

ORDER BELOW EXHIBIT 18 IN R.C.S. NO. 44/2023

This is a suit for perpetual and mandatory injunction, in which, the present application is filed by defendants under O. 39 R. 1 (a) for restraining the plaintiff by way temporary injunction from causing obstruction in the Versal tradition of celebrating Ganpati Festival and other festival in any manner which exist in their family till the decision of the suit. The Versal Tradition is a kind of tradition celebrating festival annually or year after year by the different members of group of same family one after other.

02] In short, it is the submission of defendants that they are co-sharer in the suit properties along with the plaintiff. They have filed another suit for partition of the suit property against the plaintiff and others. They have been in joint possession of the suit property along with the plaintiff. Defendants claimed rights in the suit property on the basis of registered sale deed executed in favor of Shivram Maruti Naik and Shankar Maruti Naik who were the predecessor of defendants and the plaintiff respectively. The plaintiff alone claiming rights in the suit property and he is also causing trouble to the defendant in various manners. It is submitted that all the festivals are celebrated in the family jointly in the suit house. However, it is the tradition that branch of Shivram will incur expenses of Ganpati festival for one year and branch of Shankar will incur expenses of Ganpati Festival for another year and so on. The said tradition is being followed in the family continuously without interruption. It is submitted that the last year there was turn of the plaintiff's family, and

accordingly, they had incurred the expenses for Ganpati festival last year. No objection was raised by the defendant's family to the plaintiff or his family members. However, this time, it is the turn of defendants family to incur expenses but they have apprehension that the plaintiff may cause obstruction. Thus, defendants have prayed to restrain the plaintiff accordingly from causing obstruction by submitting that they have prima-facie case, balance of convenience and principle of irreparable loss in their favor.

03] The plaintiff has strongly objected the application by filing reply below exhibit 23 and denied all the contention made in the application. The plaintiff has denied right as well as possession of the plaintiff in the suit house. It is submitted that defendants have no nexus but there were good relation between the predecessors of the both families, therefore, defendants with the permission of the plaintiffs predecessor use to visit the suit house on the occasion of festivals and they use to reside in the suit property temporary with the permission of plaintiff's family. The plaintiff has also denied the existence of any Versal tradition as alleged by the defendants and prayed for rejection of the application by submitting that defendants have no prima faice, case and balance of convenience in their favor and they will not suffer any irreparable loss, if injunction is not granted in their favor. Thus, the plaintiff has prayed to reject the application.

04] Considering submission made by the parties and argument advanced by the Ld. Advocates appearing for the parties,

following points arise for determination and I have recorded my findings against each of them for the reasons given below.

Sr. No.	Points	Findings
1.	Whether defendants prove that prima facie case lies in their favor?	No.
2.	Whether balance of convenience lies in favor of defendants?	No
3.	Whether defendants will suffer an irreparable loss, if injunction is not granted in their favor?	No.
4.	What order?	As per final order.

:REASONS:

AS TO POINT NOS. 1 TO 3.

05] It is the case of defendants that there is long and continuous tradition in the family of the plaintiff and defendants of celebrating Ganpati festival on Versal Tradition. The plaintiff's family use to incur expenses in one year and defendant's family used to incur expenses in another year and so on. As such, it is for defendants to prove prima-faice that such tradition exists in the family. Beside, the plaintiff has clearly denied such tradition of celebrating Ganpati festival and other festival on Versal tradition as alleged by defendants. Defendants claimed joint possession of the suit house along with the plaintiff but the plaintiff has clearly denied alleged right as well as

possession of the plaintiff. It is clear that temporary injunction is prayed by the defendants with respect to alleged Versal Tradition of celebrating Ganpati festival by claiming that it is their turn to incur expenses for Ganpati festival this time. It is submitted that the plaintiff's family has already enjoyed their turn in the last year. In view of the above alleged facts, the existence of alleged Versal tradition is important factor to be considered to see prima-facie case, balance of convenience as well as principle of irreparable loss.

