

MHRG140009032023



R.C.S. No. 126/2023

Order below Exh. 5

This is an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure 1908 (hereinafter referred to as the C.P.C.).

2. Plaintiffs have instituted this suit perpetual injunction restraining defendants from causing their dispossession from S. No. 54A ad-measuring 80/70 situated at Kotnaka, Tal. Uran, Dist. Raigad (hereinafter referred to as the suit property). Plaintiffs are claiming that the suit property is owned by Uran Peta Mithagar Sangh. They are tenants in the suit property since 37 years. There are in all seven shops and three hospitals in the building.

3. Plaintiffs have renovated the suit premises in their respective possession. Plaintiffs are regularly paying rent to defendants no. 1 to 3. In July 2023, defendants no. 1 to 3 have issued notice to plaintiffs to vacate the suit premises. Defendants no. 1 to 3 have threatened plaintiffs to demolish the suit property. The defendant no. 4, on 27.06.2023, issued notice to plaintiffs to vacate the building as it is in dilapidated condition. The defendant no. 4 has directed them to demolish the land within 48 hrs.. Plaintiffs have objected said notice.

4. Plaintiffs have claimed that defendants are trying to evict

them without performing Structural Audit. The building is in safe condition. It is not in dilapidated condition. Defendants are trying to evict plaintiffs without following due process of law. They are planning to demolish the suit property. If the suit property is demolished in hurriedly manner, plaintiffs will suffer irreparable loss. Hence, this suit.

5. Plaintiffs claimed that trial may take considerable time. If the suit property is demolished by defendants, they will suffer irreparable loss. Hence, this application.

6. The application came to be opposed on behalf of defendants no. 2 and 3 on the ground that the suit is not maintainable. The suit is barred by limitation. Plaintiffs have sought relief in respect of S. No. 54A. The suit is insufficiently stamped. The defendant no. 1 failed to file his say.

7. The defendant no. 4 has resisted the claim on the ground that the suit property is in dilapidated condition. The said structure may collapse at any moment. There is possibility of danger to the human life. On 16.05.2023, the defendant no. 4 has inspected the suit property. Considering the dilapidated condition of the suit property, the defendant no. 4 has issued notice to the possessors of the suit property u/s. 193-A and 195 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Defendants have not disturbed possession of plaintiffs. They have claimed that plaintiffs have issued false answer to their notice. As the building is in the worst condition, the defendant no. 4 has issued final notice dated 27.06.2023 to plaintiffs as well as defendants no. 1 to 3 for demolition of the suit property. The defendant no. 4 has properly prepared Visual Inspection Report.

8. The defendant no. 4 has also issued public notice in local newspaper. Defendants have claimed that there is no merit in the application. The defendant no. 4 has failed to challenge the legality of the notice. Hence, the application deserves to be rejected.

9. I have heard learned advocate Shri. Bapardekar for plaintiffs, learned advocate Shri. Kishor Thakur for defendants no. 2 and 3 and learned advocate Shri. R.K.Patil for the defendant no. 4. Both parties have argued in consonance of their respective pleadings. I have perused the application and documents on record. After considering rival submissions and documents, following points arise for my determination. I have recorded my findings thereon with reasons as under.

Sr. No.	Points		Findings
1.	Whether the plaintiff established prima facie case ?	..	No.
2.	Whether the balance of convenience lies in favour of the plaintiff ?	..	No.
3.	Whether the plaintiff will suffer irreparable loss, if injunction not granted?	..	No.
4.	What order ?	..	The application is rejected.

REASONS

As to Points No. 1 to 3 :-

10. Points no. 1 to 3 are interlinked. Therefore, for sake of brevity, I have discussed all points together in order to avoid repetition.

Plaintiffs have placed on record rent agreements of plaintiffs, receipts of rent amount, notice issued by the defendant no. 4 dated 27.06.2023, notice issued by the defendant no. 1 and reply to the notice of the defendant no. 4 dated 28.06.2023 and photographs of the suit property. Whereas, defendants no. 2 and 3 have relied on Structural Audit and notice dated 30.05.2018. They have also relied on letters issued by defendant no. 1 dated 21.02.2022 and 02.10.2022. The defendant no. 4 has relied on photocopy of authority letter, resolution dated 27.06.2023, notice issued in daily Ramprahar newspaper, nivida dated 14.07.2023, letter issued by the plaintiff no. 1 to the defendant no. 4 dated 06.07.2023, notice in daily Ramprahar newspaper dated 01.07.2023 and notice in daily Sagar newspaper dated 15.07.2023. So also, photocopy of Visual Inspection Report.

11. Further it is necessary to turn to the documents on record in the light of provision of law and ratio laid down in '**Shamrao Ganpat Chintamani V/s Kakasaheb Laxman Korde, 2008 (2) Mh.L.J. 819**'. It is quite clear that at the stage of temporary injunction, the Court can refer to the documents which are produced on record without formal proof and not only the affidavits on record.

12. In order to establish their claim plaintiffs have to show that prima-facie case lies in their favour, balance of convenience also lies in their favor and they will suffer irreparable losses, if injunction is not granted.

