

ORDER BELOW EXH.29

R.C.S. No. 135/2019.

(Passed on : 29.11.2022)

1. The defendant No.1 has filed this application restraining the plaintiff from making obstruction and causing damage to the crops in the suit property till the decision of the suit.
2. It is the contention of the defendant No.1 that the plaintiff has filed this suit for declaration. He has appeared in this suit and filed his W.S. The plaintiffs' suit is not legal and correct. The defendant No.1 is in possession of 2-5 H.R. out of Gat No.7 along with house property, well and onion chawl situated at Mouje Bhingare, Tal. Yeola, Dist. Nashik since last many years. Accordingly, an entry is there in Revenue Record. So also, the defendant No.1 became the owner and possessor of the suit property by way of adverse possession.
3. The plaintiffs are not concerned with the suit property. The defendant No.1 is cultivating the suit property since last many years. The plaintiffs are not legal heirs of the deceased. On 31.07.2022, when the defendant No.1 along with his family members was doing agricultural work in the suit property, the plaintiffs along with other persons threatened to the defendant No.1. Hence, the defendant No.1 has filed this application.
4. The plaintiffs have filed their say on the backside of the application and denied the contents of it. It is their contention that the matter is pending for hearing on Exh.5. Further, defendants have filed their W.S. The application does not contain basic requirement of T.I. application. The application does not identify the disputed property and its boundaries. No cause of action happened for the application.

5. Further, the application does not disclose any cause of action for this application and legal necessity for claiming such remedy. The defendant No.1 has not affixed court fee stamp to his application. Thus, on these grounds the plaintiffs have prayed for rejection of the application.

6. Considering the rival contention of both the parties, following points arise for my determination, to which I have recorded my findings for the reasons stated below:-

SR. NOS.	POINTS.	FINDINGS.
1.	Whether defendant No.1 is having <i>prima-facie</i> case ?	“Negative”.
2.	Whether balance of convenience lies in favor of defendant No.1?	Redundant.
3.	Whether defendant No.1 will suffer an irreparable loss if injunction is not granted ?	Redundant.
4.	What order?	As per final order.

REASONS

As to Point No.1:-

7. It is the contention of the defendant No.1 that he is the owner and possessor of the 2-05 H.R. land out of Gat No.7, since last many years. Further, it is his contention that he is the owner of the suit property by way of adverse possession. In order to substantiate his contention, the defendant No.1 has filed three 7/12 extracts of Gat No.7. I have gone through it. In all the three 7/12 extracts, the defendant No.1 is shown as owner of the Gat No.7, ad-measuring 2-05 H.R. The defendant No.1 has also filed the electricity bill.

8. The plaintiffs have filed the xerox copy of order passed in First Appeal

No. 573/1995 passed by the Hon'ble Bombay High Court. I have gone through it. It shows that the court has upheld the probate granted in favour of non-applicant Nos.1 to 3 i.e. Jayram Barde, Trimbak Ukaram Barde and Roshamabai Trimbak Barde and also upheld the rejection of claim of the appellant (present defendant No.1) for probate.

9. Though the 7/12 extract is in the name of defendant No.1, but the Hon'ble Bombay High Court has upheld the probate of the plaintiffs. Further, the order of Hon'ble Bombay High Court has more probative value than the 7/12 extract of defendant No.1. Thus, I answer point No.1 in the "negative".

As to point Nos.2 and 3 :-

10. In view of the discussion made above and finding given to point No.1 above, point Nos.2 and 3 became redundant and hence, answered accordingly.

As to point No.4:-

11. In view of discussion made above and findings given as to point Nos.1 to 3, in answer to point No.4, I pass the following order:-

O R D E R

1. The application at Exh.29 is rejected.

Order dictated and pronounced in open Court.

Place : Yeola.
Date : 29.11.2022.

(M. S. Ligade)
Civil Judge, Junior Division
Yeola, Dist. Nashik.

CERTIFICATE

I affirm that the contents of this PDF file Order / judgment are same, word to word, as per the original order / judgment.

Name of Stenographer : P. A. Bargal (L.G. Stenographer)
Name of the Court : Shri. M. S. Ligade, C.J.J.D.,
Yeola, Dist. Nashik.
Date of Order / judgment : 29.11.2022.
Order / judgment signed by
Presiding officer on : 29.11.2022.
Order/judgment uploaded on : 29.11.2022.