

IN THE COURT OF CIVIL JUDGE, JR. DIV. MALVAN.
AT : MALVAN.

Pandurang Gajanan Nagavekar -- Plaintiff.
Vs.
Satish Digambar Wanjari --Defendant.

ORDER BELOW EXH.05 IN REG. CIVIL SUIT NOS. 18/2015
(Order dated 26/06/2015)

This is an application filed by plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 for temporary injunction.

02. The present suit is filed in respect of landed property block No. 173 (330) Sub-division No. 9 which is specifically described in plaint para No. 1 which is here-in-after referred as "Suit Property".

03. It is the contention of Plaintiff that, suit property is owned and possessed by him and his co-sharers. Defendant having no concerned in the suit property. Defendant had filed Tenancy Application bearing No. 76/2002 for declaration of his tenancy right u/s. 70(b) of Bombay Tenancy and Agricultural Land Act, 1948 (in short B.T.& A.L.Act). The said application was allowed by Residential Nayab Tahsildar. Feeling aggrieved and dissatisfied with the said judgment and order father of plaintiff had preferred Tenancy Appeal bearing No. 2/2006. The said appeal is allowed by Sub-Divisional Officer (in short S.D.O.) on 13/10/2010 and the order passed by the trial Court is set aside. Thereafter again defendant has filed Tenancy Application bearing No. 1/2011 u/s. 4(2) of B.T.& A.L.Act. The said proceeding is pending.

4. It is further contention of plaintiff that, to create possession in the suit property defendant has made application to Grampanchayat Warad for making construction in S.No. 173A1 H.No.1A. The said land is owned by defendant. By obtaining the said permission defendant has made construction in the suit property forcibly. So, plaintiff has filed this suit for mandatory and permanent injunction as well as for possession, in which, plaintiff has filed the present application for temporary injunction.

5. Defendant has filed his written statement and say below Exh. 20 and contested the suit claim. According to him as per agreement dated 04-06-1981 the predecessor of plaintiff has given possession of suit property to him and since then he is in possession of suit property. In the crop statement there are entries of the name of defendant since the year 1991-92 till the year 2006. There was no objection for such entries. According to him he is in possession of suit property as a tenant. Tenancy Application bearing No. 1/2011 is pending in the Court of Tahasildar Malvan. So, this Court has no jurisdiction to entertain, try and dispose of the suit. He further contended that he has planted many trees in the suit property as well as he has constructed one shade in the suit property. So, he prayed to reject the application.

6. Defendant has filed application below Exh. 21 for framing preliminary issue of jurisdiction. This Court has heard both the sides and issue of jurisdiction was framed. Thereafter, upon hearing to both the advocates this Court held that, this Court has jurisdiction to entertain, try and dispose of the suit. The said order is passed below Exh. 1.

7. Today I have heard both sides for sufficient length and time. For the decision of this application following points arise for my determination and my findings thereon are as under for the reasons stated below-

Sr.No	Points	Findings
1.	Whether plaintiff proves prima facie case?	Yes.
2.	Whether balance of convenience is lies in favour of plaintiff?	Yes.
3.	Whether plaintiff has proved that if injunction order is not passed then he will suffer irreparable loss and injury?	Yes.
4.	What order?	Application is allowed.

REASONS

8. Heard Ld. Advocate Shri. Dhamapurkar for plaintiff and Ld. Advocate Shri. Tari for defendant for sufficient length and time. With their assistance I have gone through the record of the case.

As to point nos. 1 to 3 :-

9. All these points are interconnected to each other. Hence to avoid repetition I am going to discuss all these point simultaneously.

10. Admittedly, defendant had filed Tenancy Application bearing No. 76/2002 and in the appeal bearing No. 2/2006 the order passed by R.N.T. Malvan in the Tenancy Application bearing No. 76/2002 is set aside. The copy of judgment and order is at below Exh. 7. Today defendant has produced on record the 7/12 extracts of suit property below Exh. 25 and 26. From the said documents it reveals

that, since the year 1991-92 to 2005-2006 name of the defendant is appearing in possession column. Below Exh. 23/3 defendant has produced resolution of Grampanchayat dated 25/05/2006. From the said document it is seen that as per the agreement name of the defendant is recorded in possession column of suit property and he is tenant in the suit property. But admittedly the Tenancy Appeal filed by father of plaintiff bearing No. 2/2006 is allowed and judgment and order passed by the trial Court is set aside. No doubt, another Tenancy Application bearing No. 1/2011 is pending, but after perusal of Exh. 6 it is seen that as per the order of S.D.O. the name of defendant is deleted from the record of rights of suit property. Now in possession column there is no name of defendant. But it appears that, plaintiff is in possession of suit property along with his co-sharers. Below Exh. 23/4 defendant has produced affidavit of one witness namely Hirakant Ramchandra Amberkar. He stated that defendant is in possession of the suit property. But mere affidavitory evidence cannot rebut the entries in the record of rights of suit property.

11. During the course of argument Ld. Adv. For defendant submitted that one agreement is executed on 04-06-1981 between predecessor of plaintiff and defendant. The said agreement is not produced in this Court. Upon query it is submitted that the said agreement is agreement to sale and possession is given to the defendant. It is further argued that, the suit for specific performance of contract was needs to be filed. If this would be the fact then to ascertain the contents of said document that document was needs to be produced before this Court. But unfortunately the said document is not produced on record. The best reason is well known to the defendant himself.

12. At this stage there is no sufficient evidence to hold that on the date of filing of suit the defendant was in possession of suit property. After perusal of Exh. 4/5 it is seen that, the permission is granted to defendant for making construction in S.No. 173A1 H.No.1A. But according to plaintiff by taking disadvantage of this permission defendant has made construction in the suit property. The said fact is seen from the photographs produced on record. According to defendant there was old shade was standing in the suit property. But there is no reference in the 7/12 extract produced by both parties of such shade. So I do not find any substance and force in the submission of defendant. The resolution passed by Village Panchayat on 25/05/2006 is appears to be passed on the basis of revenue entries. But as stated earlier, as per the order passed by S.D.O. the name of defendant is deleted from the 7/12 extract of suit property. So, no much weightage can be given to the said resolution.

13. Admittedly, plaintiff and his co-sharers are owners of suit property. So, they are right to possession over the suit property. Suit by one co-sharer is maintainable. Prama facie case in favour of plaintiff is made out. If temporary injunction not granted then plaintiff will suffer irreparable loss. Balance of convenience is in favour of plaintiff. Hence I answer point nos. 1 to 3 in the affirmative.

As to point no.4 :-

12. In view of my affirmative findings to point nos. 1 to 3 application deserves to be allowed. Hence I make following order-

ORDER

1. Application is allowed.

2. Defendant, his servants, agents, power of attorney holders, legal representatives and anybody acting on his behalf are temporarily restrained from causing illegal obstruction to the plaintiff possession in the suit property as well as temporarily restrained from making any further construction and to make any damage to the suit property till the final disposal of this suit.

3. Costs in cause.

(Dictated on dais and pronounced in open Court.)

Date: 26/06/2015

Sd/-
(Santosh D. Chavan)
Civil Judge, Jr. Dn. Malvan.