



R.C.S. No.40/2023
Sopan Thakaji Pokharkar
Vs
Dattatray Malhari Pokharkar
& Ors.

ORDER BELOW EXH. 5

NATURE OF APPLICATION

The plaintiff has filed the present application seeking a temporary injunction under Order 39 of the Code of Civil Procedure, against the defendant No.1 and 2.

PLAINTIFF'S CONTENTIONS

2] The plaintiff contends that Gat No.478 admeasuring 0 H. 49 R (*Hereinafter referred to as "the suit property"*) is defendant No.3 to 10 and his ancestral property. He further contended that after Shri. Thakaji Namdev Pokharkar's death, his and defendant No.3 to 10 names were mutated on 7/12 extract of the suit property and since then they have been in peaceful possession of it. Further, on the western side of the suit property, there is a north-south road from Muktadevi High School to Thakarwadi Saticha Mendha (*Hereinafter referred to as "the road"*), and adjoining to it there is Gat No.477. Defendant No.1 and 2 are owners of Gat No.477. In addition, the plaintiff contended that on the northern side of the suit property, there is a house and onion storage (कांदा चाळ). It belongs to him and defendant No.3 to 10.

3] Furthermore, the plaintiff contended that recently defendant No.1 and 2 have measured the area of their Gat No.477 where it is wrongly shown that the area of their Gat No.477 is extended to eastern side of the road. The said measurement was conducted without due process. Moreover, it was conducted without prior notice. Further, as per the said measurement defendant No.1 and 2 are forcibly trying to obtain possession of an alleged encroached portion of the suit property. Therefore, filed this application and prayed for an injunction.

DEFENDANTS CONTENTIONS

4] The defendants have filed their say at Exh.26. They have denied the existence of the road between Gat No.477 and 478. On the contrary, it is contended that the area of Gat No.477 is even extend to eastern of the road. It is also contended that on 18/11/2022, in presence of plaintiff and his brother Dnyaneshwar, the Deputy Superintendent of Land Record measured the Gat No.477 and thereafter boundaries were demarcated. The defendant No.1 and 2 have installed iron bars according to said measurement and demarcation. The plaintiff never resisted at for whole process.

5] Furthermore, defendant No.1 and 2 contended that area of Gat No.477 is extend to other side i.e eastern side of the road and they are in possession of it. There used to be standing timbers and grass. The plaintiff was never had or have possession over other side i.e their eastern side of the road. Therefore, in such circumstances granting an injunction in favour of the plaintiff would cause irreparable loss to defendant No. and 2. Hence, prayed to reject the application.

6] Perused application, say and record.

7] Heard learned counsel Shri. V. B. Pokharkar for the plaintiff and Shri. Suryawanshi for the defendant No. 1 and 2.

POINTS FOR DETERMINATION

8] The points for determination and their findings are as follows;

Sr. No.	Points	Findings.
1.	Whether plaintiff has a prima facie case ?	Yes.
2.	Whether the balance of convenience lies in favour of plaintiff ?	Yes.
3.	Whether plaintiff will suffer irreparable loss if the injunction is refused ?	Yes.
4.	What order ?	Application is allowed.

REASONS

AS TO POINT NO.1

9] Order XXXIX Rule 1 of the C.P.C. deals with cases in which temporary injunction may be granted and inter alia provides that

“Where in any suit it is proved by affidavit or otherwise –

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree,*
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,*
- (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may, by order, grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit until the disposal of the suit or until further orders. It is the duty of the plaintiff to prove that his property is in danger of being damaged by bringing prima facie material i.e. either in the form of an affidavit or otherwise on record. Keeping this principle in mind, I proceed to decide the application in hand.”*

10] To obtain a temporary injunction the plaintiff must prima facie prove that he is in peaceful and settled possession of the suit property and defendants are disturbing his possession. The prima facie case should not be confused with a case proved to the hilt. Further, the plaintiff has to prove that he will suffer more loss than the defendant No.1 and 2 if the injunction is not granted in his favour, and lastly, to prove the balance of convenience lies in their favour.

11] The Ld. Advocate for the plaintiff argued that after death of Shri. Thakaji Namdev Pokharkar plaintiff's name was mutated on 7/12 extract of the suit property and since then he is in peaceful possession of the suit property along with defendant No.3 to 10. The Ld. Advocate for plaintiff also filed 7/12 extract of the suit property and pointed out plaintiff's name appears to be a possessor i.e. भोगवाटादार of the suit property. The Ld. Advocate further put-forth in his argument, there is a house and onion storage (कांदा चाळ) and the plaintiff has possession of the same. Further to substantiate his argument he relied on tax receipt of house property No.306.

