

ORDER BELOW EXH.60

- 1.** Read the application and reply of defendant no. 1 at Exh.79. Heard Ld. Advocates for the rival parties.
- 2.** Present application is made when another application for grant of temporary injunction Exh 5 is pending in the suit. Both the parties argued on the point of maintainability of this application. However, considering the prayer of temporary injunction for a specific period made in this application, it becomes clear that the application falls under Order 39 Rule 1 of Code of Civil Procedure ("C.P.C." for short).
- 3.** Ld. Advocate for plaintiffs submitted that, the plaintiffs are having a customary right of worship in the *Shrinath Mhaskoba* Temple which is one of the suit property described in para no. 1Q of the plaint. From 07-10-2021, the *Navratri* Festival is starting. There is a custom of celebrating this festival in *Shrinath Mhaskoba* Temple. The plaintiffs and their forefathers used to participate in this festival from generations to generations. The plaintiffs are having customary rights of worship in the temple which are specifically described in para no. 1Q of the plaint. However, the defendant no. 1 is trying to prevent the plaintiffs from performance of their customary worship on the occasion of *Navratri* in the *Shrinath Mhaskoba* Temple. According to him there is a prima facie case for grant of temporary injunction against

defendant no. 1 and the plaintiffs will suffer irreparable loss if the defendant no. 1 is not prevented from prohibiting the plaintiffs from performance of customary religious ceremony in accordance with the rights acquired by their family in the temple.

4. Ld. Advocate for defendant no. 1 argued that, the details of worship is not given by plaintiffs in the plaint. The temple is neither owned by plaintiffs nor the defendants. It is owned by the *Shrinath Mhaskoba* Temple. Therefore, there is no occasion for defendant no. 1 to prohibit the plaintiffs from performance of religious ceremony. However, the customary right of performance of first *Puja* is acquired by the defendant no. 1 by virtue of his being elder male member of the family. Therefore, the plaintiffs cannot encroach over this customary right of defendant no. 1. There is no cause of action for filing of present application, as the temples are closed due to Corona Pandemic. Therefore, there is no prima facie case in favour of plaintiffs for grant of temporary injunction and balance of convenience also does not lie in their favour. Therefore, he prayed to reject the application.

5. I have given thoughtful consideration to the arguments advanced by Id. Advocates for the rival parties. Hence, the following points arise for determination and my findings thereon for the reason are stated as under:

	Points	Findings
1	Whether plaintiffs are having a prima facie case for grant of temporary injunction?	No
2	In whose favour the balance of convenience lies ?	Defendant no. 1 .
3	Whether the plaintiffs will suffer irreparable loss if the temporary injunction as prayed is refused?	No.
4	What order?	As per final order

REASONS

As to point no. 1:

6. The claim of temporary injunction needs to be considered in view of the provisions laid down under order 39 Rule 1 and 2 of C.P.C. Order 39 Rule 1 opens with the wording, 'where in a suit, it is proved by affidavit or otherwise'. It means that the court can resort to affidavits filed by the parties as well as various other circumstances like the documents produced. In the present case the plaintiffs as well as defendant no. 1 have produced the affidavits of numerous persons residing in the vicinity of *Shrinath Mhaskoba* Temple, Kodit in support of their respective claims. Thus, there is oath against oath. In such circumstances it is not desirable to consider the affidavits

produced by the rival parties. Therefore, the documents produced by them and the circumstances appearing on the face of record needs to be considered for the decision of this application.

7. It is not in dispute that, the suit temple is private temple. However, if the pleadings of rival parties is taken into consideration, it shows that the public in general have access to this temple, though it is not registered as a Public Trust. This temple and certain customary rights of worship is made the subject matter of the suit in para no. 1 Q of the plaint by plaintiffs and prayed for its partition. Secondly, if para no. 16 of the plaint is read, it appears that the plaintiffs have pleaded that the suit Temple is already partitioned by oral partition between the defendants and themselves but it is in possession of defendant no. 1 to 14. Thirdly, a copy of Tax Assessment Register of this temple is produced by plaintiffs themselves which shows that it is possessed by *Shrinath Mhaskoba* Temple. To my mind, *Shrinath Mhaskoba* Temple is a juristic person who is shown to be in possession of this property. In such circumstances it become necessary for plaintiffs to show that how they are having share in this property and this fact can be evidenced into writing by them. However, there is no material on record to show that this property is owned and possessed by the family of plaintiffs and defendants.

