

Order below Exh.5 in R.C.S. No. 9/2022

CNR-MHSN-12-000056-2022

(Avinash Namdev Patil V/s Shashikant Ramchandra Patil)

The plaintiff has filed the suit for perpetual injunction.

2. Description of suit properties:-

Krishna river Gat No. 637 ad-measuring 7.5, electricity equipment and permission for water given by Public Works Development, Sangli on 18/01/2006. Thereupon, electricity connection in Gat No. 581/1 and 581/2, 4 inch PVC pipe about 2000 ft pipeline, having joint share of plaintiff with easementary right.

(Hereinafter described as suit property)

3. Brief facts of application:-

Previously the suit property was in the occupation of Late Maruti Tukaram Patil. The suit property is the ancestral property in Gat No. 481/1 and 481/2 for the purpose of providing water to the beneficiaries. This right of receiving water was granted by PWD department on 18/01/2006 from Krishna river 7.5 by establishing electricity equipment. This right and license was given to late Maruti Tukaram Patil. No third person was and is entitled to receive the water from the suit property.

4. On 29/04/2008 Maruti Tukaram Patil died. He died leaving behind five sons viz., Ramchandra Maruti Patil, Namdev Maruti Patil, Suresh Maruti Patil, Jaywant Maruti Patil, Prabhakar Maruti Patil. Namdev Maruti Patil died on 24/03/1991. Plaintiff is the son and legal heir of Namdev Maruti Patil. Ramchandra Maruti Patil died on 18/09/2012. Defendant is the son and legal heir of Ramchandra Maruti Patil. After the death of Maruti Tukaram Patil his legal heirs became entitled for the rights granted by PWD department

through license. The legal heirs of Maruti Tukaram Patil Ramchandra, Namdev, Suresh, Jaywant, Prabhakar have relinquished their right in favour of defendant on receiving consideration. Therefore, after relinquishment plaintiff gets 1/5 share and defendant gets 2/5 share and Jaywant Maruti Patil and Prabhakar Maruti Patil gets 1/5 share jointly. In such circumstances on March 2021 the defendant started causing obstruction to the plaintiff from using water from the suit property. He filed complaint at police station on 11/10/2021. Defendant sent legal notice to plaintiff for payment of electricity due bill. The plaintiff replied by sending reply and refuse to pay the electricity bill. Not only this the defendant started to sell the water to the people from the suit property. The defendant flatly stated that he will sell the water from the suit property. Therefore, plaintiff has filed this application to restrain the defendant from causing obstruction and interference in to the possession of the plaintiff from suit property and defendant should not oust the plaintiff from suit property. Moreover, the defendant should not sell the water from the river without their consent.

5. In response to summons defendant appeared and filed say and written statement vide Exh. 16. He submitted that, suit is hit by O 7 Ru 3 as the suit property is not identified. He had not mentioned four boundaries. The suit is bad for non-joinder of necessary party. On the 7/12 extract there is name of predecessor in title of plaintiff and defendant. After the death of father of defendant Ramchandra Maruti Patil on 18/09/2012 defendant alone become the legal heir. Plaintiff and defendant are the co-occupant of the suit property. Therefore, injunction can not be claimed against co-owner. Plaintiff is not ready to pay the electricity bill of his part. The electricity bill is of Rs. 42,910/-. Therefore, plaintiff has filed this suit

to avoid to pay the electricity bill. Defendant had sent legal notice on 11/10/2021 to which the plaintiff has replied the contents of reply of legal notice are false and bogus. Plaintiff has not come with clean hand. He has suppressed the material facts. The suit is hit by the Section 41 clause H of Specific Relief Act. Plaintiff has not filed suit for partition.

6. After considering the contents of application following points arise for my determination along with my findings thereon.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff proves that he is having prima-facie case ?	<u>In the negative</u>
2.	Whether the plaintiff proves that balance of convenience lies in his favour ?	<u>In the negative</u>
3.	Whether the plaintiff proves that he will suffer irreparable loss if the injunction is not granted ?	<u>In the negative</u>
4.	What Order ?	<u>Application is rejected.</u>

REASONS

As to Point No. 1 to 3:-

7. These points are interlinked with each other and for the sake of convenience they are discussed together.

8. Perused the record. Heard Ld. Advocate for the plaintiff and defendant. Admittedly, the suit property is the license to receive the water from the Krishna river granted by Public Works Development Authority i.e. Government. Admittedly, both the plaintiff and defendant are entitled to receive the water from the

Krishna river. The plaintiff placed reliance upon order of Sub-Executive Engineer, Public Works Development Department, Sangli. The copy of order shows that the Government has allowed to late Maruti Tukaram Patil and six other legal heirs to establish electricity equipment for receiving water. On the 7/12 extract there are names of plaintiff and defendant and predecessor in title. Hence, suit property is the license/ permission granted by Government to receive the water from Krishna river.

