



IN THE COURT OF CIVIL JUDGE JUNIOR
DIVISION,
AT MALVAN, DISTRICT-SINDHUDURG

Plaintiff : Deelip Ankush Pednekar

VERSUS

Defendant : Aparna Anil Samant

ORDER BELOW EXHIBIT 43 IN R.C.S. NO. 17/2018

(Passed on 07/07/2023)

This is a suit for declaration and prohibitory injunction. The present application is filed by defendant no. 1 and 2 for temporary injunction under Order 39 Rule 1(a) to restrain plaintiff/respondent from causing damage to the suit property. The applicants are defendant in the present application and plaintiffs are respondents, therefore, they are hereinafter referred to in their original nomenclature as defendants and the plaintiff for the sake of discussion.

02. Perused the application and say. Heard both sides.

03. It is submitted on behalf of defendants that the present suit is instituted by the plaintiff for perpetual and mandatory injunction. The present defendants appeared in the matter and filed detail written statement on record. The application for temporary injunction filed by the plaintiff was kept pending for long period and thereafter, the plaintiffs have made written submission to decide application for temporary injunction along with the suit.

04. On 04/12/2022, the plaintiff set on fire to the root of coconut tree standing beside the house in the suit property. Moreover, woods placed by the defendant for repair of the house and for fire purpose also destroyed by plaintiffs by setting them on fire. When the defendant visited to village, she noticed the said fact, therefore, she approached before Malvan Police Station and lodged report. Plaintiffs do not get any right over the suit house and land which is subject matter of the suit. The name of the defendants have been recorded to the 7/12 extract as well as revenue extract of House No. 700 of the said property.

05. It is further submitted that House no. 700 is located in survey no. 61 Hissa no. 7 area admeasuring 1-06-2 HR . The suit house is ancestral property of the defendant which is constructed by grandfather of defendants and entries to that effect have been recorded to the village panchayat record. The grandfather of the defendants Ganesh Anant Samant had purchased 1/18 area from Ramchandra Prabhugaonkar by way of sale transaction dt. 12/03/1947. The said property has been in possession of defendants after demise of their grandfather.

06. It is further submitted that one Ghanshyam Laxman Wayangankar were the owner of 17/18 area of S. No. 61, Hissa No. 7. The deceased maternal grandfather of defendants namely Raghunath Samant was the tenant of the said 17/18 area of S. No. 61 H. No. 7. It is further submitted that half portion of the above 17/18 tenanted area was transferred by maternal grandfather of defendants in favour of one Vasudev Ramchandra Samant in the year 1941 by way of sale transaction. The mutation entry no. 3326 dt. 07/05/1944 has been effected to the revenue record with

respect to above transaction. The remaining half portion of the said 17/18 area was in possession of the grandfather of defendants as a tenant. Defendants maternal grandfather died on in the year 2000 and deceased grandfather of defendants and their mother have been in possession. Defendants mother died in the year 2016 and they have been cultivating said land after her demise.

07. It is further submitted by defendant that grandfather of defendants had mortgaged half portion of the tenanted land in the year 1948 in favour of Raghunath Laxman Samant for mortgage amount of Rs. 300/- The defendants grandfather redeemed the mortgage portion from Raghunath Laxman Samant in the year 1945-1946, before his death by making payment of the mortgage amount, but entry of redemption of mortgage was not executed to the revenue record. Purushottam Samant who is son of Ganesh Samant availed benefit of the said fact and executed mutation entry no. 13123 on 01/02/1976, showing that he is in possession as a tenant. The said mutation entry was allowed on 29/03/1976 without giving notice of the same to defendants 1 and 2 or their predecessors. The mother of the defendants challenged said mutation entry and got it cancelled.

08. It is further submitted that names of defendants have been recorded to the land where suit house is located as per mutation entry no. 772. There are various matters pending between defendants and self declared co-sharers. Plaintiff has no nexus with the said litigation. The name of the plaintiff is also not recorded to the 7/12 extract of revenue assessment extract.

09. Defendants aunt namely Usha Samant filed an application on 10/03/2015, for repair of suit house. However, she started erecting permanent structure closed to the suit house without taking their consent and obtaining sanction of the village panchayat. Defendants filed complaint application in that regard before village panchayat. Thereafter, on 12/04/2015, the plaintiffs through her brother and family members tried to disposes defendants and criminal complaints to that regards are pending. Defendants have been in possession of the suit house till date and the portion of the suit house which was in their possession only exist today.

