

MHOS130005962021



R.C.S.NO.251/2021
Mandabai Vs. Kamalbai

ORDER PASSED BELOW EXHIBIT NO.05

By this application filed under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, the plaintiffs have prayed for grant of temporary injunction, restraining the defendants from causing obstruction and interference to their possession as well as from making construction of cattle shed by plaintiffs over the suit property.

The Case of plaintiffs in short is as under :-

02. The land gat No.141/C admeasuring about 06 H 07 R out of it area 03 H 27 R situated at village Antarvali, Tq. Bhoom, District Osmanabad, is the subject matter of dispute (Hereinafter to be referred as “suit property” for the sake of brevity). It is contended that, the plaintiffs are resident of village Antarvali, Tq. Bhoom, Dist. Osmanabad. It is contended that, the plaintiffs are in possession of the suit property. The precinct of suit property are as follows,

East	Land of Kisan Rangnath Doke
West	Land of plaintiff No.2 in Sy.no.139.
South	Disputed land mutated in the name of defendant no.1 and 4 in Sy.no.141/C.
North	Land of Dharma Ganu Kadam.

The defendants have no concern whatsoever with the suit property. However, they are causing obstruction and interference to his possession over the suit property. Defendants are co-sharer in land gat no.141/C to the extent of 02 H 75 R and 05 R land. Defendants are having their lands at the Southern side of plaintiff's land. Defendants have no concerned with suit property.

03. The original owner of suit property was common ancestor of plaintiffs, namely Kisan Kadam who died before 20 years ago. After the demise of Kisan the name of plaintiffs came to be mutated in the revenue record of suit land. The defendant no.1 and 4 are owner in possession of land sy.no.141/C to the extent of 2 H 75 R and 05 .R land respectively. The R.C.S.No.119/2013 instituted by present defendant no.1 against plaintiffs. The said suit came to be decreed on 07.10.2017. The Second Appeal by challenging the said decree is pending before Hon'ble High Court, Bombay Bench at Aurangabad. The decree is about for 2 H 75 R land in sy.no.141/C. Firstly, there was a suit by mother of defendant no.1 namely Jadabai instituted the R.C.S.No.33/1974. The suit came to be compromised. Under such circumstances, defendants have no concerned with the suit property.

04. On 16.05.2021 defendant caused obstruction and interference to the possession as well as work of construction of plaintiffs. The plaintiffs requested to defendants about not to obstruct their possession but they did not pay any attention to the request of plaintiffs. On this cause of action plaintiffs have constrained to file suit for declaration and perpetual injunction. They also filed temporary injunction application to restrain defendants from obstructing their peaceful possession as well as for protection of their construction over the suit property, till the final disposal of the present suit.

05. The defendants have resisted the instant application by filing their say at Exhibit 18, whereby they denied all the adverse allegations made by the plaintiffs. Defendants have contended that, plaintiffs are not in possession of suit property. Defendants have

contended that, map produced by the plaintiffs along with plaint is false and frivolous. Defendants are relied on the map which is annexed with their written statement. Defendants have specifically denied the existence of relationship between plaintiffs. Defendants specifically admitted their relationship interse. The mutation entry record specifically denied by defendants.

06. The defendants have contended that there is no substance for institution of suit in favour of plaintiffs because they have not ownership as well as possession over the suit property. It is further contended that, defendants relied on the decree in R.C.S.No.33/1974 as well as decree in R.C.S.No.119/2013. According to defendants the mutation entry record is not correct because the sy.no.141/D was mentioned in the decree of R.C.S.No.33/1974. Therefore, there is no cause of action arise to institute suit. In such circumstances, if the injunction as prayed by the plaintiffs is issued, they would suffer irreparable loss. Thus ultimately, they has prayed for rejection of the instant application.

07. I have heard learned advocate Shri.R.V.Mote for plaintiffs and learned advocate Shri.B.S.Mane for defendants at length.

08. Considering the application and submissions of the parties, following points arise for my determination and I have recorded my findings thereon with reasons stated below.

SR.NO.	POINTS	FINDINGS
1.	Whether the plaintiffs have made out <i>prima-facie</i> case ?	<u>YES.</u>
2.	Whether the balance of convenience lies in favour of the plaintiffs ?	<u>YES.</u>

3.	Whether irreparable loss would be caused to the plaintiffs, if the injunction as prayed is not granted. ?	<u>YES.</u>
4.	What order ?	As per final Order..

-: REASONS :-

AS TO POINT NO. 1 :-

09. In order to support their respective claim and defence, both the parties have placed reliance on various documentary evidence. The reference of the said documents will be made in my discussion at the relevant place.

