

MHOS150018572024**R.C.S. No. 716/2024**
Kannif V/s. Utreshwar**ORDER BELOW EXH. 5**

1) This is an application preferred by the plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure (hereinafter to be referred as “the Code” for short). Perused the supporting documents filed by both the parties. Heard Learned Advocate Shri. U. B. Chandanshive, for the plaintiff and Learned Advocate Shri. I. D. Shaikh for the defendant at length.

2) The plaintiff owns and possess the suit land bearing no. 61 ad-measuring 68R situated at Mauje – Shelgaon, Taluka – Paranda, Dist. Dharashiv (hereinafter to be referred as “**the suit property**”). The defendant is a **cousin** nephew of the plaintiff, who exchanged 3R land of gat bearing no. 45 with 1.5R land of the suit property with the plaintiff. Accordingly, the plaintiff executed notarized stamp dated 05/01/2001 in favour of Dattatray Rambhau Jagtap and Dada Rangnath Jagtap who have joint family with defendant. Thus, they are residing in 1.5R area by constructing their house. It is further contended that though, the plaintiff has given 1.5R land, the defendants are in possession of 2R land of the suit property. In order to access his field, the plaintiff has formed/created/made/prepared road for himself and on the western side of road there is house belonging to defendant. Thus, plaintiff is

residing on eastern side of the defendant.

3) It is specifically contended by the plaintiff that on 03/07/2024, it was brought to the notice of plaintiff that the defendant has thrown garbage from his house on eastern side (i.e.) in front of house of the plaintiff. Thus, he asked him about throwing garbage in front of his house as there is possibility of locating snakes, scorpion and other alike animals coming to their vicinity. Thus, the defendant abused and thereby threatened him with dire consequences of his life. As a result of this, the plaintiff lodged N.C. report bearing no. 213/2024. Despite this, the defendant did not stop there and continued throwing garbage in front of his house causing heap of garbage there which would cause health related problems to plaintiff and his family members. The plaintiff owns and possess the suit property which shows that he has prima-facie case. Also, the plaintiff and his family members would suffer from various diseases and hence, balance of convenience lies in his favour. If the defendant is not restrained from throwing garbage, irreparable loss would be caused to the plaintiff which cannot be compensated in terms of money and thus, he preferred instant application.

4) Per contra, Learned Advocate for the defendant vehemently opposed the said application by filing reply below Exh. No. 12 and denied the adverse contentions made in the application. It is specifically submitted that the plaintiff does not own and possess the suit land. He admitted that the plaintiff exchanged 1.5R land out of the suit property with 3R land from gat no. 45 of the

defendant and same was notoarized in favour of Dada Rangnath Jagtap and Dattatray Rambhau Jagtap, who are uncles of defendant. As 1.5R land was exchanged, the plaintiff is not an owner and possessor of the suit property and as such Dada Rangnath Jagtap is possessing the said portion since the execution of notorized document dated 05/01/2012. The defendant though admitted that he is residing in said 1.5R land by constructing house but he denied the house of the plaintiff is situated opposite across the road (i.e.) on eastern side.

5) The father of the plaintiff and grandfather of defendant are real brothers. The defendant submitted that Tandulwadi to Shelgaon road passes through the suit property and it is situated on eastern and western side of the said road. It is further submitted that as partition took place prior to sixty to seventy years between father of plaintiff and grandfather of defendant, the suit property came to share of plaintiff and gat no. 45 though stated 47 came to share of grandfather of defendant. As a result of this, the suit property is situated adjoining to road (i.e.) on western side where the defendant has constructed his house ad-measuring eastern-western 60 foot and northern-southern 10 foot. Similarly, on eastern side of road there is eastern-western 49.5 foot and southern-northern 33 foot space belonging to him for throwing dung and garbage and keeping agricultural equipments. Thus, according to the Learned Counsel, the defendant owns and possess the space where house is constructed and where the garbage is thrown.