12] The Ld. Advocate for defendant No.1 and 2 argued and resisted the present application. He vehemently argued that defendant No.1 and 2 are the owner and in possession over Gat No.477 and the area of it extend to other side of the road i.e their eastern side of the road.

13] The Ld. advocate for plaintiff has rightly pointed out plaintiff's name as a possessor i.e. भोगवाटादार on 7/12 extracted of the suit property. The plaintiff's name on 7/12 extract of the suit property prima facie shows that he is in possession over it. The tax receipt of house property No.306, shows an existence of the said house since 1960. It prima facie shows that the plaintiff is in settled possession of the suit property. Further the 8A extract of Khata No.70 also adds weight to the plaintiff's case that the plaintiff is in possession over the

suit property and farming over it. Moreover, from the road registration register for the years 2005-2006, it can be seen that Muktadevi High School to Thakarwadi Saticha Mendha road is in existence from 2005-2006.

14] Though the Ld. advocate for defendant No.1 and 2 resisted and vehemently argued that defendant No.1 and 2 have been in possession over Gat No.477 and its eastern boundary is extended to other side the road, but there is nothing on record from which the Court can prima facie see that at this stage of the suit proceeding. The measurement map placed before the Court also does not show that defendant No.1 and 2 have been in possession over other side of the road. The photographs filed by defendant No.1 and 2 shows that they were captured during measurement and demarcation of Gat No.477, and it does not show reveal possessions of defendant No.1 and 2 over the suit property.

15] The N.C.R. shows that the defendants are disturbing plaintiff's possession over the suit property. The photocopies N.C.R. filed by defendants are subsequent to plaintiff's N.C.R. registered before police. It prima facie shows that defendant is disturbing plaintiffs possession over suit property. The plaintiff relied on ***Rame Gauda (D) By Lrs Vs. M. Varadappa Naidu (D) By Lrs. & Anr (AIR 2004 SC 4609)*** in the same Hon'ble Supreme Court has held that even trespasser is entitle to the relief of injunction if he is in possession over the property. The true owner shall not take law in his hand to obtain the possession and shall follow due course.

16] From the above discussed reason prima facie it appears that the plaintiff is in settled possession over the suit property. The photo copy of Non cognizance offence information report No. 0181/2023 also shows the defendant No.1 and 2 are disturbing plaintiff's possession over the suit property. **Hence, I answer point No. 1 in the positive.**

AS TO POINT NO. 2 AND 3

17] The irreparable loss means a loss that can not be compensated in terms of money. As discussed above point the plaintiff is in settled possession over the suit property. The tax receipt of house property No.306 also prima facie shows the existence of the plaintiff's house since 1960. The measurement map placed before the Court also does not show defendant No.1 and 2 possessions over other side i.e their eastern side of road.

18] The Ld. advocate for defendant No.1 and 2 also argued that since the defendant No.1 and 2 have planted tresses over other side of the road therefore, then they would be at more loss then plaintiff, if the temporary injunction is granted in plaintiff's favour. Prima facie it can be seen from the photographs filed by defendant No.1 and 2 that they have planted tresses by digging up the soil. It make a picture more clear that defendant No. 1and 2 has planted those tress after rooted out earlier trees and standing timber over the suit property. The photographs filed by the defendant No.1 and 2 shows that the trees were planted immediately prior to institution of the suit.

19] Prima facie the plaintiff is in settled possession over the suit property and since 1960 his house situated over the suit property. The trees were planted immediately prior to institution of the suit. Therefore, rejecting a temporary injunction application at this stage of suit proceeding would cause irreparable loss to the plaintiff rather than the defendant No.1 and 2. Moreover, rejecting a temporary injunction application would cause comparative mischief or inconvenience to the plaintiff. **Hence, I answer the point No. 2 and 3 in the positive.**

AS TO POINT NO. 4

20] For the above-discussed reasons, all well-settled principles to grant the temporary injunction are not satisfied. Hence, the plaintiff is not entitled to the temporary injunction and it deserves to be rejected. Hence, I pass the following order.

ORDER

1. The application is allowed.
2. Defendant No.1 and 2 or any other person or authority on their behalf are restrained from disturbing plaintiff possession over the suit property i.e. Gat No.478 till the conclusion of a trial.

Date- 05/08/2024
Ghodegaon.

(Sagar S. Mohite)
2nd Jt. Civil Judge, Jr.Dn.,
Ghodegaon, Dist. Pune.

C E R T I F I C A T E

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

Name of the Court	: Shri. Sagar. S. Mohite, 2 nd Jt. C.J.J.D. and J.M.F.C., Ghodegaon, Dist. Pune.
Name of the Steno	: J. S. Kaite, Steno Grade - III.
Judgment/Order date	: 05/08/2024
Judgment/Order signed by P.O. on	: 06/08/2024
Judgment/Order uploaded on	: 06/08/2024