

MHOS130008512023



RCS No. 463/2023
Appa/ Subhash & other

ORDER PASSED BELOW EXH.05

The plaintiff moved an application for the relief of temporary injunction restraining defendants from cause obstruction to the plaintiff's peaceful possession over the suit property.

02. It is the case of plaintiff that, the land admeasuring area 1H-14R in Gut No.526 situated at Mouje Patsangavi, Tal. Bhoom, Dist. Osmanabad is owned by his brother Dattatray Naiknavare. He has given 1R land in Gut No.526 (hereinafter referred as "suit property") to the plaintiff vide consent letter dated 18.11.2008. Later on, the plaintiffs name was mutated on revenue record of the suit property vide mutation entry No.751. The plaintiff is as such legal owner and the possessor of the suit property. However, defendants having no concern with the suit land prepared some false documents in Grampanchayat and trying to obstruct the plaintiff's possession over the suit property. When the plaintiffs inquired about the same in Grampanchayat record, he found some names of Vadar families were recorded on the Grampanchayat record. Hence, plaintiff filed the suit for the relief of perpetual injunction against defendants.

03. Defendants resisted the application by filing the say at **Exh.23**. Defendants denied all the allegations made against them.

According to defendants, the suit property bearing Gut No.526 is situated towards western side of house property bearing No.501 to 504. Their house properties bearing No.501, 502, 503 & 504 are situated towards western side of Barshi-Pathrud road. Those properties are ancestral properties of defendants. The defendants further clarified that the house property bearing No.501 was inherited by Shankar Jadhav, Sukhdev Jadhav, Babu Jadhav, Tayppa Jadhav and Yashvanta Jadhav after the demise of their predecessor since 1960. The house property bearing No.502 was originally owned by one Laxman Vador (Jadhav). After his demise, the name of his wife Parubai Jadhav is mutated own the record. Whereas house property No.504 was originally owned by Mukinda Jadhav and Rama Jadhav. Since they were in their need of money they sold the said property to one Umesh Naykinde. Lastly, house property bearing No.504 was originally owned by Umesh Naykinde but later on he sold the said property in favour of defendant No.1 by registered sale deed No.3028/2017. As such the defendants are the owners and possessors of the house properties No.501 to 504. The defendants ultimately prayed for the dismissal of suit with compensatory cost of it is Rs.50,000/-

04. Considering the pleading in the application and say following points arise for the consideration and my findings are recorded with the reasons stated below.

SR. NO.	POINTS	FINDINGS
1.	Whether the plaintiff has made out <i>prima-facie</i> case ?	YES

2.	Whether the balance of convenience lies in favour of the plaintiff ?	YES
3.	Whether irreparable loss would be caused to the plaintiff, if the injunction as prayed is not granted. ?	YES
4.	What order ?	As per final Order.

-: REASONS :-

POINT NO.1:-

05. In support of the application the plaintiff relied on the 7/12 extract of suit property, Mutation Entry extract bearing No.751, 8-A extract of house property No.504, the copy of Exh.1 in RCS No.341/2015, the copy of sale deed bearing No.63/1990.

06. On the other hand, defendant relied on the documentary evidence injury the mutation entry extract Nos.983, 984, assessment extract for the year 1997-98, house tax receipt deposited by defendants, the assessment list extract of house property No.502, assessment list extract of house property No.501 & 504.

07. The learned advocate for the plaintiff argued that, the plaintiff is the owner and possessor of suit property. The suit property was originally owned by his brother Dattatray Naiknavare. The plaintiff brother Dattatray Naiknavare purchased the land admeasuring 1H-14R in Gut No.526 from Dashrath Patil vide registered sale deed No.68/1990. Out of which 1R land is given by Dattatray Naiknavare to the plaintiff vide the consent letter. Accordingly, vide mutation entry No.751 the name of the

plaintiff is mutated on revenue record. As such, the plaintiff is legal possessor of the suit property. However, defendants having no concern with the suit land trying to obstruct the plaintiff's possession. Hence, he prayed for interim relief of injunction.

08. On the other hand, the learned advocate for defendant, the plaintiff has not mentioned the correct boundaries of suit property. According to Learned advocate for defendant, the suit property is adjacent towards the house property bearing No.501 to 504 and it is the western side of the house properties. It is further stated that, Bhoom-Barshi road is not adjacent to the land of the plaintiff but it is adjacent to the eastern side of properties Nos.501 to 504. According to the learned advocate for defendant, since, the plaintiff has not mentioned the boundaries of suit property correctly, the application is liable to be rejected. On these grounds the defendants prayed for rejection of the application.

09. The 7/12 extract of suit property shows that, the plaintiff's name was mutated on the revenue record in respect of 1R land whereas the plaintiff's brother possess 1H-14R land in Gut No.526. The mutation entry extract 451 produced by plaintiff shows that the plaintiff's name was mutated on the record of suit property in view of the consent letter given by the plaintiff's brother. The plaintiff brother purchased the land admeasuring 1H 14R from one Dashrath Patil vide sale deed No.68/1990. The sale deed shows that the Gut No.526 is bounded by the road towards east side. Therefore, it is clear that there is road towards eastern side of the suit property.

10. It appears from the pleading of the parties that there is

a dispute as to the existence of the government road. Whether the road is in between the land of plaintiff and the house properties of defendants or whether it is towards the eastern side of the house properties of defendants can be decided after the full fledged trial. Prima-facie, it is seen that the plaintiffs name is mutated on 7/12 extracts of the suit property and the suit property is bounded by road towards eastern side. Therefore, the plaintiff's legal possession needs to be protected till the final decision of the case. Hence, point No.1 is the answered in the affirmative.

POINT NO.2 AND 3:-

11. Since, the plaintiff is having legal possession over the suit property his possession needs to be protected. If the relief of injunction is not granted and irreparable loss would be caused to the plaintiff. The plaintiff would suffer more hardship than defendants if the relief of injunction is withheld. Hence, point No.2 and 3 are answered in the affirmative. In the result following order is passed.

ORDER

1. Application is allowed.
2. Defendants or their agents or any other person on their behalf are hereby restrained from causing obstruction to the plaintiff's possession over the suit property till the final decision of the suit.

Sd/-

Date : 29.01.2024

(Smt. S.J.Patil)
Jt. Civil Judge Jr. Div., Bhoom.

CERTIFICATE

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

Name of Stenographer	:	N. V. Koli Stenographer Grade-3
Name of Court	:	Jt. Civil Court Jr. Div., Bhoom Tal. Bhoom, Dist. Osmanabad.
Order date	:	29.01.2024
Order signed by the Presiding Officer on	:	29.01.2024
Order uploaded on	:	31.01.2024