

MHPU240019442022



Reg. Civil Suit No.242/2022
Maruti Bhaskar V/s. Ganesh Bhaskar and
Others

ORDER BELOW EXH.NO. 05

(Passed on 16/01/2023)

This is an application filed by plaintiff under Order XXXIX Rule 1 and 2 of The Code of Civil Procedure, 1908 (for Short 'C.P.C.') for temporary injunction restraining defendant No.1 from causing obstruction to plaintiff's possession in suit property till final decision of the suit.

2) It is the case of plaintiff that the agricultural land admeasuring H0.12R out of it H0.06R of Survey No.265 situated at village Pimpalgaon Tarf Ghoda, Taluka Ambegaon, District Pune, i.e. the suit property is the ancestral property of the plaintiff and defendant no.2's father and grandfather of defendant no.1 i.e.Shankar Ladu Bhaskar. Shankar died in 1996. He is having four sons i.e., plaintiff, defendant no.2, Genbhau and Ekanath. After death of Genbhau names of his heirs i.e., defendant no.1, daughter Jayashri Sanjay Birmal and wife Kamal were recorded to the 7/12 extracts.

3) It is contended that, partition deed has been executed in between plaintiff and defendant nos.1 and 2, Ekanath and others on 07/11/2003 in respect of suit property and other properties. As per the said partition deed plaintiff got H.0.06R to his share and

defendant no.2 got H.0.06R share in the suit property. Defendant no.1 has no any right or interest in the suit property and no any share was given to him in the suit property. Defendant no.1 has got share in Gat nos.280 and 304, as such name of defendant no.1 is recorded as per partition to the said lands.

4) The plaintiff has constructed house in the year 2002 in the suit property with bore-well. It is also contended that, boundaries of the suit property were fixed by taking government measurement by the plaintiff.

5) It is further contended that, on 07/10/2022 the defendant no.1 has forcibly, without any authority, illegally started digging for construction of house in suit property. When plaintiff tried to stop the same, he threatened plaintiff and his son. The plaintiff's son has given complaint about the same in the Ghodegaon police station and to Gramsevak, Pimpalgaon on 10/10/2022. But, defendant no.1 has not listen of anyone and forcibly continued the construction in suit property. If he carried out the construction in suit property, plaintiff will suffer irreparable loss. Hence, he filed the suit. Through this application plaintiff has prayed for interim injunction against defendant no.1 for restraining him from carrying out construction in the suit property.

6) Per contra, defendant Nos.1 has filed his written statement at exh.16 and opposed the allegations in the suit and in application. The defendant no.1 claiming that plaintiff has filed this suit by suppressing the material facts and to pressurize the

defendant. In fact, suit property is come to the share of plaintiff and defendant no.2 by partition. There was old house of plaintiff in suit property and for construction of its plaintiff has taken Rs.2,00,000/- from defendant nos.1 and 2 and carried out construction of his house. Plaintiff has assured to repay the said amount, but, after many demands plaintiff has not repaid the said amount. Therefore, only with an intention that not to repay the said amount he has filed this false suit.

7) It is further submitted that; plaintiff has constructed new R.C.C. house in suit property and also, he has old house in it. On 07-10-2022 defendant no.2 has started construction of his house in suit property. At that time, plaintiff and his son were present. Though plaintiff is having knowledge that the defendant no.2 is carrying out construction in suit property, but only to harass defendant, the plaintiff has wrongly mentioned that defendant no.1 is carrying out construction in suit property.

8) It is further contended that, plaintiff and his son has filed the complaints against defendant no.1 only with an intention to create false evidence. Defendant no.1 has given answer to same. As such, considering the false complaint of plaintiff, no any action taken against defendant no.1. Thus, plaintiff has filed this suit only with an intention to not to repay the said amount taken from defendants. Therefore, he prayed for rejection of application.

9) Defendant No.2 has filed his Written Statement at Exh.25 and denied the suit claim. He has reiterated the contentions of

written statement of defendant no.1. He further contended that, he is constructing the house in his own land. He has expended huge amount for same. He further contended that, his young son died before some days and his children are residing with him. As the old house is in collapsing condition, so he has started construction of new house in suit property. He further contended that, plaintiff has also constructed new house in the suit property. In such situation, if injunction is granted then he will suffer irreparable loss. It will also get impact on children of his late son. Therefore, he prayed for rejection of application.

10) Considering rival submissions, following points arise for determination of which I have recorded my findings alongwith reason as under-

Sr. No.	Points	Findings
1)	Whether prima facie case made out in favour of plaintiff?	No.
2)	Whether plaintiff shows that balance of convenience lies in his favour?	No.
3)	Whether plaintiff prove that irreparable loss would be cause to him in case rejection of application filed for interim relief?	No.
4)	What order?	Application stands rejected.

REASONS

As to point Nos.1 to 4 -

11) There is no dispute that land originally belongs to the predecessor of plaintiff and defendants. It is also not disputed that the ancestral property was partitioned and suit property is come to the share of plaintiff and defendant no.2 as H0.06 R to each. It is also not disputed that the plaintiff has already constructed the house in suit property. Now the whole controversy revolves around, whether the defendant no.1 is illegally carrying out construction in suit property? Or the construction carried out in suit property is of defendant no.2 and not of defendant no.1?