10. It is further submitted that Usha Samant instituted false suit R.C.S. no. 61/2015 before this Court in which she has claimed to be the owner and possessor of the suit house as well as open land under the said house. On 14/07/2015, plaintiffs , P.O.A. of Usha Samant namely Sudhakar and brother of the plaintiffs Ramesh Pednekar demolished two rooms of eastern side with a view to cause damage to the portion of house which is in possession of defendants. Defendants filed complaint before the police about the said incident on 17/07/2015. Defendants 1 and 2 have saved portion of house no. 700 in their possession by incurring huge expenses.

11. It is further submitted that on 21/04/2015, village panchayat issued notice to Sudhakar Samant in respect of the suit house but before that he had already completed construction of 40 x 38 ft. as well as another construction of 16 x 17 ft. was carried out by him. The construction carried out by Sudhakar Samant was against the rules of C.R.Z. therefore, criminal

prosecution has been initiated against him. Moreover, chapter case came to filed against plaintiff. Sudhakar Samant have not obtained consent of defendant nos. 1 and 2 for carrying out construction. Moreover, he has not taken any permission for the same. Sudhakar Samant through her mother instituted R.C.S. no. 61/2015 in order to save construction. Notices dt. 23/03/2015 and 21/04/2015 have been issued by village panchayat Devbag by following due procedure and the said matter is pending.

12. It is further submitted by defendants that they have got entered name of their mother to the village panchayat record in the year 2011 by following due procedure. However, plaintiffs have not raised any objection against the said entry. Sudhakar Samant illegally carried out new and extended construction against the rule of village panchayat and the provisions of C.R.Z. The action taken by the village panchayat against Sudhakar Samant was just and proper. Thereafter, unauthorized construction done by Sudhakar Samant was demolished as per action taken by government machineries on 14/12/2015. Plaintiffs brother was residing in the said unauthorized demolished construction. While taking action against the illegal construction on 14/12/2015, revenue department also demolished wall compound which was repaired by defendants at their own expenses. On 04/12/2017, plaintiffs and their brother demolished some portion of newly constructed wall compound, thereafter, plaintiffs and one Shubhada Kulkarni demolished 10 ft. construction of wall compound. Plaintiffs also tried to prepare false record in collusion with member of local body but due to precaution taken by defendants, the said plan of preparing false documents could not succeed.

13. It is further submitted that one Moreshwar Dhuri was the then member of the village panchayat Devbag who is the relatives of plaintiffs. As plaintiffs were causing obstruction to defendant's possession, village panchayat Devbag issued three notices dt. 12/09/2016, 25/04/2017 and 12/12/2017 to the plaintiff. and action in that regard is pending. During that period defendants mother died on 27/06/2016, and names of defendants was mutated to the revenue record of the suit property.

14. It is further submitted that defendants used to repair suit house every year to maintain it. In this year also, defendants have repaired roof and construction of the portion of the suit house which is in their possession. Defendants incurred expenses of lakhs of rupees and erected wall compound. Thereafter, attempt was made to confine defendant no. 2 in the house. The wall compound erected by defendants was demolished by Shubhada Kulkarni by using mussel power in collusion with plaintiffs. The police complaint in that respect is pending in police station. Thereafter, wife of the plaintiff got angry and she also tried to disposes the defendants with the help of local peoples. Moreover, false complaints were lodged against defendant no. 2.

15. It is further submitted that plaintiffs time and again setting fire in causing damage to the coconut tree own and possessed by defendants. Thus, defendants have prayed for restraining plaintiffs from causing damage to the suit land and house in any manner.

16. The plaintiff has strongly objected the application

and submitted that application is false and deliberately filed to harass him without any cause of action. The plaintiff has categorically denied allegations made in the application and submitted that he and his family members have been in possession of the suit property and the suit house from last 58 years. The plaintiff and his brother Ramesh have been residing in the suit house since long. When the plaintiff was a little child of 15 days, his mother came to reside in house no. 700. At that time, Purushottam was alone residing in the said house. There were physical relations between mother of the plaintiff and Purushottam out of which his brother Ramesh was born. Since that time to till date the plaintiff and his brother have been residing in the suit house. The family of the plaintiff resides to the southern portion and family of Ramesh resides to northern portion of the suit house. Ramesh had also started one Tea house in the said house for some period.

