

**RCS No.319/2023**

Dadaso V/s.

Shobha + 1

ORDER PASSED BELOW APPLICATION (EXH. No.5)

The plaintiff has filed the application under Order 39 Rule 1 and 2 and Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') praying for temporary injunction against the defendants.

The case of the plaintiff, in brief, is as under.

02. The plaintiff possesses 2070 Sq.ft. land and a house comprising of 4 rooms, toilet, bathroom built thereon and it includes open space (for short "the suit property"). It bears C.S. No. 677 and Gram Panchayat property No. 663/A. Prior to 1980, father of the plaintiff possessed that land and since 1980, the plaintiff is possessing the suit property. Since 43 years, the plaintiff and his family possesses the suit property peacefully. The land of the suit property is Gayran land. The plaintiff has become owner of the suit property by adverse possession. The plaintiff has planted trees of Mango, Naseberry and Neem etc. Defendant No. 1 is wife of defendant No. 2. The defendants claim that they have purchased open land from the suit property. They have erected iron angles with view to fence and it was to obstruct to the family of the plaintiff. The defendants are intending to cut trees planted in the open area of the suit property. The defendants are obstructing possession of the plaintiff. There is possibility that the defendants may dispossess the plaintiff from the suit property. On 25.09.2023, the defendants expressed it with the plaintiff.

03. On 26.09.2023, the plaintiff complained to Talathi that the defendants are going to cut the trees. The complaint lodged similar complaints to Tahasildar, Range Forest Officer, Sangli praying to not grant permission to the defendants to cut the trees. Still the defendants are threatening to dispossess the plaintiff. Therefore, the plaintiff has prayed that the defendants or anybody through them be temporarily restrained from obstructing possession of the plaintiff over the suit property, they be restrained from dispossessing the plaintiff from the suit property, they be restrained from not closing easementary right of the plaintiff by fencing beyond the suit property and they be restrained from cutting trees from the suit property.

04. The defendants have filed their joint written statement and say at Exh. No. 16. They have denied all the allegations of the plaintiff. They contend that they have no nexus with the suit property. Mother of defendant No. 2 purchased some area of C.S. No. 675 on 04.01.1975. Defendant No. 2 resided with his mother in it. After demise of his mother, defendant No. 2 has become owner of it being only heir of his mother. On 01.03.2017, defendant No. 1 purchased remaining portion of C.S. No. 675. Thus, the defendants have become owner and possessor of entire C.S. No. 675. They have maintained Neem and Mango trees in their property. They have planned to construct house. They applied for permission to Gram Panchayat. Accordingly, Gram Panchayat has granted permission to them. The defendants have prospered. The plaintiff do not like it. Therefore, the plaintiff has filed false suit against them. Therefore, they have prayed to reject the application.

05. Considering the pleadings and documents available on record, following points arise for my determination. I have answered

each of it for the reasons stated below.

<u>P O I N T S</u>	<u>F I N D I N G S</u>
1) Whether the plaintiff proves his case prima facie ?	Yes.
2) Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3) Whether the plaintiff will suffer irreparable loss which cannot be compensated in terms of money, if injunction is not granted ?	Yes.
4) What order ?	As per final order.

R E A S O N S

As To Point No. 1 :

06. It is worth here to note that the plaintiff claims that the land of the suit property is Gayran land. The defendants claim that they have no nexus with the suit property. The plaintiff has placed on record property card, form No. 8, electricity bill, few tax payment receipts. There is no dispute that the plaintiff possesses the suit property. The only dispute that requires to be considered is whether the defendants are trying to cut trees from the suit property and whether there is obstruction to possession of the plaintiff over the suit property.

07. The defendant vide list of documents (Exh. No. 19) placed on record property card of his property and true copy of map issued by City Surveyor. It shows that property of the defendants i.e. C.S. No. 675 is abutting to the suit property. The suit property is

towards southern side of property of the defendants. The defendants claim that they intend to construct upon their land. Therefore, they applied to Gram Panchayat for permission. Accordingly, they have got permission of construction from Gram Panchayat. In this backdrop of categorical claim of the defendants, the documents on record requires to be considered so as to infer about intention of the defendants.

08. Vide list of documents (Exh. No. 25), the plaintiff placed on record certify copy of letter issued by Public Information Officer alias Village Development Officer. It was issued on 18.07.2024. It is addressed to the plaintiff. It appears from it that the plaintiff on 08.07.2024 under the Right of Information Act sought information. The Public Information Officer provided the information that Gram Panchayat has not given construction permission to defendant No. 1. So also Gram Panchayat has not given construction permission to defendant No. 2. Thus, till 18.07.2024, Gram Panchayat has not given any construction permission to the defendants or any of them.

