

MHRG040016422023



R. C. S. No. 174/2023

Waman Mhatre

Vs

Waman Patil & Ors.

Common Order below Exh. 05 & 29

01. These applications are filed by plaintiff and defendants respectively under Order 39 Rule 1 & 2 of CPC for grant of temporary injunction. Plaintiff prayed for restraining defendants from causing obstruction to his possession. Whereas defendants prayed for restraining plaintiff from making encroachment of suit property and from causing obstruction to possession of defendants.

02. This suit is filed by plaintiff for declaration of adverse possession and for permanent injunction. It is contended by plaintiff that he is resident of village Temghar (Nere), Tal. Panvel and he is agriculturist as well as doing business of making bricks in his own field. 12R land out of Gat no.161/0 (old Survey no.314) situated adjacent to Panvel-Matheran road having construction of 1600 sqr. ft. bearing House no.391 situated at Temghar (Nere), Tal. Panvel bounded on east by part of Gat no.161/0, on west village Temghar situated in Gat no.161/0 and on south Gat 162/0 and on north Panvel-Matheran road, is the suit property. It is contended by plaintiff that since before independence his forefather are residing in suit property. The grandfather of plaintiff by name Govind Ambo Mhatre was residing in suit property along with his sons and after his death

father of plaintiff by name Alya Govind Mhatre demolished old house and constructed new cement concrete House bearing no.391 in the year 2000. The plaintiff also planted several trees in the suit property. Since 1960 the plaintiff and his forefathers are residing in suit property without any objection and obstruction from anyone and by adverse possession he becomes owner of suit property. However, on the 7/12 of suit property names of panch of village are mentioned as owner of suit property. The three panch by name Gopal Hargovind Gujar, Meghanath Shridhar Mankame and Shiva Padu Gavate are dead and the names of defendant no.1 and 2 are mutated in the 7/12 extract by mutation entry no.1782. As the Government Schemes like CIDCO, Naina and International Airport started in Panvel, the price of land increased and therefore in order to grab money by selling public land, defendants started threatening plaintiff since 2013. They started creating nuisance in the possession of plaintiff. On 17.11.2013 defendants along with other people of village claim in the suit property with JCB machine and destroyed the trees without permission of Forest Department. They also threatened plaintiff. In 2015 Grampanchayat Nere refuse to accept the Grampanchayat tax of suit property from plaintiff and thereafter on 19.11.2015 passed resolution no.46 that the suit property belong village and suspended the tax assessment in the name of plaintiff. On 24.03.2023 defendant no.2 along with other persons entered in the suit property and threaten plaintiff to dispossess him from suit property. Therefore, plaintiff filed this suit and by filing this application prayed for restraining defendants from causing obstruction to his possession

over suit property.

03. Defendants appeared and filed their written statement as well as say to this application at **Exh.21**. They denied the plaint of plaintiff and contended that the claim of plaintiff is bogus. They contended that plaintiff is doing unauthorized business of making bricks on the field owned by village bearing Gat no.146/1 and Gat no.161/0. They contended that the suit property is owned by village and its 7/12 extract bears name of panch of village as per mutation entry no.1782 dated 01.06.1985. They contended that initially plaintiff was residing at village Umroli and after taking village Nere, he constructed farmhouse on Survey no.317(2). House no.391 was given to said farmhouse by Grampanchayat Nere. In the year 2013-14 plaintiff demolished his farmhouse and constructed new house on suit property and obtained House no.391 to said house. They also contended that plaintiff constructed cement concrete house on 1600 sqr. ft. They also contended that on 20.11.2015 they sent notice to plaintiff for unauthorized construction on suit property. They contended that plaintiff is trying to grab the land of village by making encroachment. They also admitted that they destroyed their trees in the suit property for which Forest Department imposed fine of Rs.1,06,000/- on 106 villagers. They also admitted that by passing resolution the tax assessment of house and suit property is suspended by Grampanchayat. They contended that plaintiff is trying to grab the suit property unauthorizedly and hence they prayed for rejection of application.

04. Defendants also filed counter claim at **Exh.27** and

filed application for temporary injunction against plaintiff at **Exh.29**. In these applications defendants reiterated aforesaid fact of their written statement and also contended that the plaintiff and his relatives/forefather were having field Survey no.322, 317(1), 317(2) and 317(3) field village Nere. They contended that House no.391 and 184 were situated in aforesaid field of plaintiff. They contended that by demolition aforesaid house plaintiff constructed new house in suit property by making encroachment. They contended that since 2013-14 plaintiff is residing on suit property. They contended that the suit property is owned by defendants and the plaintiff is trying to grab the suit property un-authorizely. They contended that they lodged report against plaintiff for encroachment on their land but no action was taken against plaintiff. Hence, they filed this application and prayer for temporary injunction against plaintiff restraining him from causing obstruction to their possession over suit property.

