

MHRG060001102023**Order below Exh. 5**

This application is filed by the plaintiff under Order 39 Rule 1 and 2 of The Code of Civil Procedure, 1908 for seeking interim injunction against defendants restraining them from interfering with peaceful possession of the plaintiff over the suit property as well as his easmentary rights over the same along with further relief restraining defendants from causing obstruction to employees of Jio Infocom Ltd. in the suit property .

2. The property situated at Survey no. 1 at Kashmirewaadi, Tq. Pen, Dist. Raigad admeasuring in total 0.29.3 more particularly described in Para. 2 of the application (Exh. 5) is subject matter of present application. It is hereinafter referred as “the suit property”.

3. It is contended by plaintiff that, suit property is ancestral and joint family property of plaintiff and defendants. By way of preliminary decree in RCS No. 96/2010, plaintiff is declared to be entitled for 6/5th share in the suit property. Plaintiff is having 06.912 R share in the suit property. Defendant No. 1 to 3 had already constructed houses in the suit property. Eastern part of the suit property is vacant land. Out of the same, plaintiff cleared 2.5 R land at his own and decided to give 2R land for construction of mobile tower of Reliance Jio Infocom Ltd. over there. Plaintiff obtained a permission for the same from concerned Grampanchayat. Accordingly, employees of Jio Infocom Ltd. Co. commenced work over there. On 09.01.2023, defendants obstructed plaintiff and employees of Jio Infocom Ltd. They assaulted

plaintiff as well as employees of Jio Infocom Ltd. and caused them injury. F.I.R. of the incident is lodged at concerned police station. On very second day of the incident, defendants again caused obstruction to plaintiff and employees of Jio Infocom Ltd. Ltd. Defendants are illegally causing obstruction to plaintiff as well as employees of Jio Infocom Ltd. Ltd. Hence, suit is filed and present application is made claiming interim injunction against defendants.

4. Defendant No. 1,2 and 4 resisted the application by filing their say. Defendant No. 1 and 2 filed their say at Exh. 17 while defendant No. 4 filed his say at Exh.24. According to defendant No. 1 and 2, plaintiff made false averments in the plaint. Plaintiff, being ex-policeman, is financially well off while defendant No. 1 and 2 are aged and poor. They planted fruit trees in the suit property and getting livelihood income from the same. Plaintiff is residing half a kilometer away from the suit property. Plaintiff decided to construct mobile tower in the suit property to cause annoyance to defendants. As plaintiff is not residing near the suit property, he may not but defendants and residents of defendant's vicinity may get annoy due to the construction of the mobile tower. Plaintiff did not opt to file an application for final decree of RCS No. 96/2020 till the year 2022. Suit property is still in possession of defendants. The suit property is not yet partitioned by metes and bounds. Construction of mobile tower may cause trouble to defendants. It is further submitted that the application is devoid of merit. Hence, they prayed to reject the application.

5. Defendant No.4 vide his say made alike contentions as defendant No. 1 and 2. Defendant No. 4 also states that, plaintiff has not obtained necessary permission to construct a mobile tower. It is further stated that, the suit property cannot be fragmented as there is

bar of The Fragmentation Act. It is further stated that the relief claimed by plaintiff cannot be granted. Hence, he prayed to reject the application.

6. Perused the application and say filed by defendant No. 1 ,2 and 4.

7. Considering rival contentions following points arose for my determination to which the findings are recorded alongwith the reasons as under :

<u>Sr. no.</u>	<u>Points</u>	<u>Findings</u>
1)	Does the plaintiff prove that there is a prima facie case in his favour ?	No
2)	In whose favour balance of convenience tilts ?	Defendants
3)	To whom irreparable loss will be caused if injunction is not granted at this juncture ?	Defendants
4)	What order and costs ?	The application is rejected.

Submissions of plaintiff and defendant :

8. It is submitted by Ld. Advocate for the plaintiff Shri. S.H. Deshmukh that plaintiff is having share in the suit property. He has validly obtained permission of Grampanchayat for construction of the mobile tower. Defendants do not have any *locus standi* to obstruct plaintiff. Prima facie case is in favor of plaintiff. Balance of convenience lies in his favor. He will suffer irreparable loss if interim injunction is not granted. Hence he prayed to allow the application.

9. It is submitted by Ld. Advocate for defendant No. 1 and 2 Shri. V.C.Thakur that, share of plaintiff in suit property is only declared. Plaintiff cannot claim exclusive right on certain portion of the suit property. The injunction prayed cannot be granted. Hence he prayed to reject the application. Ld. Adv. For Defendant No. 1 & 2 relied upon following citation in support of their contentions.

i. **Surya Naik Vs Suxula Naique 2014 (6) All MR 113.**

10. Ld. Advocate for defendant No.4 Shri PS. Kamble made submissions in tune with Ld. Advocate for defendant No. 1 and 2.