09. The record shows that the defendants have filed their written statement at Exh. No. 16 on 21.12.2023. Thus, on 21.12.2023, the defendants claim that they already got permission of construction from Gram Panchayat. However, the information of Public Information Officer dated 18.07.2024 clearly states that no permission is granted to the defendants or any of them. It shows that the defendants have not come before the court with clean hands. Therefore, it can be inferred that the act of the defendants not coming with clean hands before the court, supports to the claim of the plaintiff that the defendants are obstructing to possession of the plaintiff over the suit property and the defendants are intending to cut the trees standing on the suit property.

10. The defendants vide list of documents (Exh. No. 27) placed on record certain documents and tried to counter blast the documents of the plaintiff produced vide list of documents (Exh. No. 25). Vide list of documents (Exh. No. 27/1), the defendants have placed on record application of defendant No. 1 whereby defendant No. 1 applied to Gram Panchayat for construction permission. The application appears to be dated 25.09.2023. It also bears endorsement of Gram Panchayat that it received it on 26.09.2023. At the costs of repetition, I mention here that the defendants placed on record their written statement (Exh. No. 16) on 21.12.2023. Thus, after filing written statement (Exh. No. 16), only defendant No. 1 applied to Gram Panchayat for construction.

11. At Exh. No. 27/2 there is copy of letter to defendant No. 2 issued by Public Information Officer alias Village Development Officer. The letter is dated 30.07.2024. On 30.07.2024, Public Information Officer informed to defendant No. 2 that he has submitted certain information with that letter. With that letter, there is copy of resolution of monthly meeting of Gram Panchayat office. In that resolution it is mentioned that there was monthly meeting on 18.10.2023 and resolution No. 7 was passed. It shows that vide resolution No. 7 application of defendant No. 1 praying for construction upon C.S. No. 675 was allowed unanimously. Thus, defendant No. 1 vide application dated 25.09.2023 applied for permission and it was resolved on 18.10.2023 to allow her to grant permission subject to rules and condition.

12. The defendants vide list of documents (Exh. No. 27) placed on record copy of order issued by Range Forest Officer, Sangli. I perused It. It shows that defendant No. 1 had prayed for permission

to cut trees. Range Forest Officer granted permission to cut those trees from C. S. No. 675. Therefore, apprehension of the plaintiff and action of the defendants in not coming with clean hands before the court, makes me infer that there is every possibility that either on the strength of the alleged order of Range Forest Officer or on the pretext of the alleged obtained permission as per written statement, the defendants may cut the trees standing on the suit property.

13. It is worth here to note that mere resolution of permission has been granted to defendant No. 1 subject to rules and regulations. Thus, there is no permission of construction either to the defendants jointly or separately. Therefore, I find substance in the allegation that on the pretext of construction, the defendants may cut the trees standing on the suit property, the defendants may obstruct to possession of the plaintiff over the suit property. Therefore, I answer issue No. 1 in the affirmative.

As To Point Nos. 2, 3 :

14. On not allowing the application the defendants may cut the trees standing on the suit property. That action cannot be undone. Therefore, I find that the loss cannot be compensated in terms of money. For the same reason, I find that balance of convenience is also in favour of the plaintiff. On the contrary, there would be no loss to the defendants on allowing the application. The defendants can construct upon their property by following law. Therefore, I answer point Nos. 2, 3 in the affirmative.

As To Point No. 4 :

15. Considering the findings of point Nos. 1 to 3, the

application requires to be allowed. Therefore, I pass the following order in support of point No. 4.

ORDER

1. The application is allowed.
2. The defendants or anybody through them are hereby temporarily restrained from obstructing possession of the plaintiff over the suit property, they are also restrained temporarily from cutting trees from the suit property.
3. Costs in cause.

Miraj
Date : 22.08.2024

(R. S. Wankhede)
Civil Judge Junior Division
Miraj

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file judgment/order are same, word to word, as per the original judgment/order.

Name of the Stenographer. : K. A. Udagave (Steno. - III)

Court. : Civil Judge Junior Division
and J.M.F.C. Miraj

Dictation Date : 22.08.2024

Order signed by
the Presiding Officer on. : 22.08.2024

Order uploaded on. : 26.08.2024