

MHRG140013862016



R.C.S. No. 32/2017

Order below Exh. 21

Plaintiffs have instituted this suit for removal of encroachment, possession and perpetual injunction restraining defendants from causing obstruction to the possession of plaintiffs over S.No. 11/2 admeasuring 0-13-50 and CTS No. 665 admeasuring 1396 Sq. Meter both situated at village Chanaje (hereinafter referred to as 'suit properties').

2. Plaintiffs have claimed that they are owners and possessors of suit properties. The property of defendants is situated at western side of suit properties. Since 1952, plaintiffs are in possession of suit properties. In 2015, defendant no. 3 has tried to commit encroachment by constructing compound with the help of bamboo and net. Therefore, on 15.12.2015, the plaintiff no. 1 made complaint to the Group Grampanchayat Chanaje. Accordingly, inquiry was conducted.

3. On 23.01.2017, the defendant no. 3 made an application to the Grampanchayat for permission of construction of wired compound. On 10.02.2017, permission was granted subject to condition that he should not commit encroachment over any others land. However, on 19.02.2017 while erecting compound, defendants have committed encroachment to the extent of 146 x 10 ft. and erected wired compound.

Defendants have also started construction of house by committing encroachment. Hence, plaintiff was constrained to institute this suit.

4. During the pendency of the suit, Exh. 5 came to be rejected. Thereafter, Court Commissioner was appointed to carry out measurement of suit properties. The Court Commissioner filed its report at Exh. 29. After the said report, defendants no. 4 to 6 were added as defendants in the suit. It was transpired that defendants no. 4 to 6 are also committing encroachment. On 07.01.2015, defendants no. 1 to 3 have sold their property to Sanket Dnyaneshwar Koli. Some portion of suit properties is in possession of defendants no. 4 to 6. They are trying to construct house over the suit property. If the said house is constructed, plaintiffs will suffer irreparable losses.

5. Defendants no. 1 to 3 have resisted the claim on the ground that they are owners and possessors of their property. They are not concerned with suit properties. The construction is carried out by Sanket Koli. Hand made map is not genuine. There is no measurement of the suit properties. On 30.12.2016, the Grampanchayat visited suit properties. After due verification, NOC was granted for the construction. The construction is almost completed. There is drainage line for suit properties which is enough to bifurcate both properties. They have claimed that plaintiffs have failed to establish encroachment over suit properties by defendants. The plaintiff have failed to make out prima facie case. Hence, application deserves to be rejected.

6. I have perused the application and documents on record. Plaintiffs have filed written notes of argument. 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 ?	..	Application is rejected.

REASONS

As to Points No. 1 to 3 :-

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

8. 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.

9. 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.

10. Admittedly, the suit properties are owned and possessed by plaintiffs. So also, S.No. 661 is owned and possessed by defendants. Plaintiffs have claimed that defendants have committed encroachment over suit properties. Initially plaintiffs have claimed that defendants no. 1 to 3 were trying to install a compound with net and bamboos. Plaintiffs have claimed that defendants were trying to commit encroachment over suit properties. However, the application of plaintiffs under O. 39 R. 2 was came to be rejected on 20.11.2017. Thereafter, plaintiffs have preferred this application on 14.02.2018 claiming that defendants are now constructing house over the alleged encroached portion. It is seen that the suit is instituted prior to filing of report of court commissioner Exh. 29. It was held that there are no specific measurements of the alleged encroachment. Therefore, the interim injunction application was rejected.

11. Plaintiffs have preferred this application on the ground that defendants have started new construction of the house. Learned advocate for defendants has submitted that there is no pleading in respect of construction of house by plaintiffs. Therefore, plaintiffs cannot claim ad-interim injunction in respect of the relief which is not claimed in the plaint. I have perused the plaint. It is seen that there is pleading of construction of new house by defendants no. 1 to 3. However, there is nothing on record to show that on which part of the alleged encroached portion the alleged construction is going on. There are no specific measurements given by plaintiffs about alleged encroachment and construction of house thereon. So also, there is no pleading to the effect

that after rejection of application Exh. 5, defendants have started alleged construction. There is no pleading as to when and on which portion the said construction was commenced.

12. It is claimed that on 07.01.2015, defendants no. 1 to 3 have sold the property on which construction was going on to Sanket Dnyaneshwar Koli. Therefore, some portion is in his possession. Learned advocate for plaintiffs has relied on the report of court commissioner. She has claimed that report shows that some portion of suit properties is in possession of defendants.

13. I have perused the map drawn by the court commissioner. It is seen that some portion is in possession of defendants. The map drawn by the court commissioner does not disclose any construction of house over the said portion. Whereas plaintiffs have claimed that defendants are carrying out construction of house over said alleged encroached portion. Considering this aspect, I do not find any substance in submission that defendants are carrying out construction over the alleged encroached portion. Hence, I have no hesitation to hold that plaintiffs have prima facie failed to show that defendants are trying to carry out construction of house over the alleged encroached portion.

14. 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 1 C 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.

15. In the case at hand 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 favour of plaintiffs. As a result, I have answered points no. 1 to 3 in the negative.

As to Point No. 4 :-

16. As I have discussed above, plaintiffs have failed to establish prima facie case in their favour. Therefore, balance of convenience is not in their favour 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 : 20.07.2023

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