REASONS

As to point no. 1 :

11. In order to prove that there is prima facie case in favour of the plaintiff, the plaintiff must prove that there is some reasonably good arguable case which would require trial on merits. From perusal of the record and pleadings of plaintiff, it is clear that the nature of suit property is admitted to be joint family property between plaintiff and defendants. There is a preliminary decree of partition of the suit property. In the suit for partition, there are three stages. At first, by way of preliminary decree, share of the parties are declared; by way of final decree, suit property is partitioned by metes and bounds; lastly, parties are put in possession of their respective portion of the property. Having regard to the same in the light of present application, there is merely a preliminary decree passed regarding the suit property. Suit property is not partitioned by metes and bounds. None of the parties can claim exclusive ownership on specific portion in the suit property at this juncture. Plaintiff claims exclusive right of use of the suit property at this juncture which in fact is not available to him at this juncture.

12. It is also pertinent to note that, plaintiff is claiming exclusive right to use the specific portion of the suit property to construct mobile tower. Prima facie, it looks that plaintiff has not obtained necessary permissions to construct and operate the mobile tower. The suit property is agricultural property and plaintiff has not filed anything on record to show that the permission by appropriate authority is given for it's non-agricultural use.

13. Plaintiff is claiming interim injunction in his favor as well as Jio Infocom Ltd. Ltd. However, there is nothing on record to infer the relationship between plaintiff and Jio Infocom Ltd.. No document showing the relationship is filed on record. Under such circumstances, a serious question remains unelaborated as to whether plaintiff can seek injunction for Jio Infocom Ltd. or not. The case of plaintiff is prima facie vague on that aspect. As relief of injunction is equitable relief, plaintiff ought to have come with clean hand before the court. He cannot take benefit of vagueness.

14. When the case of plaintiff is prima facie vague on material points, there is no serious question in this application which requires trial on merit. Having regard to the case of the plaintiff I do not find any reasonably good arguable case which would require trial on merits. Hence, there is no prima facie case in favour of the plaintiff. Accordingly, I answer point no. 1 in the negative.

As to point no. 2 :

15. The balance of convenience between the parties has to be weighed considering documents on record as well as comparing submission by the parties. Having regard to present case, defendants are prima facie seems to be in possession of the suit property. Final

decree proceeding regarding the suit property is pending. It is filed after the gap of almost 10 years by plaintiff. Under such circumstances, balance of convenience in this application lies in favor of defendants. Accordingly, I answer point No.2.

As to point no. 3 :

16. The question of irreparable loss is a matter of fact and has to be assessed by comparing cases of both the parties. Considering present application, if the application is allowed at this juncture, the plaintiff may take possession of the specific portion of the suit property. It will defeat the final decree proceedings. Such acts would dissuade procedure established by law. In such a situation, defendants may not get fair opportunity to put forward their case regarding final decree proceedings. It may cause defeating defendants right which is irreparable loss to them. Hence, if application is allowed, defendants would suffer irreparable loss. I answer point No. 3 accordingly.

As to point no. 4:

17. Order 39 Rule 1 of The Code of Civil Procedure, 1908 states that when defendants threatened plaintiff to dispossess out of suit property the relief of interim injunction may be granted. For that purpose, plaintiffs must prove prima facie case, balance of convenience tilting in his favour and irreparable loss that would be caused to him. Plaintiff must prove all three ingredients coextensively. The relief of injunction is equitable relief. The one who seeks equity must do equity. Being equitable relief the notion of relief is to balance rights of the parties and to give one what he owns. In this case, I have already discussed that plaintiff has not come with the clean hand before this Court. Plaintiff has kept his case prima facie vague. Defendant No. 4 relied upon the case of *Surya Naik* (Supra). However, the case in hand

completely differs on factual aspects from Surya Naik (Supra) case. Surya Naik (Supra) case arose out of the decree and judgment in that suit. Hearing in this case is not yet commenced. Therefore, with due respect to the law laid down by The Hon'ble Parent High Court in Surya Naik case, I most respectfully submit that the ratio in the case is not beneficial for defendants at this juncture. Further, having regard to case in hand, the conduct of plaintiff as well as prima facie facts disentitle him from getting any equitable relief at this juncture. Therefore, in answer to point No.4, I proceed to pass following order:-

ORDER

- 1) The application (Exh. 5) is hereby rejected.
- 2) Costs follows cause.

Pen
Date: 18.07.2023

(Pritesh Deshpande)
Jt. Civil Judge Junior Division,
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