the Government. Defendant Nos. 1 and 2 are residing in Survey No. 9 being grandson of defendant No. 3. Defendant Nos. 1, 2 and 4 have started construction of new houses in place of old houses after taking permission of Gram panchayat Wadamba. They are constructing without encroachment over Survey No. 10. Plaintiffs are mischievously interrupting in the defendant's legal constructions. Defendant Nos. 1, 2 and 4 have no concern with survey No. 10. They have not constructed on the area of plaintiff i.e. survey No. 10. they are constructing on area of survey No. 9 which belongs to defendant Nos. 2 and 4.

10. Plaintiffs have not filed any documents on record to show that defendants are making constructions over the area of plaintiffs. Plaintiffs have not mentioned about the area of encroachment and not filed any authentic map showing encroachment of defendants over the area of plaintiffs. Plaintiffs are not entitled for any relief. If application is allowed the defendants will suffer irreparable loss which cannot be compensated in terms of money. Hence, this application is liable to be rejected with costs.

11. After considering the contentions of both the parties along

with supporting documents following points arise for determination. My findings thereon with reasons are recorded as follows:

Sr. No.	Points	Findings
1	Whether plaintiffs have <i>prima-facie</i> case?	No.
2	Whether balance of convenience is in favour of plaintiffs?	No.
3	Whether irreparable loss will cause to plaintiffs if temporary injunction as prayed not granted?	No.

REASONS

As to Point Nos. 1 to 3:

12. All these points are interconnected with each other hence to avoid repetition of reasons all are discussed together. In view of these points learned Advocate for plaintiff has argued that plaintiffs are owner of field Survey No. 10 and defendant Nos. 3 and 4 are owner of field Survey No. 9. Both situated at Mouza Wadamba. Defendant Nos. 1 and 2 have no concern with these properties they are trespasser. To show the same they have filed on record 7/12 extract, map.

13. In December, 2020 defendant Nos. 1,2 and 3 were benefited under Gharkul Yojna. They have not obtained any permission from local authority and started construction work of their houses. Defendant Nos. 1, 2 and 4 have started digging pits over land Survey No. 10 of the plaintiffs. Therefore, plaintiff No. 1 has approached Gram panchayat Wadamba and filed complainant against defendants to stop their illegal work. Gram panchayat Wadamba has conducted a meeting and directed to defendant Nos. 3 and 4 to measure their land and to stop constructions till measurement. Defendant Nos. 1 and 2 are trying to trespass into land of plaintiffs.

14. On 18/01/2021 plaintiffs have applied for measurement of Survey No. 10 and paid requisite fees. The copy of Challan is filed on record. The defendant Nos. 1 and 2 have again started digging pits and trespassing into the field of plaintiffs. Therefore, plaintiffs had written complainant to Gram panchayat Wadamba. The copy of that complaint is filed on record. Accordingly, Sarpanch, Gram panchayat Wadamba had issued letter to defendant No. 4. Gram panchayat Wadamba has conducted spot inspection. That report is filed on record. It has directed defendants to stop their illegal constructions till proper measurement of Survey Nos. 10 and 9.

15. On 03/02/2021 defendant Nos. 1 and 2 have again started work of digging pits over the suit properties. They are doing construction work without sanction of local authority. Therefore, to protect possession, right and interest of the plaintiffs over the suit properties defendants needs to be restrain from making any construction on suit properties. The plaintiffs have *prima-facie* case and balance of convenience in their favour. If injunction is not granted they will suffer irreparable loss which cannot be compensated in terms of money. Hence, this application be allowed.

16. Learned advocate of defendants have argued that plaintiffs have filed bogus suit to harass the defendants and to grab the suit properties. Defendant Nos. 1, 2 and 4 were having old houses on Survey No. 9 since last more than 80 years. Survey No. 9 is on West side of Survey No. 10. Defendant Nos. 1, 2 and 4 have dismantled the old construction in January, 2021 as it was in dilapidated conditions and started new construction on the same area.

17. Defendant Nos. 1, 2 and 4 got Gharkul from the Government.

Defendant Nos. 1 and 2 being grandson of brother of defendant No.3 are residing on Survey No. 9 since more than 80 years. Defendant Nos. 1, 2 and 4 are constructing new houses in place of old houses after taking permission of Gram panchayat Wadamba. There constructions are without making any sort of encroachment over Survey No. 10. Plaintiffs are mischievously interrupting in the legal construction of the defendants. The measurement carried out by TILR on 15/06/2021 shows that defendants are carried out the construction within their area where as plaintiffs have made encroachments over the area of defendants.

