

CNR No :- MHSI100002052018



:- Regular Civil Suit No. 20 of 2018 :-

:- Order Below EXH 5 :-

The Plaintiff have filed the present suit for perpetual injunction wherein he has filed the present application under order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (Hereinafter referred as '**CPC**' for the sake of brevity).

02. It is contended that, landed properties at Sr. No. 1 survey No. 92 hissa No. 152A and Sr No. 2 survey No. 92 hissa No. 165 as more particularly described in para 1 of the application are subject matter of the suit and hence they are hereinafter referred as '**suit properties**'.

03. That, property at Sr. No. 1 is joint property of Plaintiff, Defendant and other co owners. Plaintiff and Defendants has 4 anna share each in that property. Property at Sr. No. 2 is adjacent to property at Sr. No. 1 and it is owned by Plaintiff and other co-sharers. That there was house No. 34 owned by Plaintiff and Defendant in property at Sr. No. 1. There was previous litigation RCS No. 236 of 2015 in respect of earlier disputes between Plaintiff and Defendant relating to suit properties. However, said suit was disposed off. However, now on 14.06.2018 again Defendant encroached upon the share of Plaintiff in suit property and started digging with JCB to construct water tank for toilet. Defendant has started collecting

construction material and labourers for its construction. It is also contended that Defendant can anytime encroach upon the suit property at Sr. No. 2 as well. If the Defendant succeeds in his intentions, then it will cause irreparable loss to the Plaintiff. Hence, it is prayed that the Defendants be enjoined from disturbing plaintiff's possession and from making any construction in Plaintiff's share in suit property at Sr. No. 1 and from encroaching upon suit property at Sr. No. 2.

04. Defendants No. 1 and 2 filed their say at **EXH 17** and objected the Application. Defendant has denied the contents of Application. That, the suit property at Sr.No. 1 is joint property of Plaintiff, Defendants and other co-owners and their shares are fixed. That, the co-sharers are enjoying their shares independently. It is contended that, though the suit properties are not partitioned, there are houses of Plaintiff and Defendants in their own sharers of land. It is contended that, defendants have not disturbed the possession of Plaintiff in suit property at Sr. No. 1. So also, as Defendant has no concern with suit property at Sr. No. 2. Hence, no question of encroaching in that property arise. That, the Defendants have never threatened the Plaintiff nor obstructed them. Earlier also plaintiff had filed the Suit RCS No. 236/2015 against Defendants. However, the said was dismissed in default and now the present suit without any cause of action has filed. It is contended that, Plaintiff does not have any prima-facie case. Hence, it is prayed that, the application be rejected with costs.

05. Perused the application and say. Perused the document filed on record by both the parties. Heard Ld. Advocate for the Plaintiff and Defendants. Considering the rival contention of both the parties, following points are arise for my determination and its findings alongwith the reasons are as follows :-

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the Plaintiff has made-out prima-facie case ?	No.
2.	Whether balance of convenience is in favour of the Plaintiff ?	No.
3.	Whether the Plaintiff will suffer irreparable loss in the event of refusal of temporary injunction ?	No.
4.	What Order ?	Application is rejected with costs.

-: REASONS :-

As to point No. 1, 2 and 3 :-

As all these points are interlinked and in order to avoid repetition of facts, they are dealt with, discussed and decided together.

06. It is argued on behalf of the Plaintiff that, the suit property at Sr. No. 1 i.e. Survey No. 92 Hissa No. 152 A is jointly owned by Plaintiff, Defendants and other co-owners and that,

Plaintiff and Defendants has 4 Ana share each. The suit property at Sr. No. 2 i.e. Survey No. 92 Hissa No. 165 is exclusively owned by Plaintiff and it is adjacent to suit property at Sr. No. 1. It is contended that, Defendant is trying to construct water tank in the suit property which is in possession of Plaintiff and for that purpose they have started digging with JCB, collected material and labourers. The Plaintiff also fears that, Defendants will encroach upon suit property at Sr. no. 2. Hence it is prayed that, the application be allowed.

07. On the other hand, it is the case of Defendants that, they have not constructed any water tank in the area in suit property at Sr. No. 1 which is in possession of Plaintiff. That, it is also their case that, Defendants had not tried to encroach upon suit property at Sr. No. 2 as the same is owned by the Plaintiff. Allegations made in application are false. There is no cause of action. Hence, it is prayed that, application be rejected.

08. On perusal of 7/12 extract of suit property at Sr. No. 1, it can be seen that, the same is possessed by the Plaintiff, Defendants and other co-sharers. The suit property at Sr. No. 2 is owned by Plaintiff and other co-sharers. The said fact is also admitted by the Defendants. However, it is required to be seen, whether there is any material which prima-facie shows that, Defendants are trying to disturb the possession of plaintiff over the suit properties as alleged. Plaintiff have filed on record the photographs alongwith the list at **EXH 4** in order to show the alleged digging at the hands of Defendants. However, on perusal

of the same, it cannot be gathered whether there is any digging or not. Further, there is no JCB around in that photos. So also, there does not appear any material etc. in those photo to show that, there is any preparation for construction of water tank. At this juncture, it is also pertinent to note here that, plaintiff is also not made it clear that, as to on how much area, the Defendants have made the alleged encroachment and construction in the area in suit property at Sr. No. 1 which is in his possession. From photos it cannot be gathered as to which portion of card is in possession of Plaintiff and Defendants.

09. It is further pertinent to note that, in respect of suit property at Sr. No. 2, the Plaintiff has merely contended that, he is assuming that, the Defendants would encroach upon the suit property at Sr. No. 2. However, there is no material to prima-facie show that, Defendants are trying to encroach upon the suit property at Sr. No. 2. So also, the suit property at Sr. No. 2 is joint property of Plaintiff and other co-sharers. However, Plaintiff have also not mention as to on which side of the suit property at Sr. No. 2, he is in possession and how as per Plaintiff, the Defendant encroach upon that property. Hence, there is no prima-facie material to establish the said allegation in respect of suit property at Sr. No. 2 as well.

10. It is settled principle of Law that, the injunction should not be granted against the Co-sharers. Plaintiff and Defendants are co-sharers in suit property at Sr. No. 1. It is already observed above that, there is no material on record to

show that, the Defendant has disturbed the peaceful possession of Plaintiff over the suit property at Sr. No. 1. So also, mere assumption that, Defendant will encroach upon the suit property at Sr. No. 2 is not sufficient. Under such circumstance, the Plaintiff does not have any prima-facie case. The suit property at Sr. No. 1 is joint property of Plaintiff and Defendants, then granting of injunction, may cause irreparable loss as the Defendants have right over the suit property until the same is partition. Under such circumstance, balance of convenience does not fall in favour of the Plaintiff. Hence, I answer points No. 1 to 3 in the 'Negative'.

As to Point No. 4 :-

11. From the discussion made in above points, it is clear that the Plaintiff is not entitled to temporary injunction as prayed. Hence the Application is liable to be rejected. Accordingly, in answer to this point, I proceed to pass the following :-

:: ORDER ::

Application is rejected with costs.

(Dictated and Pronounced in open Court)

Place : Dodamarg.
Date : 18.01.2023.

(Y. P. Bavkar)
Civil Judge (Junior Division)
Dodamarg.