12) Order 39 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 plaintiff to prove that his property is in danger being damaged by bringing prima-facia material i.e. either in the form of affidavit or otherwise on record. Keeping this principle in mind, I proceed to decide the application in hand.

13) Plaintiff has filed revenue record which shows that plaintiff and all defendants are occupant of their respective areas of land as per partition deed. Suit property is come to the share of plaintiff and defendant no.2 and accordingly their names are recorded to suit property. It is admitted by defendants also. As per the contentions of plaintiff, defendant no.1 is carrying out construction in suit property. In support of this contention, he has filed the photographs of suit property and the complaint filed by him against defendant no.1 to Ghodegaon Police station. On the other hand, as per the contentions of defendants the defendant no.2 is carrying out construction in suit property and not the defendant no.1. In support of this contention, he has filed the photographs of construction carrying out in suit property. He has also filed the copy of building contract made between defendant no.2 and contractor. They have also filed the photographs of Bhumipujan in suit property. It is the contention of defendants that the son of plaintiff was present at the time of Bhumipujan and therefore plaintiff has knowledge about the construction of house by defendant no.2 in suit property. For this he relies on the photographs of Bhumipujan. But during the

argument Id. Advocate of plaintiff has argued that the said photographs are not of the house which is under construction in suit property but said photos are of Bhumipujan of house which is already constructed by defendant no.2. He also argued that, defendant no.2 has already constructed house which was sanctioned by government under scheme of Indira Aawas Gharkul Yojana to him. Now he has no need to construct new house. Therefore, the construction which is carrying out in suit property is of defendant no.1. In support of this he has filed the photographs and the documents of Indira Aawas Gharkul Yojana in the name of defendant no.2 and the Assessment extract in the name of defendant no.2. On perusal of same it reveals that the defendant no.2 has constructed one house earlier. Plaintiff has also filed the affidavit of adjoining owner, who deposed that the construction carried out in suit property is of defendant no.1. On the other hand, defendant no.1 is denying that he is carrying out construction in suit property. Also the defendant no.2 who is the co-owner in suit property has also submitted on oath that he is carrying out construction in suit property. Defendant no. 2 has also filed the affidavit of Eknath Bhaskar who is brother of plaintiff and defendant No. 2. He has also deposed in his affidavit that the defendant no.2 is carrying out construction in suit property. It is also argued on behalf of defendants that the plaintiff has no locus standi to file this suit. It is also argued that the plaintiff has other efficacious remedy under sec.41(h) of Specific Relief Act. But he has filed this suit only for permanent injunction. Therefore, injunction can not be granted in such situation. On the other hand it is argued on behalf of the plaintiff

that title of plaintiff is not disputed therefore, it is not necessary to claim other reliefs. In support of argument advanced by Id. Advocate for the defendants, has filed the Judgment of Hon'ble Delhi High Court in case of **Davendar Lal Mehata V/S. Dharmendar Lal Mehata and Anr.** He also relied upon Judgment of Hon'ble Supreme Court in case of **Anthula Sudhakar V/s. Buchi Reddy by Lrs. and others.**

14) Considering all the above situation it seems that plaintiff is claiming that the defendant no.1 is illegally carrying out construction in suit property, but defendant no.2 the co-owner in suit property claiming that he is carrying out construction in suit property. Plaintiff has sought the relief of injunction against the defendant no.1 and not against defendant no.2. He also submitted that the suit property is came to his share along with defendant no.2 without showing the directions. The plaintiff has filed the documents relating to the fact that the defendant no.2 has newly constructed house sanctioned by the Indira Aawas Gharkul Yojana. It is argued by the Id. Adv. for plaintiff that defendant no.2 is not in economic condition and also not in need to construct new house. Therefore, the construction carrying out in suit property is of defendant no.1. But on perusal of record, it can't be inferred that the construction carrying out in suit property is of defendant no.1. Also, it is not the case of plaintiff that the defendant no.2 is ousted him from the possession of suit property. It seems that the plaintiff is claiming that the defendant no.1 is carrying out construction in suit property, but he has not mentioned that in which area of suit property defendant no.1 is carrying out construction. Also it is admitted position that the

plaintiff and defendant no.2 are the co-owners in suit property. And defendant no.2 has submitted that the said construction is carrying out by himself and not by the defendant no.1. In such situation, on perusal of record, prima facie plaintiff has failed to prove that the defendant no.1 is carrying out construction in suit property. For all these reasons in my view plaintiff has no prima-facie case.

15) In such circumstances, balance of convenience lies in favour of defendant no.2 and he will suffer irreparable loss, if injunction is granted. If plaintiff succeeded in proving that defendant no.1 is carrying out construction in suit property, he will get protection by final decree. But at this stage, I don't think any irreparable loss will be caused to the plaintiff. In the result, I have answered point Nos.1 to 3 in negative and proceed to pass following order :-

Order

1. Application stands rejected.
2. Costs in cause.

Place - Ghodegaon
Date – 16/01/2023

(M.S.Mali)
2nd Jt. C.J.J.D & J.M.F.C.
Ghodegaon