6) It is further submitted that Shelgaon to Karmala road has been widened and as the prices of the suit property has increased, the plaintiff is harassing defendant so that he could leave the space where the garbage is thrown. The plaintiff also with intend to grab the property erected patra shade ad-measuring 12 X 20 foot near the garbage in last two to three months. However, he does not reside there permanently. The defendant submitted that garbage has been there since last 60 to 70 years and therefore, the suit is filed with intend to harrass him. It is also submitted that the brother of defendant Madhav Arjun Jagtap is also residing with him and the plaintiff has been doing garbage from the side of kitchen wall where brother of defendant is residing. According to the defendant, there is no prima-facie case to the plaintiff and balance of convenience also does not lies in his favour. No hardship would be caused to the plaintiff. To the contrary, serious prejudice would be caused to defendant, if the application is allowed. Thus, the plaintiff did not approach this Court with clean hands and therefore, he prayed to reject the said application.

7) Considering the rival pleadings of the parties following points arise for my determination and I have recorded my findings thereon with reasons stated thereunder.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
(1)	Whether the plaintiff prove prima facie-case in his favour?	...Yes

(2)	Whether balance of convenience lies in his favour?	...Yes
(3)	Whether irreparable loss will cause to the plaintiff, if application is rejected?	...Yes
(4)	What order?	As per final order

REASONS

As to points No. 1 to 3:

8) As all the above three points are interlinked with each other and in order to avoid repetition they are being discussed together.

9) To support the contentions the plaintiff has produced on record 7/12 extract of the suit property, copy of NCR, village namuna of property bearing no. 671 and 707, notarized sale deed dated 05/01/2001 and certain photographs of the suit property. Whereas, the defendant also relied on notarized sale deed dated 05/01/2001 and three photographs.

10) It is the case of plaintiff that he owns and possess the suit property. It is not disputed that he exchanged 1.5R land of the suit property with 3R land of gat bearing no. 45 belonging to the defendant and in that regard they executed notarized document 05/01/2012 in favour of Dattatray Rambhau Jagtap and Dada Rangnath Jagtap, uncles of the defendant. They are residing in 1.5R

area by constructing their house is also not disputed. The defendant is residing on the western side of road and plaintiff is residing on eastern side of the defendant. On 03/07/2024, it was brought to the notice of plaintiff that the defendant has thrown garbage from his house on eastern side (i.e.) in-front of house of the plaintiff. As the defendant has been continuously throwing garbage on the suit property which causes serious inconvenience to him and irreparable loss which cannot be compensated in terms of money.

11) With regard to this, the plaintiff has produced on record 7/12 extract of the suit land and notarized sale deed dated 05/01/2001. The 7/12 extract prima-facie shows the plaintiff possess the suit property. From the averments of pleadings it is noticed that the defendant has been residing on western side of Shelgaon Karmala road. The notarized document dated 05/01/2001 also shows that the plaintiff was having remaining land on eastern side and on western side Shelgaon Karmala road. Thus, as per pleadings plaintiff and defendant are residing opposite each other and in between through their houses Shelgaon Karmala road passes.

12) It is contended by the plaintiff that the defendant has been throwing garbage across the road (i.e.) in-front of the house of the plaintiff. According to defendant, the said place belongs to him and he has been using it when they exchanged it as mentioned earlier. Thus, the place where the defendant has been throwing garbage is belonging to him and the plaintiff has no concern with it and as such he does owns and possess the suit property.

13) It is clear from the pleadings and record that the portion of land where the garbage has been thrown or throwing is a part of the suit property. Admittedly, the defendant has constructed house or he has been residing on the place which was exchanged by the plaintiff with defendant and Dada Rangnath Jagtap and Dattatray Rambhau Jagtap. The defendant though denied the fact of throwing garbage at the suit property but according to him, he has been using the said space for his various agricultural purposes. In such circumstances, it is necessary for the defendant to show that the said space is belonging to him.

14) As per notarized document dated 05/01/2001, it is clear from the record that the defendant has been in possession of 1.5R land. According to the plaintiff the defendant has constructed his house in the said area. The area which the defendant is claiming to be his is actually across Shelgaon to Karmala road. The defendant has not shown the said area is actually owns and possess by him or included in 1.5R land. Admittedly, the said portion is part of the suit property and therefore, prima-facie it can be said that the said portion is possess by the plaintiff.