05. Plaintiffs filed their say at **Exh.33** to the counter claim and application for temporary injunction filed by defendants. They denied all the contention of defendants. They contended that they are legally doing their business of making bricks on their own field. They contended that all the pleadings of defendants is false and prayed for rejection of application of defendants.

06. Following points arise for determination and I have recorded my findings against each of them along with reasons as under -

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	In whose favour prima facie case exists ?	-- ..plaintiff
2	In whose favour balance of convenience lies ?	-- ..plaintiff
3	Who will sustain irreparable loss if injunction is not granted in his favour?	-- ..plaintiff
4	What order?	-- As per final order.

REASONS

07. As to point no.1 :-

Both plaintiff and defendants are relying on their pleadings in support of their application & reply under Order 39 Rules 1 & 2 of CPC. The description of suit property is admitted to both parties. It is contended by plaintiff that his forefather are residing in suit property since 1960. In support of his contention plaintiff filed some documents which consist of receipts of payment of house tax for the year 1959-60, 1961-62, 1967 and so on. It is admitted by the defendants also that forefathers of plaintiff were residing in village Nere. It is contended by defendants that forefather of plaintiff were having landed property in Survey no.317 and 322. The receipts filed on record by plaintiff support the contention of plaintiff and defendants also.

08. However, it is contended by defendants that the plaintiff and his relatives were having house property in their own land. It is admitted by defendants that House no.391

belongs to plaintiff. The plaintiff filed house tax receipts of House no.391 for the year 2001-02 up to 2013-14. Perusal of these receipts shows that the name of plaintiff is mentioned as name of owner of House no.391.

09. It is contended by defendants that house no.391 was initially situated in Survey no.317 and in the year 2013 plaintiff demolished his old house and constructed new house in the suit property. It is also contended by defendants that same House no.391 was obtained by plaintiff for his new house. However, defendants have not filed on record any documents to shows that the new house was constructed by plaintiff in the year 2013. On the contrary, it is the case of plaintiff that the new house was constructed in suit property in the year 2000. The house tax receipts also shows the payment of tax from the year 2000 till 2013-14.

10. It is also argued by defendants that from the year 2013-14 plaintiff made encroachment in suit property and constructed house and residing there. Thus, from the above discussion it is clear that House no.391 belongs to plaintiff and admittedly since 2013-14 plaintiff is residing in said house situated in suit property. Thus, prima facie it is seen that the plaintiff is having possession of suit property. Thus, prima facie case exist in favour of plaintiff. Hence, I answer point no.1 in favour of plaintiff.

11. As to point no.2 & 3 :-

From the documents filed on record by plaintiff it is clear that forefathers of plaintiff were residing in the village Nere

since 1959-60. It is also admitted fact that at present plaintiff is residing in suit property. Though it is contended by both plaintiff and defendants and even from the 7/12 extract it is seen that the name of defendants appears in 7/12 extract in respect of suit property, at present plaintiff is having possession of suit property. Whether plaintiff and his forefathers were having possession of suit property since 1959-60 or whether plaintiff made encroachment on suit property, has to be decided after adducing evidence by both parties. The plaintiff also filed other documents which shows that he made complaint in 2013 about destroying the trees on the suit property by defendants and on said complaint Forest Department took action and imposed penalty of Rs.1,06,000/- on defendants and other villagers. This fact is admitted by defendants. It is also admitted by defendants that the Grampanchayat suspended the payment of tax of House no.391 since 2015 and the defendants filed several complaints against plaintiff that he made encroachment on suit property. Thus, from the aforesaid facts it is clear that as per documents produced on record plaintiff is having possession of suit property since year 2000 and there is threat of his dispossession by defendants. Definitely plaintiff is having balance of convenience in his favour and he will suffer irreparable loss if defendants are not restrained from obstructing his possession. Hence, I answer point no.2 & 3 in favour of plaintiff.

12. Having regard to aforesaid discussion, I pass the following order.

Order

1. The application **Exh.5** is allowed and **Exh.29** is rejected.
2. The defendants and their agents, servants etc. are hereby temporarily restrained from causing obstruction to the peaceful possession of plaintiff over suit property, till decision of the suit.
3. Cost in cause.

Date :19/09/2025

Place :Panvel

(R. Y. Khandare)
5th Joint Civil Judge; Sr. Div,
Panvel.