

ORDER BELOW EXH.5

1. This application has been filed by the plaintiff seeking temporary injunction against the defendant restraining him from dealing with the suit property in any manner and also for restraining him from disturbing an exclusive possession of the plaintiff over the suit property.

2. The factual matrix of plaintiff's case runs as under:

The plaintiff Evangelical Alliance Ministries, Nashik is a trust and Madhukar Surawade and Dilip Shashikumar Naik are trustees of the said trust. An agricultural land bearing Block No. 391 situated at Village Nasarapur, Tal- Bhor Dist. Pune, is the property of the plaintiff trust. However, two persons viz. Rajendra Khisty and Vijay Khisty, who have been removed as trustees, have appointed the defendant as Manager and under the grab of said order; the defendant is interfering into their possession over the suit property. On the basis of this appointment, the defendant has made an encroachment, and he is a trespasser and intending to dispose off the suit property for his own benefit. He has also destroyed CCTV camera installed in the suit property, and threatened to the trustees of the plaintiff trust. The Ld. Jt. Charity Commissioner has passed an order in application bearing No. 6/2015 filed under Sec.41 (E) of the Act, and has granted interim relief against the defendant, restraining him from entering in the suit property. But the powers under Sec.41 (E) of the Act are limited. Hence, plaintiffs have filed this application for restraining the defendant from entering and trespassing into the suit property by way of temporary injunction and to deal with or create 3rd party interest.

3. Defendants resisted and vehemently opposed the instant application by filing reply at Exh.18 and denied in toto the entire averment of

plaintiff. It is the contention of the defendant that the suit is filed against the employee of the trust, who has been appointed by the trustees. The present plaintiffs Madhukar Surawde and Dilip Naik are not the trustees of the plaintiff trust. It is contended that the resolution passed by the trust in respect of the appointment of the defendant is legal and valid. Defendant lastly contended that suit filed by plaintiffs is false, bogus and outrightly prayed to reject the instant application.

4. Following points arose for determination and I have recorded my findings with reasons to be followed thereon:

POINTS FOR DETERMINATION

Sr. No	Points	Findings
1.	Whether the plaintiffs prove prima facie case lies in their favor?	No
2.	In whose favor the balance of convenience lies?	Defendant
3.	Whether the plaintiff would be put to irreparable loss, if injunction is not granted?	No
4.	What order?	As per final order

REASONS

5. I have heard learned counsel appearing for the plaintiffs and defendant.

AS TO POINT Nos. 1 TO 4:

6. As point nos. 1 to 4 are inter linked with each other I prefer to discuss it under one common caption.
7. Ld. advocate for the plaintiff submitted in consonance to his plaint and application. In order to substantiate his submissions ld. advocate for the plaintiff invited my attention towards documents filed on record. He

submitted through his application that, prima facie case and balance of convenience lies in favor of plaintiff and irreparable loss would be caused to the plaintiff which could not be compensated in terms of money and accordingly prayed to allow the instant application.

8. Plaintiff filed copy of 7/12 extract of the suit property, copy of Govt. map of the suit property, copy of resolution of the appointment of the defendant dated 20/9/2014, copy of FIR filed against the defendant dated 16/06/2014, copy of photographs of the suit property, copy of order passed by Jt. Charity Commissioner Nashik against defendant, copy of the change report dated 24/2/2016.
9. Per Contra Id. advocate for the defendant submitted that plaintiff has filed instant application with ulterior motive and the suit of the plaintiff is not tenable. He submitted in consonance to his reply at Exh.18. In order to substantiate his submissions he invited my attention towards documents to show their bonafides and also submitted that documents filed by plaintiff are not reliable at this juncture.
10. Defendant has filed the decision of Jt. Charity Commissioner on change report of 19/2/2010, intimation letter issued to Dilip Naik and M.B. Surwade by Rajendra Khisty on 24/9/2013, copy of proceeding book of meeting held on 2/8/2014, copy of resolution of extension of appointment of defendant, copy of resolution regarding appointment of defendant held on 7/2/2015, copy of letter dated 17/07/2012 issued to Dilip Naik and M.B. Surwade.
11. It is canon of settled legal principle that power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as the matter of right or course. The grant of injunction is at the discretion and must be

exercised in favor of the party only if the Court is satisfied that, unless the other party is restrained by an order of injunction, irreparable loss or damage would be caused to that party. The court grants such relief on the principle of *ex debito justitiae* i.e. to meet the ends of justice.

