

ORDER BELOW EXH.5 IN RCS NO.69/2017

(Shri. Vithoba Mahadev Mhatre V/s. Shri. Pradeep Anant Mhatre and others)

(Passed on 27/06/2018)

1. This application is filed by plaintiff for temporary injunction.

2. Suit is for permanent injunction, declaration of ownership and compensation. It is contended by the plaintiff that, defendant no.1 is nephew of plaintiff. Defendant no.4 is brother of plaintiff. Defendant no.3 is grampanchayat, Div. Suit property i.e. Gut no.110/House no.139 is situated at Mauje Div. Out of this property, one room ad-measuring area 25X10 is the subject of the suit. This suit property was allotted to the share of plaintiff during the life time of father and mother of plaintiff, in the year 1987 itself. Since then plaintiff is in possession of it. During the period 02/05/2017 to 10/05/2017 defendant unlawfully entered in the suit property by unlocking door of the suit property. Plaintiff lodged complaint to that effect. Finally plaintiff prayed for temporary injunction against defendant.

3. All defendants duly served. Defendant no.1, 2, 3 and 4 were appeared but failed to file their written statement. Hence, suit to proceed without written statement against them.

4. Heard argument of plaintiff at length. Prima facie perused oral and documentary evidence on record. Following points are raised for determination.

POINTS

1. In whose favour prima facie case lies?
2. What order?

FINDINGS

- ... In favour of plaintiff
... Application allowed

REASONS

AS TO POINT NOS. 1 AND 2

5. Main allegation of the plaintiff is that suit property i.e. Gut no.110/house no.139 is ancestral property of plaintiff and defendants. Out of which, one room admeasuring area 25X10 is in possession of

plaintiff since 1987, by virtue of partition and with consent of his parents for his residence. The said room was allotted to the plaintiff during the life time of his parents in the year 1987 itself. But, defendant unlawfully entered in the said room between the period 02/05/2017 to 10/05/2017 and had stolen the articles in it. In support of this allegation, plaintiff has produced 7x12 extract of gut no. 110 on record which prima facie revealed that suit property is an ancestral property of plaintiff and defendant. Plaintiff has also produced copy of F.I.R. in connection with the alleged incident of theft committed by defendants as stated above. I have perused these documents.

The conduct of the defendants that they remain absent continuously and did not file their written statement on record is very relevant to decide injunction application. There is no ground to disbelieve prima facie the allegation levelled by plaintiff against defendants. The suit is for declaration of ownership and prima facie it appears that plaintiff is in possession of the said one room as mentioned above. Therefore to avoid further complication and multiplicity of proceeding it is necessary grant injunction against defendants. Plaintiff has also produced photographs of the said room on record. Under these circumstances, I have passed following order.

ORDER

- 1) Application is hereby allowed.
- 2) Defendants or anybody on behalf of defendants are hereby restrained from entering into the said room ad-measuring area 25X10 situated in Gut no.110/house no.139, till the disposal of the suit on the merit.

Pen
Date-27/06/2018

(V.V. Kulkarni)
Civil Judge, J.D. Pen