06] It is also worth to note that possession of defendants and their rights in the suit house are disputed by the plaintiff. However, defendants have claimed joint possession over the suit house along with the plaintiff. Defendants in support of their contentions have filed on record affidavit of two witnesses namely Ramkrushna Shivram Acharekar and Arvind Vithu Maral. Those two witnesses claimed that they are neighbor of the plaintiff and defendants. They have submitted that the plaintiff and defendants have joint possession over the suit house. Perusal of affidavit of the witness reveals the contention in respect of existence Versal tradition of celebrating Ganpati Festival. They have also stated in their affidavit that the last year was the turn of the plaintiff's family to incur expenses and accordingly they have incurred such expenses of Ganpati festival by bringing Ganpati Statue and incurring related expenses of the same.

07] The plaintiffs advocate submitted that the affidavit of the witnesses cannot be considered as they have not come before the Court for deposition. It is worth note that said affidavits are not

evidence affidavit but those are filed at the primary stage in support of the application. Thus, submission of the plaintiff's advocate that such affidavits cannot be considered is not tenable. Those affidavits can be considered, but, it is to see, whether such affidavits are suffice to show prima-facie existence of tradition as alleged by the defendant.

08] While considering the question of existence of any particular right or tradition, it is necessary to consider the provisions of section 13 and section 48 of the Indian Evidence Act. While considering the question of existence of any particular right or customs, which facts are relevant, are explained in those provisions. Section 13 and 48 lays down facts and circumstances which will be relevant when a right or custom is in question.

09] As per section 13 of Indian Evidence Act, any transaction by which such right or custom was created, claimed, modified, recognized, asserted or denied or the facts which were inconsistent with the existence of such custom or rights are the relevant facts. In addition, section 48 speaks that when the Court has to form an opinion as to existence of right or custom. In the said case, the opinion of the person who would be likely to know of the existence of such rights or custom is a relevant facts.

10] Defendants have claimed that there is system of Versal Tradition of celebrating Ganpati and other Festival but no any particular instances are given to show that from when such tradition was started. Except submission of the defendants and affidavit of two

witnesses filed, no any prima-facie document is on record to show the existence of such type of tradition as alleged. The statement of defendants and witnesses in their affidavit about existence of Versal Tradition are made prima-facie after the disputes started between the parties. In the said situation, there should be any prima facie documentary evidence on record showing that such type of tradition as alleged by defendants was in existence. Thus, it appears that there is no prima-facie evidence on record to show prima-facie existence of alleged tradition.

11] It is also pertinent to note that Versal tradition as submitted by the defendant is in respect of incurring expenses of Ganpati Festival on annual basis by the family of the plaintiff and by their family members. It is worth to note that incurring expenses of the Festival on annual basis by one group of members in one year and by another group of members for another year is not any kind of right or privilege but it appears to be an arrangement made that who will take the responsibility of expenses in a particular year. It is not the case of defendants that despite incurring expenses of Ganpati Festival some special rights of offering prayer, or any other rights are enjoyed by a family who incur expenses of the festival in a particular year. The submission of defendant is itself clear that the Festival is to be celebrated jointly by the all the members together.

12] The submission of the defendant is clear that celebration of the Ganpati festival is to be done collectively by them as well as the plaintiff's family. The only thing in the Versal Tradition as alleged

by defendants is about incurring expenses of festival. If the celebration is to be done jointly as per Versal Tradition as submitted, then the right to participate and in festival also lies with the plaintiff's family. If it is presumed that Versal Tradition exists as alleged by defendants, then the rights of the both families will have to be considered. If the celebration is to be done jointly by family of the plaintiff and family of the defendants, then there may be chances of misuse of the order of injunction, if granted. There are also chances that defendants may deprive, the plaintiff's family or their right to participate in the Ganpati Festival, if injunction is granted.

13] It is worth to note that there is no prima-facie evidence on record to prove existence of Versal Tradition. It is also pertinent to note that no any specific right or privilege are claimed except incurring expenses in particular year. None of the document filed on record by the parties throw light to prove prima facie existence of Versal tradition as alleged. Defendants have no prima facie case and balance of convenience in their favor so far alleged Versal tradition is concern. Defendants will not suffer any irreparable loss, if injunction is refused. Hence, I answer point nos. 1 to 3 in negative and pass following order with reference to point no. 4.

ORDER

1. The application stands rejected.
2. Costs in main cause.

Date : 16/09/2023

Amardeep D. Tidke

Place : Malvan.

Civil Judge Junior Division, Malvan