

MHNS190019652025



ORDER BELOW EXH. 5

- 1) Read the application Exh.5.
- 2) The plaintiff has filed this application seeking injunction against defendant no.1 as not to obstruct his possession and not to dispossessed him without following due process of law.
- 3) The plaintiff further contended that, suit property 1(b) is owned by defendant no.2. In year 2006 defendant no.2 gave suit property 1(b) to him for his brick business. Since 2006 he is in possession of 30R. Land out of suit property 1(b). Defendant no.2, villagers and he himself are under impression that the property in his possession is part and parcel of Gat no.177. He also constructed his house in said property under Pantpradhar Avas Yojana.
- 4) The plaintiff further contended that suit property 1(a) is in the name of defendant no.1. Suit property 1(a) and 1(b) are adjacent properties. Defendant no.1 measure his property on 14/10/2025. According to defendant no.1 the property in his possession is part and parcel of suit property 1(a). His house, brick-kiln, kiln area are shown in suit property 1(a) in measurement done by defendant no.1. Therefore now defendant no.1 in obstructing his possession and threatening him to dispossess. Therefore he filed this suit. He relied upon following documents,
 - a. 7/12 extracts of suit properties

- b. Light bill
- c. Royalty receipt
- d. Payment receipts
- e. Royalty receipt
- f. Payment receipts
- g. Application to Tahsildar
- h. Certificates of Grampanchayat
- i. Permission of Tahsildar for transportation of minerals.
- j. Payment receipts
- k. State Government Letter to Collector
- l. Caste certificate
- m. Royalty receipts
- n. Payment receipts
- o. Plaintiffs Letter to Tahsildar
- p. N.C. report

5) **The plaintiff also relied upon, (a) Smt. Sarladevi Kundanlal Bandawar v/s Shailesh Gourishankar Namdeo, AIR 1996 BOMBAY 98, in which it is observed that,**

Considering the law laid down by the Supreme Court in N.S.S. Ltd.s case, A.I.R. 1968 S.C. 1165; M. Kalappa Settys case A.I.R. 1972 S.C. 2299; the Full Bench decision of Kerala High Court in Lissys case, 1976 Kerala Law Times 571; and the decision in Karthiyayani Ammas case, A.I.R. 1980 Kerala 224- all cited supra. I concur with the view expressed by the learned Singe Judge of the Kerala High Court. In the case in hands also the situation is no different. It is

amply proved that the plain-tiff has been in peaceful possession of the property in question: that the initial entry of her husband K.L. Bandawar itself has been lawful as he was put in possession by the Society and after him, the plaintiff has continued to be in possession. It is now amply proved that the plaintiffs pos-session is uninterrupted right from 1965, or at least after the death of her husband in 1980, till the date of filing of the suit. In that view of the mat-ter, the plaintiff would certainly be entitled to an injunction as prayed for by her, and both the courts below, having failed to correctly appreciate the factum of possession of the plaintiff over the suit land, have erred in law in refusing her the injunction.

- 6) Defendant no.1 filed his say at Exh.16 and denied the contents of the application. He submitted that suit property 1(a) is recorded in his name and suit property 1(b) is recorded in the name of defendant no.2 in revenue record. The plaintiff was well aware about his possession, but he purposely raised confusion about his possession regarding suit properties. The plaintiff has filed royalty receipt which shows Gat no.177 and therefore he has no possession in suit property 1(a). The suit is bad for want of notice u/s 180 of Mumbai Grampanchayat Act 1958. For all these reasons he prayed to reject the application.
- 7) Heard Ld. Advocate Shri. Kalantri for the plaintiff and Ld. advocate Shri. Shinde for the defendant no.1 at length. They argued in consonant with their pleadings at length.

- 8) Upon perusing records of suit, hearing learned advocates, following points arose for consideration and finding are recorded for the reasons follows.

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiff has prima facie case for grant of temporary injunction?	In negative
2.	Whether the balance of convenience is in favour of plaintiff?	In negative
3.	Whether plaintiff will suffer irreparable loss if his prayer is disallowed?	In negative
4.	What order?	As per final order

REASONS AS TO POINT No.1 to 3 :-

- 9) All three points are discussed together as these are inter-linked with each other. From the record of the suit it appears that plaintiff has filed present suit for declaration and injunction. According to the plaintiff defendant no.2 allotted him Government land for brick-kiln business. He himself was under impression that land allotted by defendant no.2 is in suit property 1(b). But the defendant no.1 measured his land and his house and brick-kiln are shown in suit property 1(a). Now defendant no.1 is obstructing his possession. On the contrary according to defendant no.1 the plaintiff was never in possession of suit property 1(a). The plaintiff has filed this false suit against him.
- 10) Here in case at hand it is true that suit property 1(a) is owned by defendant no.1 and suit property 1(b) is owned by defendant no.2. It

is also true that the plaintiff is neither owner of suit property 1(a) nor suit property 1(b). According to the plaintiff he was under impression that he has his house and brick-kiln in suit property 1(b) but it appears in suit property 1(a). In other words according to plaintiff he has his house and brick-kiln in suit property 1(a) at present and that land is allotted him by defendant no.2. But the plaintiff has not filed any document on record which will prima facie show that either suit property 1(a) or 1(b) is allotted him by defendant no.2. No doubt the plaintiff has filed one certificate issued by defendant no.2 dtd. 19/08/2006 which shows that suit property 1(b) was allotted him for his business. But if said certificate is minutely considered then that was issued for 11 months from 14/08/2006. It means at present the alleged allotment period is already over. No other cogent evidence filed by the plaintiff which will show that suit property 1(b) is allotted him by defendant no.2.

- 11) Moreover according to the plaintiff he was allotted suit property 1(b) but his house and brick-kiln appears after measurement report in suit property 1(a). Even if this fact is considered then also no document in that support is filed by plaintiff on record. The plaintiff failed to file any relevant document on record to show that even prima facie he is in possession of either suit property 1(a) or suit property 1(b). Rather defendant no.1 filed copy of judgment passed in RCS 89/2009 in which prima facie it appears that the claim of father of plaintiff about possession in suit property 1(b) was rejected by this Court. Therefore also it is clear that the plaintiff failed to show his possession in suit property 1(a) as well as 1(b) even prima facie.

- 12) Furthermore if overall pleading of the plaintiff is considered then it is difficult to ascertain even prima facie that for which property the plaintiff is claiming injunction order. The plaintiff himself pleaded that he is under impression of his possession in suit property 1(b). If under assumption and presumption of plaintiff an injunction order is passed then it would amount to be a blanket injunction order. For this reason also I am inclined to reject the application. The supra citation referred by the plaintiff, 'Sarladevi' is not helpful to the plaintiff as plaintiff himself failed to show his possession even prima facie.
- 13) In fine plaintiff failed to show with cogent evidence that suit property 1(a) or 1(b) is in his possession even prima facie. He also failed to lead reliable evidence to show that he has his house and brick-kiln in either suit property 1(a) or 1(b). Hence found no arguable case in favour of plaintiff.
- 14) To sum up, the prima facie case is not in favour of plaintiff. If defendant no.1 is not restrained, then, no irreparable loss will cause to the plaintiff. Therefore, present application needs to be dismissed. Accordingly, I answer point no. 1 to 3 in negative and proceed to pass following order.

ORDER

1. The application is rejected.
2. The costs in cause.

Date : 24/03/2026

(S.M.Bohara)
Civil Judge Jr. D.V. Yeola.
Dist. Nashik.