17. It is further submitted that the middle portion of the suit house was in common occupation of defendant and her brothers. On 29/12/2017, defendant no. 1 thrown out goods of the plaintiff from the suit house forcibly with the help of two workers and tried to set on fire woods of roof by breaking and removing it. Moreover, they filed false cases against plaintiffs and his family member. Defendant always threat to plaintiffs to drove out of the suit house. The plaintiff temporarily repaired roof of the house in presence of Shubhada Kulkarni. Moreover, on 18/02/2018 and 21/02/2018, defendants tried to cut down trees forcefully with the help of J.C.B. and tried to take possession of the suit property.

18. The present application filed by defendants is itself illegal. If injunction is granted as prayed by defendants, plaintiffs will suffer an irreparable loss. Plaintiffs have not come before Court with clean hands. Balance in convenience is lies in favour of plaintiffs. The actual possession of the suit house lies with the plaintiffs. Thus, plaintiffs have prayed for rejection of the application.

19. Considering submissions made by the Ld. Advocates for the parties, following point are arise for determination and I have recorded my finding against each of them for the reasons given below-

Sr. No.	POINTS	FINDINGS
1)	Whether the applicants /defendants have a prima facie case in his favour ?	No.
2)	Whether the balance of convenience lies in favour of the applicants /defendants?	No.
3)	Whether the applicants /defendants would suffer an irreparable loss, if injunction is not granted in his favour ?	No.
4)	What Order ?	As per final order.

REASONS

POINT NO. 1 to 4 :

20. The defendant has prayed for restraining plaintiff from causing damage to the suit land and house in any manner.

So far allegations made by the defendants against plaintiff are concern, those allegations have been denied in material particular. While considering prima-facie case, defendants have to show prima-facie that the plaintiff is doing any act detrimental to the suit land and house. While considering the suit property, it appears that land bearing S.No. 61, H.No.7 admeasuring 1-06-2 HR situated at village Devbag Tal. Malvan including Grampanchayat House no. 700 located in the said land is the suit property. The suit is filed by the plaintiff for perpetual and mandatory injunction to restrain defendants 1 and 2 from causing obstruction to his peaceful possession over House no. 700. It is further prayed by the plaintiff to restrain defendants from causing damage to the suit house or any part or things in possession of the plaintiff.

21. Considering submission of the parties, it is prima-facie seen that the plaintiff and defendants are co-sharer of house no. 700. It is further pertinent to note that in addition to the present civil suit, another civil suit bearing R.C.S. No. 12/2018 is also pending before this court which is instituted against the present defendant by one Shubhda Shubhash Kulkarni. The plaintiff's advocate has produced on record copies of order passed below exh. 5 and 48 in the said civil suit against the defendant no. 1 in the present suit. Perusal of order passed below exh. 5 in R.C.S. no. 12/2018 goes to show that, the suit property in both the matter is one and same. In the said civil suit, order passed below exh. 5 shows that defendant no. 1 is restrained from alienating or creating any third party interest in the suit property and from causing obstruction to the plaintiffs right of cultivation

to the suit property. Further order passed below exh. 48 in the said civil suit also shows that defendant no.1 is also restrained from by way of temporary injunction from causing damage to the suit house and from removing roof of the house and dispossessing the plaintiff in the said matter. The plaintiff in the present and matter and RCS No. 12/2018 are different but subject matter of the suit is same.

22. Defendants have not disclosed in the present application, the order passed against her granting temporary injunction to not to cause damage to the suit property in RCS No. 12/2018. It appears that the suit property in the present and RCS No. 12/2018 is one and same, therefore, it was required for the defendants to disclosed fact of existing order of temporary injunction granted against her in the said civil suit. However, the same is not done. These things goes to show that defendant has not approached before this Court with clean hands.

23. As per submission of defendant, on 04/12/2022, plaintiffs set on fire root of the coconut tree and the said fact was noticed by the defendant when she visited the house. The defendant further lodged report about the said incident on 19/01/2023 with Malvan Police station. The copy of N.C. is produced on record. Perusal of N.C. report shows that the complaint as regards the aforesaid alleged incident was lodged by the defendant.