12. Reverting back to the hub of the matter, plaintiff has pleaded that the defendant has trespassed over the suit property.

13. Plaintiffs have largely relied upon joining letter of defendant dated 20/9/2014. According to the plaintiff said appointment was made for 6 months and the defendant has not brought on record the extension of his appointment. At the time of argument ld. advocate for the defendant placed on record the copy of extension of appointment of the defendant and resolution passed by the members of the trust to that effect dated 7/2/2015.

14. There is no document on record to show that plaintiffs have taken steps against Vijay Khisty or Rajesh Khisty for making the forged document of the appointment of the defendant. Further, they have not challenged the resolution and appointment of the present defendant. Various change reports in this regard has been filed including the change reports in respect of the appointment of the plaintiffs as trustee. Copy of the change report dated 24/2/2016 showing that the name of Mr. Madhukar Surwade is entered as a trustee of the present trust. Ld. advocate for the defendant argued that these change report are not annexed with the order of the charity commissioner.

15. In this regard the plaintiff relied on the case of **Chembur Trombay Education Society Vs. D.K. Marathe, [2002(3) BomC.R.161]**, wherein it was laid down that taking note of change report by the authority like charity commissioner is not condition precedent to come in effect the

change. The facts of this reported case were different and the points involved in the case in hand are different. Thus, the proposition made in the case cited supra of *Chembur Trombay Education Society* is of no help to the plaintiff in the present case.

16. On the perusal of the said change reports it seems that the said change reports are not annexed with the order of the Jt. Charity commissioner. There is no other document on record to show that present plaintiffs are in possession with the suit property being the trustee of the plaintiff trust.
17. Per contra, documents filed by the defendant would exemplify and demonstrate that the appointment of the defendant was extended. The defendant has filed the proceeding book in that regard and extension letter of the defendant. On the perusal of the appointment letter of the defendant it seems that the said defendant was appointed as branch manager of the suit property.
18. Another important aspect which needs to be discussed here is that the defendant has come up in possession with suit property by way of appointment as an employee of the plaintiff trust, on the contrary, the plaintiff claimed to be in possession of the suit property. The plaintiff was at liberty to show his possession over the suit property, however, he has failed to do so. In my view, the documents speak volumes about the possession of the defendant over the suit property.
19. At this juncture, prima facie the defendant appears to be in possession of the suit property. Hence, in my view the pleadings of rival parties are counter blast to each other and can only be decided after framing of issues and leading evidence inter se in dispute. As of now, granting injunction would result into greater hardship to defendants as

compared to plaintiffs.

20. On comparing the hardship which would be caused to parties, the defendant would suffer more hardship as suit property is in his possession presently. Thus, considering all the above aspects, I am of the view that the plaintiff has failed to make out prima facie case in his favor. Perusal of entire record shows that the balance of convenience lies with the defendants. It cannot be said that the plaintiff will suffer irreparable loss. Accordingly I answer point Nos. 1 to 3 in negative. In the result, I am inclined to pass the following order:

ORDER

- 1) The application at Exh.5 hereby stands rejected.
- 2) Parties to bear their own costs.

Date: 04/12/2017

Sd/-
(Ms. A. C. Rokade)
Jt.CJJD, Bhore, Dist. Pune

"I affirm that the contents of this P.D.F file Order are same word for word as per original Order.
Name of the Clerk : G.S Mhavale.
Court Name : Smt. A.C.Rokade
Jt.C.J.J.D & J.M.F.C., Bhore, Dist. Pune.
Date :04/12/2017
Order signed by presiding officer on : 04/12/2017
Order uploaded on :04/12/2017."