8. The plaintiffs have prayed to restrain defendant no. 1 from causing obstruction in performance of religious

ceremony to them in the temple during the *Navratri* Festival. It is a specific case of defendant no. 1 that he is having a customary right to perform of first *Puja* on such occasion and except this preferential right, the plaintiffs are at liberty to perform other rituals. However, it is submitted by plaintiffs that they have acquired this customary right and not the defendant no. 1. It makes a sense that the real controversy between the parties is about this preferential right which is termed as *Manache Adhikar* by the parties. The aforesaid right of worship is a customary right. Both parties have filed affidavits in support of their respective claims and it is oath against oath. Therefore, those affidavits are not helpful at this stage.

9. However, as discussed above, if the case of plaintiffs is considered, it is threefold. If this single aspect is considered, it does not appear that, there is a serious question to be tried at the hearing, and there is no probability of plaintiffs obtaining the relief of injunction at the conclusion of the trial on the basis of material placed on record. It is settled position of law that, if a fair question is not raised for determination, it should be taken that, no prima facie case is established. Hence, I hold that, the plaintiffs have not made out a prima facie case and answer point no. 1 in the negative.

As to point no. 2:

10. Both the parties are not denying the right of

worship of each other in *Shrinath Mhaskoba* Temple except the preferential right of worship. The temporary injunction sought by plaintiffs is in respect of the performance of religious ceremony as per the customary right acquired by the family of plaintiffs. The particulars of this ceremony is not before the court at this stage. Therefore, the court will not be in a position to supervise the terms in which injunction is granted. In such circumstances, if the temporary injunction as prayed is granted then the defendant no. 1 may lose his right to worship. On the other hand, the plaintiffs will not be placed in any inconvenience for the reason that, they are not prevented from worshipping in the temple by defendant no. 1, as the record does not show it. Therefore, the comparative mischief, hardship or inconvenience which is likely to be caused to the defendant no. 1 by granting temporary injunction will be greater than that which is likely to be caused to the plaintiffs by refusing it. Hence, I answer point no. 2 accordingly.

As to points no. 3 and 4:

11. The dispute herein is about the right of worship. Therefore, it is for the plaintiffs to show that the grant or refusal of temporary injunction will cause irreparable loss to them. The irreparable loss means a loss which cannot be compensated in terms of money at the conclusion of trial. However, it is not shown by the plaintiffs that they will cause irreparable loss if the defendant no. 1 is not prevented from causing obstruction to them. This fact needs

to be looked in the light of the pleading of defendant no. 1 that he has only objection in respect of performance of *Manache Adhikar* and not other religious ceremonies, if perform by the plaintiffs. In such circumstances, the plaintiffs will not suffer irreparable loss, if the temporary injunction is refused. Hence, I answer point no. 3 in the negative.

12. Thus, a prima facie case is not made out by plaintiffs for grant of temporary injunction. The balance of convenience also does not lie in their favour. They will not suffer irreparable loss if the temporary injunction as prayed is refused. If the pleading in the plaint is read in the light of documents produced by plaintiffs themselves it appears that, the plaintiffs approached the court with threefold case. If this aspect is considered it appears that, the conduct of plaintiffs is not free from blame and they did not approach the court with clean hands. Hence, in answer to point no. 4, I pass the following order:

ORDER

Application stands rejected.

Place : Saswad
Date : 06/10/2021

(N.H. Tikhe)
Civil Judge Junior Division
Saswad

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : R.V.Beldar, Stenographer, (L.G.)

Court Name : Shri. N. H. Tikhe
Jt.Civil Judge Jr. Division, Saswad.

Date of Judgment : 06/10/2021

Judgment signed by presiding officer on : 06/10/2021

Judgment uploaded on : 08/10/2021