15) It is contended by the plaintiff that on 03/07/2024, the defendant has thrown garbage on the portion which is shown have been part of the suit property. With regard to this the plaintiff lodged N.C.R. against the defendant prima-facie showing the defendant has thrown garbage in-front of house of the plaintiff and on being asked by the plaintiff, he was threatened with dire consequences to his life

by the defendant. It is also averred that the defendant has been continuously throwing garbage on the said portion. The said portion is shown to have been in possession of the plaintiff and if the defendant is continued to throw garbage on the said portion in such circumstances, possibility of locating dangerous reptiles like snake and scorpion in the nearby vicinity cannot be ruled out. Also, possibility of spreading various diseases causing inconvenience to the plaintiff and defendant cannot be ruled out which cannot be compensated in terms of money. No hardship would be caused to the defendant, if he throws the garbage at some other place than the suit property, where it can be thrown. The same would be in the interest of all and more particularly from environment perspective.

16) It is also submitted that the brother of defendant Madhav Arjun Jagtap is also residing with him and the plaintiff has been doing garbage from the side of kitchen wall where brother of defendant is residing. So far as above contention of the defendant is concerned, the same cannot be considered as there is nothing on record to show that the plaintiff has been doing the same.

17) The Learned Counsel for the defendant relied on the judgment of **Chandrakant Rameshchandra Bhujbal and others V/s. Gangaram Rampratap Mahant through L.R.'s** reported at **1994 BCJ 905** wherein Hon'ble Bombay High Court held that temporary injunction cannot be granted in favour of a party who is not in the possession of the property. The Learned Counsel for the defendant also placed his reliance on the judgment of **Baba Bhikoo Dube V/s.**

Municipal Corporation of Greater Bombay reported at **1996(1) BCJ 12** wherein it was held by Hon'ble Bombay High Court that it is the plaintiff who has come to court and wants an equitable relief of injunction and he must succeed or fail on the basis of his strength and certainly not on weakness of the defence case. Hence it is immaterial and irrelevant to consider as to how much extent defendant is in possession and whether the defendant can get good title without a sale deed etc. If defendant is shown to be in possession of the disputed site, the plaintiff cannot get an order of injunction irrespective of the question whether defendant's possession is lawful or not.

18) In the present case though the plaintiff is not in possession of the entire suit property as the 1.5R portion of the said land was exchanged with uncle of defendants but he is shown to have been in possession of remaining portion of it. Though it is denied that the plaintiff owns and possess the suit property but it is also the case of the defendant that the plaintiff is residing on other land than the suit property. Thus, it cannot be said that the plaintiff is not in the possession of the suit property. Thus, it is established that the plaintiff is in possession of the suit property and therefore, in my respectful submission **Chandkant case** (supra) is not applicable to facts of the present case. Similarly, on going through the judgment of **Baba case** (supra) it appears that the facts of the said case are completely different than the facts of the present case. Therefore, I respectfully submits that ratio laid down in the said case is not helpful to the defendant.

19) Having regard to the present facts and circumstances, I concur submissions advanced by Learned Counsel for the plaintiff and answer points No. 1 to 3 in positive. In the result, application deserves to be allowed. With this, in terms of point no. 4, I proceed to pass the following order.

ORDER

- 1) Application is allowed.
- 2) The defendant, his servants/labours, agents, relatives, friends, or any other person claiming on his behalf are hereby restrained from throwing garbage on the suit property till the final disposal of the suit.
- 3) Parties to bear their own costs.

Date: 22/01/2025

(P. S. Thakare)
2nd Jt. Civil Judge Junior Division,
Paranda.

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 the Stenographer	Suresh B. Bhingare
Name of Court	Shri. Parag S. Thakare, 2 nd Jt. C.J.J.D. and J.M.F.C., Paranda
Date of Dictation	22/01/2025
Judgment signed by the P.O. on	22/01/2025
Judgment/Order uploaded on	22/01/2025