9. The electricity bill is in the name of late Ramchandra Maruti Patil. The electricity bill is of Rs. 82,330/- of dated 20/02/2020 and Rs. 42,910/- of dated 23/03/2021. There appears dispute between plaintiff and defendant concerning payment of electricity bill equally. It is the averment of plaintiff that defendant is causing obstruction in receiving water from Krishna river. The defendant may oust the plaintiff from the suit property. Considering the nature of suit property the defendant can not oust from the suit property as it is the Government property. In order to prove the prima-facie case plaintiff placed reliance upon the document of license granted by Government. There is joint possession of plaintiff and defendant over suit property. So far as question relating to prima-facie case plaintiff further placed reliance upon legal notice dated 11/10/2021. The notice is concerning request payment of electricity bill Rs. 32,861/- to be paid by plaintiff and defendant separately which comes to total Rs. 42,960/-. The Ld. Advocate for the plaintiff argued that para No. 6 of the legal notice contains the warning to the plaintiff for taking legal action if the plaintiff fails to pay electricity bill of his part. On minute reading of the legal notice, it appears that it does not contain the fact that the defendant caused obstruction by threatening or by any other mode to the plaintiff in

receiving water from the Krishna river. He just requested the plaintiff to pay electricity bill of his part. The plaintiff averred that sending of legal notice amounting to obstruction. But requiring to electricity bill does not amount to obstruction in to the possession of plaintiff over suit property.

10. The plaintiff by this application further averred that the defendant is selling the water to third person viz., Santosh Pradip Jadhav owner of land Gat No. 495, Ramesh Ramchandra Mahar owner of land Gat No. 587, Nagnath, Dayanand, Sharad Kisan Jadhav. Therefore, defendant should be restrained from selling water to these persons. Admittedly, the suit property is the Government property i.e. Krishna river. The Government is having perfect title. The plaintiff and defendant having imperfect title they are in permissive possession. They are entitled to only receive water from the Krishna river. If the defendant is selling water to the these persons then it will definitely be breach of terms and conditions of license. The Government can take legal action, however, the plaintiff has not applied or stated his grievance to the Government. He has not made party to these persons. The plaintiff directly approached this Court. In order to show that defendant is selling water to these persons, he has not brought out any prima-facie document. With regard of obstruction in to the possession of plaintiff over suit property and selling the water to these persons, plaintiff has not filed single document. The present application is not supported by the affidavit of adjacent land owners.

11. Plaintiff averred that legal heirs of Maruti Tukaram Patil have relinquished their right in favour of defendant on receiving consideration. After relinquishment plaintiff gets 1/5 share and defendant gets 2/5 share and Jaywant Maruti Patil and Prabhakar

Maruti Patil gets 1/5 share jointly. The defendant contended that after death of late Ramchandra Maruti Patil he is the sole legal heir. The license and electricity bill is in the name of father of defendant. This issue may be decided after trial. This issue is not necessary for the purpose of the deciding discretionary relief of temporary injunction.

12. The Ld. Advocate for plaintiff has placed reliance upon cited authority reported in 1974, AIR Bombay, A.F.A.D. No. 1184/1966, Bombay High Court, **Thanhabai Jaivanta Ilag v.s Dhondiram Pandurant Ilag & Ors.** In this case suit was filed for declaration of her share and for permanent injunction to ensure peaceful enjoyment of her right to take water from the well. The Court observed that common enjoyment of common property by co-owners. Each co-owner would be entitled to a reasonable user in respect of common enjoyment of a common property. Between co-owners each is in title to enjoy facility of common property without detriment of to the enjoyment of other and so long as the property itself suffers no injury. In this authority the Court relied upon **two** sale deeds and held that there is specific condition in sale deed half share in the well was sold to plaintiffs husband as $\frac{3}{4}$ share but that must be only about the extent of vendors share in the well at that time. This authority is not helpful to the plaintiff as he placed reliance upon the license granted by PWD Department. The license granted in favour of plaintiff and defendant. The authority in hand concerning declaration of right of receiving water from well on the basis of sale deed. While the present case is concerning simple suit for injunction to restrain the defendant from causing obstruction in to the possession of plaintiff and restraining the defendant from selling water to third persons. In the present case the plaintiff has not filed

document showing that he has separate right over suit property. It is settled that the injunction can not be granted against co-owner unless divided. In the present case the suit property is joint that too is on the basis of permissive possession. It is still not divided and partitioned. Hence, present application is hit by under Section 41H of Specific Relief Act. Therefore, this authority is not helpful to the plaintiff's case.

13. Hence, I am of the view that plaintiff has not brought prima facie case, therefore, balance of does not convenience lies in favor of plaintiff. Therefore, question of irreparable loss is out of consideration. On the contrary the license is appearing in the name of father of defendant. The electricity bill is also appearing the name of father of the defendant and he has filed payment receipt of electricity bill. Hence, I answer as to point no. 1 to 3 in the 'negative'. In answer point no. 4, I pass the following order.

ORDER

1. Application is rejected.
2. Cost in main cause.

(Dictated and pronounced in open court)

Palus.
Date-06/02/2023

(I. A. Y. A. Khan)
Jt.Civil Judge Jr.Dn., Palus

CERTIFICATE

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

Name of Stenographer	:	Mrs. S. V. Kadam Stenographer Grade III
Court	:	Jt. C.J.J.D. & J.M.F.C., Palus
Date	:	06/02/2023
Signed by P. O. on	:	06/02/2023
Uploaded on	:	07/02/2023