24. The defendant has also produced on record photographs showing factual position of the suit property. The

photographs of the suit property have been taken on 18/03/2023. The alleged incident of setting on fire the root of coconut tree is dt. 04/12/2022. If the root of coconut tree was set on fire as alleged by the defendant, there should be something in photograph showing burnt coconut tree and woods but nothing is seen in the photographs. As per submission of defendant, alleged incident is dated 04/12/2022 but the complaint about the alleged incident lodged on 19/01/2023. Allegation is made by the defendant against plaintiffs in respect of setting on fire to the root of the coconut tree, but the defendant did not approach before the Court immediately seeking relief of injunction against the plaintiff. Moreover, the defendant also did not approach before Police at the earliest but she approached after delay of more than one month. If the submission of the defendant is considered, it did not appear that plaintiff was seen by anybody while doing alleged act of setting fire to the root of coconut tree.

25. It is further pertinent to note that the present suit filed by the plaintiff is for mandatory and perpetual injunction against the defendants. Issues are also already framed by this Court on 14/03/2023. The defendant has prayed to restrain plaintiff from causing damage to the suit house. The plaintiff had also sought temporary injunction against the defendant by filing application below exh. 5 but the said application will be decided along with the suit. The plaintiff's advocate has made written submission to decided prayer of temporary injunction along with the suit.

26. The report is lodged by the defendant against the

plaintiff but there is nothing on record to show prima facie that the alleged fire was set by the plaintiff. No affidavit of any witness is filed on record who has seen the plaintiff while doing alleged act. There is no prima-facie direct evidence on record to show that the present plaintiff has set on fire the root of coconut tree.

27. Defendants advocate has placed relied upon Judgment of Hon'ble Apex Court delivered in **Dalpat Vs. Pralhad Singh**, wherein while referring provisions of O. 31 R 1C it is observed by the Hon'ble Apex Court as “ temporary injunction may be granted there in any suit it is proved by affidavit or otherwise that the defendant threatened to disposes the plaintiff or otherwise caused injury to the plaintiff in relation to any property in dispute, the Court may grant temporary injunction to restrain such act or make order for staying etc. It is also settled law that grant of injunction is a discretionary relief. The exercise thereof is subject to the Court being satisfied firstly that there is serious disputes to be tried in the suit and secondly that the Court's interference is necessary to protect parties from the spices of injury and burden is on the plaintiff by evidence adduced by affidavit or otherwise to prove that there is prima facie case”.

28. The defendant also relied upon the judgement delivered by Hon'ble High Court of Panjab and Harayana in **Bachan Vs. Swaran Singh**. The Ld. Advocate for defendants drawn my attention to para. no. 15 of the said judgment and submitted that a co-owner out of possession can certainly seek

and injunction to prevent the diminution of the value and utility of the property. However, defendant has prayed to bring on record prima-facie that plaintiffs are causing damage to the suit property.

29. The Ld. Advocate for the plaintiff argued that no injunction can be granted against co-sharer. The Ld. Advocate for the plaintiff has relied upon the judgment of the Hon'ble Bombay High Court delivered in **Armando Pereira & Anr. Vs. Krishnanath V. Malvancar (Since deceased) Represented by his LR's and Ors reported in 1999 CJ (Bom) 62**. However, the said judgment is not applicable to the facts of the present case. Beside, defendant's advocate argued that, if the plaintiff is doing any act detrimental to the suit property, in that circumstances, the Court can grant injunction. It is pertinent to note that so far common possession of co-sharer in a joint property is concern, no injunction can be granted against any party to not to cause obstruction or interference in possession. The reason behind not granting injunction in such cases is that the parties have common enjoyment and it may cause hindrance in the right of possession and common enjoyment of any party in possession. However, when the question is in respect of causing damage to the common property, then the alleged act of causing damage by any party to the property under common enjoyment can be granted without interfering right of such party to use and possess common property.

30. Considering overall facts and circumstances and prima facie evidence on record, I am of the opinion that

defendants has no prima facie case in their favor. Moreover, balance of convenience also does not lie in their favour as they have not disclosed fact of grant of temporary injunction in another suit in respect of the same suit property. Thus, I am also of the opinion that the defendant will not suffer an irreparable loss, if injunction is granted in their favor. Hence, I answer point no 1 to 3 in negative and with reference to point no. 4, I pass following order.

-: ORDER :-

01. The application at exh. 43 stands rejected.
- 02 No order as to Costs.

Date : 07/07/2023

Amardeep D. Tidke

Place : Malvan.

Civil Judge Junior Division, Malvan.