

MHOS130010582024



R.C.S. No.338/2024
Prabhakar Vs. Vikram

ORDER PASSED BELOW EXH.5

This is an application filed by plaintiffs under Order 39 Rule 1 & 2 of Code of Civil Procedure for the relief of temporary injunction restraining defendants from making construction in survey no. 29/A and 29/B (more specifically described in para 2 of the plaint) situated at Bhoom, Tal. Bhoom, Dist. Dharashiv (Herein after referred as "suit property").

02. Plaintiffs case in short that, they are joint owners of land survey no.29/A and 29/B. For the purpose of family settlement, the names of plaintiff no. 1 and 2 are mutated on survey no. 29/A where as the name of plaintiff no. 3 is mutated on survey no. 29/B. Plaintiffs are legal owners and possessors of the suit property. All the plaintiffs are residing at Pune since the year 2010. According to plaintiffs, by taking the advantage of their absence defendant started construction in the suit property. In fact defendants are the owners of land survey no. 33 admeasuring area 98R situated towards the northern side of the suit property. Defendants have started construction in survey no. 29 by making encroachment in the suit property. The plaintiff requested them to measure both lands before commencement of the construction. However, defendants did not pay any heed to the request. Hence,

plaintiffs constrained to file the present suit for the relief of declaration of ownership and for the relief of perpetual injunction against defendants.

03. Defendants no. 1 to 4 contested the suit and application by filing the written statement at Exh. 31. Defendants denied the allegations made by the plaintiff against them. Defendants contend the plaintiff has no locus standi to file the present suit. Hence the suit is not tenable. According to defendants the plaintiffs have not specifically stated as to whether in survey no. 29/A on survey no. 29/B the construction is going to be made. The plaintiff also have not stated the exact area on which defendants have made the alleged encroachment. On the contrary defendants are the owners and possessors of land survey no. 33A. Defendants are making construction of cattle shed in survey no. 33A. Defendants denied that they have made encroachment in the suit property. It is the specific contention of the defendant that there was a 20 feet south-north road in between the land of the plaintiff and defendants. There is also drainage system constructed by the municipal corporation, at the both sides of the road. Defendants are making construction of the cattle shed in their land survey no. 33/A. Hence defendants prayed for dismissal of suit with compensatory cost of Rs. 10,000/-

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. The plaintiff relied on the documentary evidence including 7/12 extract of survey no. 29/A and 29/B. Certified copy of mutation entry no. 7786 and 7787, map issued by T.I.L.R. Bhoom, certified copy of 7/12 extract of land survey no. 33A, 33B, 33C, 33D etc. Besides, the plaintiff filed the photographs showing the construction trying to be made by the defendants. On the other hand defendants also produced the photograph of the construction.

06. The learned advocate for plaintiff argued that plaintiffs are the owners of land bearing survey no. 29/A and 29/B. The names of plaintiff no. 1 to 3 are mutated on the revenue record only for the purpose of family settlement. The defendants land bearing survey no. 33 is situated towards the northern side of the suit land. The learned advocate for the plaintiff relied on the map issued by T.I.L.R. Bhoom and argued that due to the flowing of road proceeding towards Bhoom the plaintiff's land bearing survey

no. 29 is divided in two parts. Some of the portion of the land survey no. 29 is situated towards the northern side of the land. Where as the land own by defendants bearing survey no. 33 is situated towards the extreme northern side of land survey no. 29. The learned advocate for plaintiffs submitted that defendants are trying to make construction over the portion of survey no. 29 situated towards the northern side of the road. The learned advocate for plaintiff relied on the photograph showing the construction made by the defendants towards the northern side of the road. It is further submitted that defendants have not obtained any permission from the appropriate authority before making construction in the suit land, even though the suit property lies within the jurisdiction of Municipal Corporation Bhoom.

07. On the other hand, learned advocate for defendant argued that, survey no. 29 is divided as 29/A, 29/B but the plaintiff has not stated in what portion and as to what extent the construction is trying to be made. According to the learned advocate plaintiffs have no locus standi to file the present suit. He submitted that defendants are making construction in their own land which is situated towards northern side of the plaintiffs land further he submitted that the plaintiff has not shown as to what extent and in which portion the construction is going on. Hence, in this background, he prayed for the rejection of the application.

08. So far as the argument of the learned advocate for defendants, that the plaintiff has not locus standi to file the suit is concerned, I do not find any substance in his argument because

land bearing survey no. 29 is divided in gat no. 29/A and 29/B. There is not dispute as to ownership of the land survey no. 29. Plaintiffs are joint owners of the land survey no. 29. So far as the exact portion of encroachment is concerned, it can be determined after the measurement of the land from the expert and after full fledged trial.

09. The map produced by the plaintiff on record prima-facie shows that the plaintiffs' land bearing survey no. 29 was divided by the road. Some portion of land bearing survey no. 29 is situated towards the northern side of the road and the land owned by defendants bearing survey no. 33 is situated towards extreme northern side of survey no. 29. The photograph produced on record prima-facie depicts that defendants are trying to make construction adjacent to the road. Whether the construction trying to be made by the defendants is in survey no. 29 or whether in survey 33 can be decided after recording the evidence of the parties and measuring the land of both parties. The plaintiff contention in the plaint warrants that the dispute needs to be decided on merit. Thus plaintiff has shown the prima-facie case in his favour. Hence, point no. 1 is answered in the affirmative.

POINT NO.2 & 3:-

10. Since, plaintiff has prima-facie case the balance of convenience also lie in favour of plaintiff. If defendants are succeed in making construction it would create more hardship to the plaintiff to that of the defendant. Further it would create complications and multiplicity in the suit. In such circumstances an

irreparable loss will cause to the plaintiff if the relief of injunction is withheld. Hence, point No.2 and 3 are answer in the affirmative. Hence, the result following order is passed.

ORDER

1. Application is allowed.
2. Defendants, their agents or any other person on their behalf is hereby restrained from making construction in survey no. 29/A and 29/B situated at Bhoom, Tal. Bhoom, Dist. Dharashiv till the final decision of the suit.
3. Cost in cause.

Sd/-

Date : 06.06.2024

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