



: ORDER BELOW EXH. 05 IN R. C. S. NO. 52/2018:
(CNR No. MHRG13-000314-2018)

By this application, plaintiffs have prayed for the temporary injunction restraining defendant from causing obstruction to the peaceful possession of plaintiffs in the Wada (वाडा) of House No. 3A admeasuring 267 Sq. ft. situated at Medhe, Tal. Tala, Dist. Raigad till the disposal of the suit. (Hereinafter referred as “suit property”)

2. The factual matrix of plaintiff's case runs as under :

It is the case of plaintiffs that the total area of House No. 3A is 38.13 Sq. Ft. Out of which 267 Sq. ft. is the suit property. Suit property is their ancestral property. On 30.10.2017 defendants tried to tie their cattle's in the suit property. When plaintiffs asked about the same, the defendant abused plaintiffs and threatened them. Plaintiffs averred that the defendants are trying to disturb his peaceful possession over the suit property by causing encroachment and they are in grave apprehension that they will be dispossessed from the same. Hence, by way of instant application, plaintiffs prays for grant of temporary injunction restraining the defendant from causing encroachment and obstruction to the peaceful possession of plaintiffs over the suit property till the disposal of the suit.

3. The defendant has combated this application by filing say vide Exh. 15. Defendant has denied the case set forth by plaintiffs. He contended that he is not causing any encroachment over the suit property. His house No. 7 is adjacent to the suit property. He is tying cattle's in his own property and not in the suit property. He is not having any concern with the suit property. Defendant thus contended that the instant application filed by plaintiffs is false, bogus and not maintainable. Therefore, defendant prayed to out rightly reject the instant application with costs.

4. Following points arose for my determination and I record my findings with reasons thereon as follows :-

Sr.No.	POINTS	FINDINGS
1.	Where plaintiffs have made out Prima facie case in their favor ?	..No
2.	Whether the balance of convenience lies in favor plaintiffs ?	..No
3.	Whether plaintiffs will suffer irreparable injury if the injunction is not granted in their favor ?	..No
4.	What order ?	..As per final order

: REASONS :

5. I have heard Mr. C. B. Chavan learned counsel for plaintiffs and Mr. R. J. Pandhare learned counsel for defendant.

AS TO POINT NOS. 1 TO 4 :

6. As point nos. 1 to 4 are interlinked with each other I prefer to discuss it under one common caption. Mr. Chavan submitted in consonance to his plaint and application. In order to substantiate his submissions Mr. Chavan invited my attention towards documents filed on record. He submitted through his application that, prima-facie case and balance of convenience lies in favor of plaintiffs and irreparable loss would be caused to plaintiffs which could not be compensated in terms of money and accordingly prayed to allow the instant application.

7. Per Contra Mr. R. J. Pandhare submitted that plaintiffs have filed instant application with ulterior motive and the suit of plaintiffs is not tenable. He submitted in consonance to his reply at Exh. 15. In order to substantiate his submissions he invited my attention towards documents to show their bonafides and also submitted that documents filed by plaintiffs are not reliable at this juncture.

8. It is canon of settled legal principle that power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as the matter of right or course. The grant of injunction is at the discretion and must be exercised in favor of the party only if the Court is satisfied that, unless the other party is restrained by an order of injunction, irreparable loss or damage would be caused to that party. The court grants such relief on the principle of *ex debito justitiae* i. e. to meet the ends of justice.

9. Reverting back to the hub of the matter, plaintiffs have pleaded that the defendant is causing encroachment by tying his cattle's in the suit property. Plaintiffs have largely relied upon the assessment extracts showing their ownership over the suit property. In the instant case at hand the only question which needs to be determine at this stage is whether the defendant is causing obstruction and made an encroachment over the suit property by illegally tying cattle's therein. It is admitted fact that plaintiffs are the owner of the House No. 3A and the defendant is the owner of House No. 7. It is also admitted that the defendant is having his house therein.

10. Plaintiffs have filed on record some photographs showing the suit property. Plaintiffs have submitted that the defendant is tying his cattle's in the suit property. It is pertinent to note that mere photographs of the suit property are not enough to decide that defendant is causing encroachment over the suit property by tying his cattle's. Plaintiffs have not even filed affidavits of adjacent land holders of the suit property supporting the submission of plaintiffs regarding the alleged encroachment. Plaintiffs have merely come up with the case that the defendant is causing encroachment over the suit property. However, there is no material on the record which would prima-facie demonstrate the same.

11. So far as photographs are concerned is indeed not sufficient to hold that the defendant is prima causing encroachment in the suit property. Hence, except bare words,

plaintiffs have not brought anything on encroachment and obstruction can be proved only on merit. Prima-facie at this stage, it cannot be assumed that, the defendant has caused encroachment over the suit property. However, on the basis of assessment extracts and photographs prima facie it cannot be say that, defendant is causing obstruction over the suit property.

12. The facts alleged by both sides in dispute can be adjudicated by adducing evidence by both sides. It is pertinent to mention here that the pleadings of rival sides are counter blast to each other and needs to be adjudicated by framing issues and by leading evidence by parties inter se in dispute. As of now, granting injunction would result into greater hardship to defendant as compared to plaintiffs. Thus considering all the above aspects, I am of the view that plaintiffs have failed to make out prima facie case in his favor. Accordingly, I answer point Nos. 1 to 3. In the result I am inclined to pass the following order.

: ORDER :

1. Application Exh. 05 is hereby rejected.
2. Parties to bear their respective costs.

(Dictated and pronounced in open Court)

Mangaon,
Date : 09.09.2021.

(Aparna C. Rokade)
Civil Judge, Junior Division,
Mangaon, Dist. Raigad.