

MHOS130015542022

R.C.S.NO.879/2022
Abdul Pathan / Bhagwat Salunke**ORDER PASSED BELOW EXH.05**

This is an application filed by the plaintiff for the relief of temporary injunction restraining defendant from causing obstruction to the land bearing Gat No.420 area 57R situated at Mouje Chincholi, Tal. Bhoom.

02. According to the plaintiff, he has purchased the suit property to the extent of 74R from one Manik Murlidhar Ware vide registered sale deed No.1418/1998. Since, then he is owner and having possession over the suit property. In the year 2017 the plaintiff sold 17R land from Gat No.420 to one Surekha Jagannath Shirke accordingly, the plaintiff is having possession over 57R land in suit property. It is further submitted by the plaintiff that, defendant is owner of land Gat No.552. In the sale deed of land Gat No.552, it is shown as bounded by old road towards east. The defendant taking benefit thereof causing obstruction to the plaintiff's possession over suit property. Hence, plaintiff filed the present suit for perpetual injunction and sought for the interim relief of temporary injunction.

03. The application is resisted by defendant contending that plaintiff has not described the suit property correctly. Except

the eastern boundary rest of the boundaries are incorrect. There is old Bhoom-Rameshwar road towards the western side of the suit property. At the north, it is bounded by Gat No.421 and towards south, it is bounded by the defendant's land bearing Gat No.552. The defendant further state that, there was a road in between Gat No.552 and 553 however, the Government has not acquired the said road and not compensated the defendant till date. According to defendant, the plaintiff intend to grab the land left for the purpose of road. According to defendant, without measurement of land Gat No.420, 552 and 553 injunction cannot be granted blindly. Hence, he prayed for rejection of the application.

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 have made out <i>prima-facie</i> case?	No
2.	Whether the balance of convenience lies in favour of the plaintiff?	No
3.	Whether irreparable loss would be caused to the plaintiff, if the injunction as prayed is not granted. ?	No
4.	What order ?	As per final Order.

-: REASONS :-

AS TO POINT NO.1:

05. The plaintiff relied on the documentary evidence include 7/12 extract of Gat No.420, 7/12 extract of Gat No.552,

8/A extract of Gat No.420. Map of Gat No.420, Map of Gat No.552 and copy of sale deed No.1418/1998 etc. The plaintiff further relied on the measurement map of Gat No.420 filed along with list Exh.23, copy of sale deed bearing No.686/2011 of land Gat No.552.

06. The learned advocate for plaintiff argued that, he is owner and possessor of Gat No.420 situated at Chincholi, Tal. Bhoom. But the sale deed of land gut no.552 shows the old road towards east. Defendants having no concern with the land Gat No.420 trying to obstruct plaintiff's possession hence, plaintiff brought the present suit.

07. On the contrary learned advocate for defendant argued that, the plaintiff has not mentioned the correct boundaries in his sale deed. Suit property bearing Gat No.420 is surrounded by old Bhoom-Rameshwar road towards west, Gat No.420 towards north and Gat No.552 towards south. Since, the suit property is not correctly described the plaintiff is not entitled for the relief of injunction.

08. I have perused the document filed on record. It shows that, the plaintiff has purchased the suit property from one Manik Ware. Defendant also purchased property land Gat No.552 from Ratanbai Salunke and Balasaheb Ramchandra Kulkarni. The map of gut no. 552 and 553 produced on record by the defendant shows that, there is a road between Gat No.420 and Gat No.552.

However, the said road is mentioned as Bhoom-Rameshwar road and not Bhoom-Ileet road. That apart, upon perusal of the measurement map produced by the plaintiff along with list Exh.23 shows that, the plaintiff has in possession over, some portion of Gat No.421 and having possession over some portion of Bhoom-Rameshwar road. In short plaintiff is having possession over the adjacent land Gat No. 421 and the adjacent road.

09. It is cardinal principle of law that, the person seeking equity must do equity or equity must come with clean hands. For the relief of injunction plaintiff has to come with the clean hands. The measurement map produced along with Exh.22 shows that, the plaintiff is having in possession , more area than the actual area of Gat No.420. It appears that, the plaintiff is not come with clean hands.

10. Another reason needs to be mentioned here that, the defendant come with the defence that the boundaries of the suit properties are not correctly mentioned. However, it to be stated here that for the sake of argument, even, it is accepted that the boundaries of the suit property are correct, the same is not bounded by the land of the defendant hence, no question as to the disturbance of possession would arise.

11. Nextly, it appears that there is dispute between the parties in respect of the road. The said issue can be resolved after the measurement of the adjacent lands. Hence merely on the basis

of the sale deed of the plaintiff it can not be said that the plaintiff has a prima facie case. Hence, point No.1 is answered in the negative.

AS TO POINT NO.2 & 3:

12. Since, plaintiffs have not prima-facie case the balance of convenience also do not lie in favour of plaintiff nor any irreparable loss with caused to plaintiffs if relief of temporary injunction is withheld. Hence, point No.2 and 3 are answered in the negative. In the result following order is passed.

ORDER

1. Application is rejected.
2. Cost in cause.

Date : 25.07.2023

(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, Junior Division,
		Bhoom, Tal. Bhoom, Dist.
		Osmanabad
Order date	:	25.07.2023
Order signed by the	:	25.07.2023
Presiding Officer on		
Order uploaded on	:	27.07.2023