10. The application made under Section 39 Rule 1 and 2 of the Code of Civil Procedure, the present application is supported by an affidavit. The plaintiffs must make out prima-facie case in support of the right claimed by them. The Court must be satisfied that there is a bona-fide dispute raised by the applicants, that there is an arguable case for trial which needs investigation and a decision on merits and on the facts before the Court there is a probability of the applicants being entitled to the relief claimed by them. The existence of a prima-facie right and infraction of such right is a condition precedent for grant of temporary injunction. The burden is on the plaintiffs to satisfy the court by leading evidence or otherwise that they have a prima-facie case in their favour.

11. Learned advocate Shri.R.V.Mote for plaintiffs argued that the present suit is instituted for declaration of ownership and perpetual injunction in respect of protection of possession of plaintiffs. The suit property 03 H 27 R in land sy.no.141/C exclusively owned by the plaintiffs. Defendants have no concerned

with the suit property. Firstly, there is a decree in R.C.S.No.33/1974 which produced at Exh.26 are exclusively in favour of both parties. By way of that decree plaintiffs predecessor namely Kisan became of the owner of suit property after the demise of Kisan plaintiffs became owner and possessor of suit property. The plaintiffs started construction of cattle shed in suit property but defendants tried to obstruct the possession of plaintiffs. Considering the documents on record plaintiffs have made out three parameter of injunction in their favour. Learned advocate submitted that the defendants may kindly be restrain from obstructing peaceful possession of plaintiffs over the suit property, till final disposal of suit.

12. Learned advocate Shri.B.S.Mane for defendants argued that the suit instituted for declaration and perpetual injunction is not tenable in the eyes of law. The property in land sy.no.141/D is regarding to the decree passed in R.C.S.No.33/1974. The pleading of plaintiffs not supported to their case. To prove their defence at the time of hearing of T.I. application defendants relied on the affidavit of witnesses at Exh.22 and Exh.23. In such circumstances, the decree in R.C.S.No.119/2013 is in existence and is not set aside yet by any Hon'ble Court. Plaintiffs have no any possession over the suit property. The witnesses supported to the case of defendants. Under such circumstances, application for temporary injunction relief is not tenable. Learned advocate for defendants lastly submitted that application may kindly be rejected.

13. It is the specific case of plaintiffs that the land sy.no.141/C adm. about 06 H 07 R out of it the area 03 H 27 R own and possessed by them. The original owner of suit property was deceased Kisan Kadam who is common ancestor of plaintiffs. The plaintiff no.1 is wife of deceased Kisan and other plaintiffs are sons

and daughters of deceased Kisan. After the demise of Kisan the names of plaintiffs recorded over the revenue record of suit property. The names of defendants wrongly mutated in the revenue records. The defendant no.1 instituted R.C.S.No.119/2013 in respect of her ownership and possession in land sy.no.141/C adm. about 2 H 75 R. The said suit came to be decreed.

14. It is the case of defendants that plaintiffs have no concerned whatsoever with the ownership and possession of defendants. The map and description given in the plaint of suit property is itself false. The contention made in the written statement that the sy.no.141/D was in existence. Plaintiffs claim their right on sy.no.141/C. There is no substance in the pleading of plaintiffs about the ownership and possession. Hence, T. I.application is not tenable in the eyes of law. Defendants are relied on the affidavit of witnesses at Exh.22 and Exh.23 respectively. On perusal of these affidavits it reveals that witnesses namely Mahadeo Doke and Dattu Sabale stated that defendants have possession over the land adm. about 7 Acres. There is 10 to 15 R land is *potkharab* in that sy.number. On this count, defendants prayed for the rejection of present application.

15. Considering the argument of both sides, pleading and document produced on record It is observed that the plaintiffs have claimed their possession over the suit property and submitted that the defendants have no concern whatsoever with the suit property. However, the defendants have caused obstruction and interference with their possession over the suit property. Therefore, they have instituted the present suit for declaration of ownership and for perpetual injunction. On the other hand, it is the case of the defendants that, the plaintiffs are not in possession of the suit

property. Plaintiffs have mentioned false precinct in their plaint. The 14 R land is *potkharab* from land property. On that count, plaintiffs are claiming their right on defendants property. Therefore the question of obstruction and interference would not arise.

16. Thus, it is seen that both the parties have claimed their possession over the suit property. Admittedly, at the time of determination of an application at Exhibit 5, the factum of possession is of vital importance. Therefore, it has to be seen as to whether the plaintiffs have *prima facie* established their possession over the suit property. The *prima facie* case is the *sine qua non* for the grant of temporary injunction.

17. It is seen that the plaintiffs have instituted the present suit for declaration and perpetual injunction. The plaintiffs have claimed the relief of perpetual injunction restraining the defendants from causing obstruction and interference to their possession as well as to their construction work of cattle shed over the suit property. The plaintiffs have further prayed the relief of declaration of ownership over the suit property. In order to substantiate their contentions of possession over the suit property, the plaintiffs have placed reliance on the 7/12th extract of the suit property produced on record. Admittedly, the 7/12th extract produced below Exhibit 8 show that the name of the plaintiffs are appearing in the cultivator column to the extent of 03 H 27 R land. The defendants also owner in land Sy. No. 141/C to the extent of 02 H 75 and 05 R land respectively. In view of the provision of Section 157 of the Maharashtra Land Revenue Code, the said entries of the revenue record are presumed to be true unless contrary is proved. However, the said presumption is rebuttable.

