

R.C. S. No. 70/2020

Raghunath Vs. Bapu & ors.

ORDER BELOW EXH. 16

(Dated: 20/02/2023)

The plaintiff has filed this application vide order XXXIX rule 1 (a) of The Code of Civil Procedure, 1908 (hereinafter referred as 'the CPC', for the sake of brevity) for the grant of relief of temporary injunction against defendant no. 1 to restrain him from causing obstruction to alleged road and water channel.

02. Description of the suit property block No. 190/1/B/2 admeasuring about 0.57R, situated at Tanali, Tah. Pandharpur, which has been particularly described in Para No. 1.

03. The plaintiff has submitted that, the suit property para 1A(5) was and is possessed by him. The suit property para 1 A(4) is situated at Northern side of the suit property para 1A(5). The plaintiff and defendant no. 1 to 15 measured the suit properties by M.R. No. 4663/2017 and accordingly fixed the boundaries. Wherein it was disclosed that, defendant no. 12 to 15 committed encroachment. Hence, the plaintiff and defendant no. 1 to 10 filed R.C.S. no. 628/2017 against defendant no. 12 to 15 for removal of encroachment. However, on 30.09.2019 at the time of Lok-adalat that suit is compromised and it was agreed between the parties to measure the land and to remove the alleged encroachment portion. Accordingly, when in October 2019 measurements were done, it was identified by defendant no. 1 committed encroachment admeasuring about 15R in the suit property owned by the plaintiff. Defendant no.

1 constructed the wall at the Western side on the road heading from North to East direction and thereby closed the alleged road. The plaintiff further submitted that, when he requested defendant no. 1 not to commit encroachment and remove the obstruction, however, goes in effective. With these cause of action defendant no. 1 is obstructing the alleged road which the plaintiff is using since long back. Hence, with this application, the plaintiff prayed to grant interim relief against the defendant no. 1 to restrain him from causing obstruction over alleged road and water channel.

04. To This, the defendant no. 1 filed his say at Exh. 23. He denied all the contention in the application in to-to. He specifically submitted that, four boundaries of suit properties are not mentioned in the application, therefore, application is not tenable. The location of the suit property is not clearly mentioned. He is specifically submitted that he is residing in his land since year 1997. In the year 2016 defendant no. 1 borrowed loan amount from band of India Khardi. At that time defendant submitted domicile certificate with the Bank. He also filed the expenses estimation for the alleged construction. Accordingly, since 2017, the defendant is residing in the suit property. Hence, the plaintiff has mentioned false cause of action and file this application. Thus, the plaintiff has no prima facie case in his favour. Therefore, he prayed to reject the application.

05. The points for determination along with the findings and the reasons thereon are as under –

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff has prima facie case in his favour?	No.
2.	Whether the plaintiff would suffer irreparable injury, in case, temporary injunction is rejected?	No.
3.	Whether the balance of convenience is in favour of the plaintiff?	No.
4.	What Order ?	As per final Order.

REASONS

06. Heard Learned advocate for the plaintiff and Defendant. They reiterated contentions as per the pleadings. In view of O. XXXIX R. 1 (c) when the defendant threatens or intends to dispose the plaintiff or otherwise cause injury in relation to suit property to the plaintiff then temporary injunction may be granted. Accordingly, I would lead to discuss these facts in following points.

As To Point No. 01

07. In order to prove the prima facie case in favour of the plaintiff, the plaintiff has to establish that,

- a. That the plaintiff is in possession of the suit property
- b. that the defendant has caused obstruction to his possession

08. In accordance with this admittedly, there is no dispute in the parties in respect of nature of the property as ancestral. After going through the application and say, it is also no in disputed that the partition has been effected between the parties for block No. 384 by registered partition deed. Now, at this stage the plaintiff has to prima facie show that in legal aspect, he is entitled to claim pre-emptionary right over the suit property.

09. For the purpose of pre-emptionary right, in the perspective of Sec. 22 of the Hindu Succession Act, it contemplates that when interest in any immovable property of an intestate, in any business carried out by him, whether solely or in conjunction with other, devolves upon two or more heirs specified in class-I of the schedule, and any one of such heir proposes to transfer his or her interest in the property then other heirs shall have a preferential right to acquire the interest proposed to be transferred. Thus, the contingency as stipulated in Sec. 22, is devolution of interest in immovable property of an intestate on two or more heirs specified in class-I in this schedule. It would therefore be necessary to examine whether the requirements of Sec. 22 of the said Act satisfied in this suit.

10. As contented by the plaintiff himself it is the specific case of the plaintiff that, pursuant to registered partitioned dated 03/01/2002, the suit property was allotted to the share of the defendant. In such circumstances, it definitely becomes her separate property by virtue of above said partition. Both the plaintiff and

defendant have been allotted deferent shares in the suit property. It is not the case of plaintiff that on account of devolution of interest in immovable property of their father, a right has been accrued to the plaintiff. The entire claim of preferential right is with regard to the suit property only which is allotted to the share of the defendant. It is therefore obviously aforesaid requirements of Sec. 22 of the Hindu Succession Act, does not satisfied at all. Hence, seems that, the plaintiff is not qualified to claim the preferential right over the suit property.

11. Hence, it is suitable to say that, the plaintiff failed to prove prima facie the fact of preferential right over the suit property. Thus, it looks as if, there seems no bonafide contest between the parties in regard to alleged pre-emptionary right. Taking into consideration this aspect, it is apparent on face of record that, there is no prima facie case to the plaintiff in his favor. In the result, answer to point no. 1 is in the **negative**.

As To Point no. 2

12. In this suit, dispute is in respect of immovable property. Hence, the adjudication has to be made in consonance with the irreparable injury. From the above discussion, it is perceptible that, the plaintiff failed to prove his entitlement for the pre-emptionary right. Moreover, there is no record found as to attempt by the defendant to alienate the suit property. Since the plaintiff himself not entitled to claim preferential right, there are no rational chances and probability to believe the contention that any irreparable loss

would be caused to the plaintiff. The suit property is becomes separate property of the defendant. Thus, as the possibility can be ruled out that, refusal to grant of injunction would result in irreparable injury to plaintiffs, there is no need to protect him from the consequences of apprehension and injury which cannot be compensated in terms of money. For these reasons answer to point no. 2 is in the **negative**.

As To Point No. 3

13. In this aspect of comparative mischief and inconvenience which is likely to be caused to the plaintiff by refusing to grant injunction will not be greater than that which is likely to be caused to the defendant by granting it. Considering the alleged threatening of the defendant as to alienation, it can be said that, the plaintiff would not suffer greater hardship if interim relief is refused, as he himself failed to bring on record such material even to assume prima facie existence of the preferential right.

14. Thus, the plaintiff needs for such protection does not weighed more against corresponding need of defendant to be protected against injury resulting from his rights for which they could be adequately compensated. Hence, it is appropriate to say that, the balance of convenience not lies in favour of plaintiff. Resultantly, answer to point no. 3 is in the **negative**.

As To Point No. 4

15. In view of above discussion and considering the nature of suit, it will be going to decide differing rights of parties finally. In

the result, as per O. XXXIX R. 1(a), it would not be just and proper to grant interim relief of injunction to restrain defendant from alienation of the suit property. Consequently, in answer to point no. 4 following is the order –

ORDER

1. The application vide (Exh.05) is rejected.
2. Parties to bear their own costs.

(Dictated and pronounced in open court).

Date – 20/02/2023.

(Sonal. A. Salunkhe)

Place – Pandharpur.

5th Jt. Civil Judge, J.D., Pandharpur.