



**::COMMON ORDER BELOW EXH.5 AND 15 IN RCS
NO.120/2022 ::
CNR:MHRG070011862022**

Suryakant Laxman Mhamunkar & Ors. ...Plaintiffs

V/s.

Nandkumar Baburao Palande & Ors. ...Defendants

1. I have heard argument of learned advocate Shri. A. V. Mandlik for plaintiffs and learned advocate Shri.D.R.Gaikwad for defendants. I have also gone through the record and proceeding and documents produced by both the parties. Plaintiff have filed application below Exh.5 and 15 and sought interim relief. Considering the above, I have decided the application with finding and reasons.

2. The following points arise for my determination and I have recorded my findings thereon for the reasons given below.

	<u>POINTS</u>		<u>FINDINGS</u>
1	Whether plaintiffs proves that they have <i>prima-facie</i> case ?	:	No
2	Whether plaintiffs proves that balance of convenience lies in their favour ?	:	No
3	Whether plaintiff prove that irreparable loss would be caused to them, if interim relief as prayed is not granted ?	:	No
4	What order ?	:	As per final order.

:: REASONS ::

AS TO ISSUE NO. 1 TO 3:-

3. Under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure (in short hereinafter referred as “the Code”), the temporary

injunction can be granted if, it is shown that; the suit property is in danger, being alienated or damaged. *Prima-facie* case does not mean proving the case at hint what is to be seen that, whether the bonafide and reasonable issue has been raised for the adjudication on merit. At this stage, Court is not required to conduct mini trial of the suit. Keeping in mind these principles, it has to be seen that, whether the prima-facie case is made out by the plaintiff.

4. In support of their claim plaintiffs have filed documents at Exh.4 i.e. xerox copy of 7 x 12 extract, xerox copy of mutation entry no.3121, xerox of gat book map, xerox copy of assessment extract house no.333, verified copy of power of attorney, xerox copy of house tax receipt of the year 2010 to 2015 and 2021-2022, xerox copy of construction permission application dated 17/12/2021, xerox copy objection application dated 08/02/2022, xerox copy of objection dated 28/02/2022 filed by defendant nos.1 and 2, xerox copy of objection dated 28/12/2021 filed by defendant nos.1 and 2, xerox copy of notice dated 08/02/2022 filed by defendant no.3, application dated 14/02/2022 filed by defendant no.3, xerox copy of statement dated 17/12/2021 and 03/03/2022, xerox copy of application dated 21/02/2022 filed by plaintiff, xerox copy letter dated 22/02/2022, xerox copy of application dated 08/03/2022 to the Tahsildar, xerox copy of application dated 27/07/2022 filed by plaintiff, xerox copy of statement dated 05/08/2022 filed by defendant no.3, to the application of plaintiff of dated 27/07/2022 and photographs.

5. Whereas defendants have filed documents at Exh.20, i.e. xerox copy of sale deed bearing no.2823/1997, xerox copy of sale deed bearing no.2659/2004 dated 18/09/2004, xerox copy of application dated 02/03/2022, xerox copy of panchanama dated 23/09/2022,

photographs, xerox copy of application dated 21/09/2022, xerox copy of N.C. dated 24/12/2021, xerox copy of map dated 21/04/2013 and original copy of power of attorney dated 10/10/2022.

6. The points are interlinked with each other therefore, I have considered these points together for a discussion in order to avoiding repetition. The plaintiff have mentioned suit land situated in gut No.164/2/D ad-measuring 34R and house no.333 ad-measuring 420 sqft.. It is pertinent to note here that, plaintiffs have not mentioned boundaries of the suit properties in his plaint. The specification of boundaries are necessary for identification of the suit properties. The plaintiff must be vigilant to give description of the immovable suit property with its full description including boundaries thereof as required in order VII, Rule 3 of the Code of Civil Procedure.

7. It is contention of plaintiffs that they are having possession over the suit property since 1985 but they are not having of knowledge about the details of the boundaries of the suit properties. It is case of plaintiff that, they are having possession over suit property since 1985 and taking benefits, therefore their possession is adverse and therefore they may be declared as owner of the suit property. If the plaintiffs are claiming to be declared them as a owner on the basis of adverse possession then plaintiffs have to make proper pleadings, plaintiffs have not mentioned that, who is the real owner of the suit property and how they are put in possession of the suit property. The plaintiff further contended that, defendant are not concerned with the suit land and recorded their names in collusion with Revenue authorities but not mentioned the name of real owner.

8. The plaintiff are relying on the receipt of Grampanchayat of house no.333 for the year 2011-12 onwards. It is mentioned that, record of house property is lost in the flood of 2005, the grampanchayat informed that, record prior to the year 2005 is lost in the flood. It is also informed that record and entry of house no.333 is in their file. The defendants have requested grampanchayat to verify the record and prepared the panchanama that application is on record alongwith list of documents Exh.20 thereafter grampanchayat conducted the panchanama. I have perused the said panchanama it reveals that, there is no structure of house on the site. Plaintiffs have also filed some photographs of suit site on record. I have perused those photographs there is no structure of house seen in those pictures. Therefore, prima facie reveals that, there is no structure available and pleaded by the plaintiff in gat no.164/2/d. It is pertinent to note here that, plaintiffs failed to file clear cut document showing that, house no.333 has situated in gat no.164/2/d. The plaintiff have filed 7 x 12 extract of gat no.164/2/d on record. The said 7 x 12 extract reveals that, the names of defendants are shown as owner and possessor of said land ad-measuring 34R. Defendants have produced the xerox copy of sale deed bearing no.2659/2004 which reveals that, the defendant no.1 has transferred some of the land situated in gat no.164/2/D in favour of defendant no.2. The said sale deed is of the year 2004. It shows that, revenue record was also in the name of defendant no.1 in respect of suit land in the year 2004. 7 x 12 extract does not reveals name of plaintiffs therefore mere filing of some tax receipts of house no.333 is not sufficient to hold plaintiff are having possession over the suit land. It is pertinent to note here that, tax receipts of house no.333 does not reveals survey number or gat number. Therefore I have find prima facie case in favour of

defendants. Plaintiff case is for claiming declaration and injunction in respect of suit property, has to produce some documentary evidence on record so as to considered their prima facie case therefore in light of above discussion I found that, there is no existence of prima facie case in favour of plaintiffs Hence I answer point no.1 into negative.

As to point no.2 and 3 :-

9. Relying upon aforesaid discussion, I came to conclusion that, there is no balance of convenience in favour of plaintiffs. Moreover since plaintiffs have no prima facie case in that eventuality in the event of temporary injunction is refused no irreparable loss is sustained to plaintiffs. Hence I answer point no.2 and 3 into negative.

As to Point No.4:

10. In view of my negative findings to the points No.1 to 3, this application deserves to be rejected. Hence, in the result and in answer to this point, I proceed to pass following order.

:: ORDER ::

- 1 The application at Exh.5 and 15 are rejected.
2. Costs in main cause.
- 4 Parties to take note of this order.

Date: 04/01/2023

(Sau. Sujata R. Shinde)
Civil Judge Jr. Division, Karjat,
Dist. Raigad