18. It is contended by defendants that plaintiffs have not mentioned in the that the *potkharab* land situated at the middle of land Sy. No. 141/C. Defendants have mentioned the said fact in their map annexed to the written statement at Exh.18. On perusal of record and considering the argument advanced by the learned counsel for respective parties it reveals that the revenue record i.e. only 7/12th extract of sy.no.141/C produced on record which is at Exh.8. In support of contention by both parties there is nothing on record to assume that the entries on 7/12th extract are false. The plaintiffs have produced the photocopy of Judgment in R.C.S.No.119/2013 the photocopy cannot be read in evidence at the hearing of T. I.application. The decree in R.C.S.No 119/2013 is about to the extent of 2 H 75 R and 05 R land. The certified copy of decree in R.C.S.No.33/1974 produced on record. On perusal of decree it reveals that the sy.no.141/D appeared in that decree. At this juncture, in absence of the revenue record I.e. *mutation entry record*, 7/12th extract for the time being, it cannot be decided that entries are false. But, on the production of the 7/12th extract of sy.no.141/C at Exh.8 it is assumed that the plaintiffs have possession over the suit property because defendants have not produced any contrary document in this regard. The witnesses affidavit not helpful to defendants against the revenue record at this juncture. The only specific denial in written statement does not rebut the presumption under the provision of Section 157 of the Maharashtra Land Revenue Code. Because it reveals from the 7/12th extract produced below Exh.8 that there is no mentioned that the 14 R *Potkharab* land is recorded in the name of plaintiffs.

19. Thus, having considered all the aforesaid facts and circumstances of the instant case, it is seen that the plaintiffs have

prima facie established their possession over the suit property land Sy. No.141/C area 03 H 27 R. The threatening to the possession of plaintiffs are itself the obstruction. Therefore, I find that there is prima facie case in favour of the plaintiffs for issuance of temporary injunction as prayed for. Hence, I answer point No.1 in the affirmative.

AS TO POINT NO.2 :-

20. In view of reasons given in support of my findings to the point no.1, the plaintiffs have *prima facie* established that they are in possession of the suit property Sy. No.141/C area 03 H 27 R mentioned in the instant application. Whereas, the defendants failed to establish their possession over the suit property. If this being a position, I am of the considered view that in case of refusal of an injunction, the comparative hardship would be sustained by the plaintiffs. Therefore, I find that the balance of convenience is in favour of the plaintiffs. Hence, I answer point No.2 in the affirmative.

AS TO POINT NO.3 :-

21. Thus, In view of reasons given in support of my findings to the point no.1 and 2, the plaintiffs have *prima facie* established that they are in possession of the suit property Sy. No.141/C area 03 H 27 R mentioned in the instant application. However, it is no more *res integra* that the existence of the *prima facie* case alone does not entitle the plaintiffs for temporary injunction. On the other hand, the plaintiffs must establish that they will suffer irreparable injury if the injunction as prayed is not granted. From this point of view, if the instant case is considered, it is seen that the plaintiffs have *prima facie* established their possession over the suit property and

enjoyment of it. It is the specific case of the plaintiffs that the defendants are causing obstruction and interference to their possession over the suit property. In view of the specific pleadings of the defendants as regards to the denial of the possession of the plaintiffs over the suit property and also the enjoyment of it, the alleged obstruction and interference pleaded by the plaintiffs can not be said to be evasive. In such circumstances, in case of refusal of an injunction as prayed for, the plaintiff would suffer irreparable loss. On the other hand, no such irreparable loss would be suffered by the defendants, which could not be compensated in monetary terms. Hence, I answer point No.3 in the affirmative.

AS TO POINT NO.4 :-

22. Thus, in view of my findings to the aforesaid points, the instant application is deserves to be allowed. Hence, in answer to point No.4, I proceed to pass the following order.

<u>O R D E R</u>	
1.	Application is allowed.
2.	The defendants or anybody claiming through them are hereby restrained by way of temporary injunction from causing obstruction, interference to the possession as well as to the construction work of cattle shed by plaintiffs over the suit property, till the final disposal of the present suit.
3.	Costs of this application shall be costs in cause.

(Order dictated and pronounced in open court)

Date : 06.07.2021

(K. K. Khomane)
Jt. Civil Judge, J.D. Bhoom.

C E R T I F I C A T E

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

Name of Stenographer	:-	M.K.Shinde
Court	:-	Jt.C.J.J.D., Bhoom, Dist. Osmanabad.
Date	:-	06.07.2021
Order signed by the Presiding officer on	:-	06.07.2021
Order uploaded on	:-	07.07.2021