13. Plaintiffs have claimed that they are in possession of the suit property as tenants. It may be noted that the fact of tenancy is not in dispute. It is also not in dispute that the suit property is owned by

defendants no. 1 to 3.

14. Learned advocate for plaintiffs has submitted that the plaintiffs are protected tenants. They have replied the notice of the defendant no. 4. There is no Structural Audit of the suit property. Hence, the defendant no. 4 cannot issue the notice. Plaintiffs are senior citizens. Defendants have failed to provide alternate accommodation.

15. On the other hand, learned advocate Shri. K.D.Thakur for defendants no. 2 and 3 has submitted that they are not concerned with S.No. 54 A. The building is in dilapidated condition. It may collapse at any moment. The plaintiff no. 1 has issued letter stating that the suit property is not habitable. There are no threats to plaintiffs by defendants no. 1 to 3. Plaintiffs have themselves evicted the suit property.

16. Learned advocate Shri. R.K.Patil for the defendant no. 4 has submitted that plaintiffs are not owners of the suit property. Plaintiffs have failed to pray for temporary injunction in the plaint. The suit property is not properly described. The defendant no. 4 has taken action as per law and by following due process of law. Plaintiffs have failed to comply with the notice. The defendant no. 4 is not responsible for Structural Audit. He has claimed that it is the duty of plaintiffs to carry out Structural Audit.

17. It may be noted that plaintiffs have claimed simplicitor injunction against defendants. It is the claim of plaintiffs that the building is in proper condition. Defendants are trying to dispossess them from the suit property. Plaintiffs have claimed that they are protected tenants. Therefore, their possession needs to be protected. It may be

noted that plaintiffs have not prayed for any relief under Maharashtra Rent Control Act or any declaration in that behalf. Whereas defendants have claimed that defendants are following due process of law. The defendant no. 4 has claimed that the notice was issued as per provisions of law. Defendant no. 4 is following due process of law.

18. Now, it is to be seen whether plaintiffs have established that defendants are trying to evict them without following due process of law. It may be noted that plaintiffs are the tenants in the suit property. The Visual Inspection Report of the suit property shows that the suit property is in dilapidated condition. Accordingly, notice was issued u/s. 193 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The letters issued by the plaintiff no. 1, to the defendants show that building is in dilapidated condition. Some part of ceiling is has started falling down. Therefore, he has moved his hospital to some other place. He has also issued same letter to the Municipal Council wherein he has stated that he has stopped the use of the premises in his possession. Considering these aspects, prima facie it is seen that the building is in dilapidated condition.

19. Plaintiffs are seeking protection to their possession over the suit property. It is well settled that no one even trespasser can be evicted without following due process of law. In the case on hand, the defendant no. 4 has issued notice to plaintiffs and defendants no. 1 to 3 to demolish the suit property as it is in dilapidated condition. Plaintiffs have pleaded that the defendant no. 4 has issued wrong notice. However, there is no pleading to show that how the notice is wrong.

20. I have seen the prayers of plaintiffs. It is seen that plaintiffs

have not challenged the legality and validity of the notices dated 16.05.2023 and 27.06.2023. Therefore, it is established that the validity of notices is not in dispute. It is settled that the Civil Court has jurisdiction only in cases where the legality of notice is challenged. As the validity of the notice is not in question, it cannot be said that defendants are trying to dispossess plaintiffs without following due process of law.

21. It is claimed that as the suit property is in dilapidated condition, it may collapse at any moment. Therefore, existence of the building is dangerous for public at large. Considering these aspects, I have no hesitation to hold that plaintiffs have failed to prima facie establish that defendants are trying to dispossess them without following due process of law.

22. Having held that plaintiffs have failed to establish prima facie case in their favor, there is no question of plaintiffs suffering irreparable losses. The last condition for granting temporary injunction is that balance of convenience must be in favor of granting party. Order 39, Rule 1C provides that temporary injunction may be granted wherein any suit it is proved by affidavit or otherwise, that the defendant threatens the plaintiff to dispossess or otherwise to cause injury to the plaintiff in relation to any property in dispute, the Court may by order grant temporary injunction to restrain such act or make such order staying such injury or damage. It is well settled that grant of injunction is discretionary relief. Exercise thereof is subject to Court being satisfied that the Court's interference is necessary to protect party from injury. Burden is on plaintiff to prove by affidavit or otherwise that there is prima-facie case.

23. In the case on hands plaintiffs have failed to establish prima-facie case. Therefore, they will not suffer irreparable loss if injunction is not granted. Considering these aspects, it is clear that balance of convenience is not in favor of plaintiffs. As a result, I have answered points no. 1 to 3 in the negative.

As to Point No. 4 :-

24. As I have discussed above, plaintiffs have failed to establish prima facie case in their favor. Therefore, balance of convenience is not in their favor and they will not suffer irreparable losses if injunction is not granted. As a result, application deserves to be rejected. Consequently, I pass following order.

ORDER

The application is rejected.

Uran,
Date : 17.08.2023

(Vikas D. Bade)
Civil Judge, J.D., Uran