18. Defendant Nos. 1, 2 and 4 have no concern with Survey No. 10. They have not made any construction over area of plaintiffs. They are carrying construction on Survey No. 9 which belongs to defendant Nos. 3 and 4. The plaintiffs have not mentioned about area of encroachment and not filed any authentic map showing encroachment of defendants over area of plaintiffs. They have failed to make prayer of declaration of possession in respect of alleged area of encroachment. On this points he placed his reliance on *Marthwada Wakf Board Vs. Smt. Vibhavari 26/02/2016 (The Hon'ble Bombay High Court)* it was discussed that, it is necessary for the plaintiff to prove the encroachment to the extent of the area. If he failed to show the same he can not get relief.

19. *On Anathhula Sudhakar Vs. P. Buchi Reddy 25/03/2008 (The Hon'ble Supreme Court)*. It was discussed that, person out of possession can not seek the relief of injunction simpliciter, without claiming the relief of possession. Same view was discussed in *Parmanand Gopalrao Kesari Vs. Dilip Gopalrao Deshmukh 22/10/2019 (The Hon'ble Bombay High Court)*.

20. Plaintiffs have not come before the Court with clean hand.

Therefore, they are not entitled to claim any relief from the court. If application is allowed then defendant will sustain irreparable loss which cannot be compensated in terms of money. It is settled law that a person who seeks equity, must come with clean hand. A litigant who suppresses a fact from the court, indeed loses the right to seek an equitable relief of injunction. On this point he placed his reliance on *Premdeep Vs. Bhavna (The Hon'ble Bombay High Court, Bombay Bench) 17/02/2020*. But fact of this case are different from case in hand.

21. *Smt. Champa Arora and others Vs. Shri Shiv Lal Arora (The Hon'ble Delhi High Court) 27/08/2001*. It was held that it is settled principal in law that a person who seeks equity, must come with clean hand.

22. Plaintiffs have filed present suit and application to harass the defendants and to grab to suit properties. They are not entitled for temporary injunction as they failed to show *prima-facie* case, balance of convenience, irreparable loss. Hence, their application is liable to be rejected with costs.

23. Learned advocate of defendant has placed his reliance on *Agnigundlal Venkata Ranga Rao Vs. Indukuru Ramchandra Reddy (The Hon'ble Supreme Court)* on point that injunction cannot be granted against true owner and in lawful possession. Defendants are true owner and in lawful possession in the suit land.

24. It is settled law that in a suit for perpetual injunction, temporary injunction cannot be granted because grant of temporary injunction amount to grant of final relief and also in an initial stage. He placed his reliance on *Ashokkumar Bajpai Vs. Dr. Ranjana Bajpai AIR*

2004 All 107. It was discussed that, the court while dealing with the case at an interim steps cannot grant a relief which amounts to final relief. Same view was discussed in *Smt. Bhikani Devi and others Vs. Amarlal AIR 2006 Patna 141. In Zilla Parishad Gadchiroli and Medical Officer PHC Vs. Smt. Chandramala Khoragade 2011 (4) Mh LJ 605*.

25. On *Maltibai Vs. Subhashchandra and others (2002) 3 Civil LJ 16*. It was held that, an injunction against the true owner of the land cannot be granted unless it can be clearly demonstrated that the plaintiff is in settled or lawful possession of land in dispute.

26. He prayed that plaintiffs are not entitled for temporary injunction as they are failed to show prima-facie case, balance of convenience and irreparable loss. Hence, their application is liable to be rejected with costs.

27. After considering the submissions of both the parties and on perusal of record it appears that plaintiffs have filed suit for permanent injunction. It is their contention that defendant no 1 and 2 are trespassing in their land Survey No. 10. Though they have filed 7/12 extract of their name but they have not filed on record any map or other document to show that defendant no 1 and 2 have made encroachment on their land and on how much area. On the other hand, it is contention of the defendants that plaintiffs have encroached over area of Survey no. 9. Therefore, I come to conclusion that plaintiffs have failed to show *prima-facie* case in their favour.

28. As per contention of plaintiff's defendants are digging pits in their area. On application of plaintiffs defendants were directed to stop the construction. Meanwhile the defendants got measured their land

Survey No.9. On the basis of measurement that it is their contention that plaintiffs have encroached over some area of their land. They have demolished their old construction and now constructing on the same place houses under Gharkul Yojna. Plaintiffs have not shown balance of convenience is in their favour. They have also not shown that at this stage if defendants are not restrained plaintiffs will suffer irreparable loss which cannot be compensated in terms of money. Therefore, I come to the said conclusion and answer Point Nos. 1, 2 and 3 in the negative respectively.

29. After considering the available material on record at this pre trial stage it appears that plaintiffs have not established their *prima-facie* case. Balance of convenience is also not in their favour. The same way plaintiffs have not shown that irreparable loss will cause to them if temporary injunction is not granted. Therefore, holding the same accordingly in the interest of justice I proceed to pass the following order-

Order

The application below Exh-5 is hereby rejected.

Sd/-

(Kum. V. P .Dhurve)

Civil Judge Junior Division, Ramtek.

Date : 12/10/2021.