



ORDER BELOW EXHIBIT 05 IN R.C.S. No.102/2024

(Passed on 26th September 2024)

This is an application under Order 39, Rule 1 and 2 of the Code of Civil Procedure [for short 'CPC'] filed by the defendants for granting temporary injunction against the defendants or anyone acting on their behalf from interfering the use and causing obstruction over the suit property enjoyed by the plaintiffs. The suit property is described by the plaintiff in paragraph number 1 of the suit as well as application by means of Gat No.326/2, having an admeasuring area of 2 H. 75 R situated at Mouje Gaudgaon (Bu.) and which is surrounded by the land of Gat No.327 towards east, original Gat No.326/1 (at present Gat No.326/1/B held by the defendant number 1) towards west, original Gat No.326/1 (at present Gat No.326/1/B held by the defendant number 1) towards south and Gat No.326/1/A held by the defendant number 5 and a stream passing through the land of original Gat No.326 and including the articles situated over it alongwith all the rights to cultivate it and a well filled with water with a electric motor pump installed over it (hereinafter shall be referred to as 'suit property', for the sake of brevity).

02. The original Gat No.326 was owned by the fathers of the plaintiff and defendant and there was oral partition amongst them in the year 1978 and Gat No.326/1 was allotted to the share of ancestors of the defendant and Gat No.326/2 went to the share of the father of plaintiff and the names were accordingly mutated by way of mutation entry No.36 and thereafter, the suit property was cultivated



jointly by the plaintiff and his family members. The other family members of the plaintiff relinquished their respective shares in favour of the plaintiff on the strength of relinquishment deed dated 18.07.2002 and he became the exclusive owner of it by way of mutation entry No.820. The defendant number 1 and 5 are brothers and they had effected partition of Gat No.326/1 by way of registered partition deed dated 06.08.2009. Gat No.326/1 was further divided into two parts because of the partition and defendant number 5 became the owner of Gat No.326/1/A having an admeasuring area of 1 H 53 R and some portion of which lies towards eastern-southern corner and some portion lies towards southern-western corner of the suit property whereas defendant number 1 became the owner of Gat No.326/1/B. The possession of the plaintiff, his ancestors over the suit property is enjoyed since 1978 onwards and there is a customary right of way situated towards western side bandh of the property owned by defendant number 5 and it continues till the northern side and near to the southern side bandh of the property owned by defendant number 1 and the said way travels from west to east.

03. The defendant number 1 has caused obstruction over the northern side portion of the above mentioned way and Tahsildar, Akkalkot had allowed his application for removal of obstruction over the said path way by passing an order to that effect on 31.05.2024. The defendant number 1 to 4 got annoyed with the passing of the order and had started causing obstruction to the enjoyment of the right of way available to the plaintiff thereby causing trouble for



cultivation of his property. He had lodged reports of these incidents at Police Station, Akkalkot South but to no effect. The defendant number 5 is also helping the other defendants in their illegal act and hence he prayed for restraining them or anyone acting on their behalf from causing obstruction to the peaceful possession over the suit property owned by him by way of temporary injunction. He had all the three essential ingredients for granting temporary injunction in his favour. The plaintiff relied upon the ratio laid down by the Hon'ble Bombay High Court in

- 1) **Margao Municipal Council Vs. Pandurang reported in 2000 (1) Mh.L.J. 767.**
- 2) **Mohanbhai Ishwarbhai Patel and another Vs. Indian Council of Basic Education and others reported in 2005 (4) Mh.L.J. 433**
- 3) **Kosarichand Motichand Shah Vs. Fakirbhai Kariabhai Koli and others reported in AIR 1995 Bombay 102** in support of his submissions.

04. The defendant number 2 to 4 have filed their written statement at Exhibit 19 whereas, defendant number 5 was proceeded ex-parte. The contesting defendants submitted that, the original Gat No.326 was not demarcated after conducting measurement, fixing of boundaries, boundary marks and such other procedures. The plaintiff and defendants are in possession of exactly how much area of Gat No.326, therefore cannot be stated with certainty. The plaintiff and defendants are therefore, still co-owners or co-sharers and temporary



injunction cannot be granted against them. The description of the suit property given by the plaintiff in paragraph No.1 of the suit as well as application is incomplete and there is no reference about the exact dimensions thereby the position of the lands of the parties could be ascertained. The suit property as well as the property of the defendants could not be properly identified in these circumstances and hence, a blanket injunction cannot be granted in favour of the plaintiff. The description of the suit property finds mention of the existence of a well but this well is commonly owned and possessed by the parties and it is situated over the field property belonging to the defendants. The plaintiff wants to grab and interfere with the possession of the defendants over the well and hence, has filed the present suit. There is no cause of action in favour of the plaintiff to file the present suit and the partition of 1978 is admitted but portion of Gat No.326/1 excluding the southern side portion was allotted to the defendants is denied. The plaintiff is approaching to his field by travelling from the eastern side bandh of the original Gat No.326 since long but he is trying to unnecessarily disputes by insisting to travel through western side bandh of Gat No.326. There was no interference or obstruction to the plaintiff to the right of way as well as his rights over the common well in any manner from the defendants. The defendants have filed a map at annexure A to show the alleged partition and possession of the parties over their respective shares. The plaintiff wants to interfere with their possession and hence, had filed the present suit and has not approached the Court with clean hands. He is not entitled to the



equitable relief of temporary injunction because the essential ingredients are not available in his favour. They prayed for rejecting the application. The defendants relied upon the ratio laid down by the Hon'ble Kerala High Court in

1) **Sivarajan Kuttan and another Vs. Surendran Paramu and others reported in RSA No.640 of 2010 dated 24th June 2015**

and upon the ratio laid down by the Hon'ble Orissa High Court in

2) **Lucy Naron vs. Raghunath Jew Bije in Second Appeal No. 151 of 1985 dated 29th June 1992, 1993 AIR(Orissa) 143**

3) **Bandhu Das and another vs. Uttam Charan Pattanaik in Second Appeal No. 158 of 1987 dated 10.05.2006, 2007 AIR(Orissa) 24** in support of their submissions.

05. The following points arise for my consideration and I record my findings against each of them with reasons therefor.

Sr. No.	Points	Findings
1.	Whether the applicant/plaintiff proves that he has prima facie case in his favour ?	Negative.
2.	Whether the applicant/plaintiff proves that he would suffer irreparable loss, if injunction is not granted in his favour ?	Negative.



3. Whether the applicant/plaintiff proves that balance of convenience lies in his favour ? **Negative.**
4. What order ? **Application is rejected.**

REASONS

As To Point Nos.1 to 3 :-

06. All the points are inter-connected and hence, they are taken up for discussion together. The undisputed facts between the parties with respect to partition in the year 1978, relinquishment deed in favour of plaintiff and partition amongst defendants in the year 2009, right of way flowing and mentioned in the partition deed 2009, existence of common right over the well situated in the land of the defendants and measurement of Gat No.326 and its parts was not conducted ever by the parties. The plaintiff has filed several documents like the 7/12 extract of the suit property which reflects his name as exclusive owner of it and the said property is being cultivated and crops were taken for the sowing season of 2021-22 to 2023-24. Thus, it cannot be said that, the suit property is not under cultivation but the fact remains about causing of obstruction to the plaintiff while exercising his right of way as well as right over the common well. The plaintiff has not filed the measurement map whereby Gat No.326 was demarcated and the respective shareholders were put into possession of their respective shares after the alleged oral partition of 1978. The extent of the possession of the shareholders was lawful by conduct but not on the strength of any



legal document. There is no separation of lands or pieces of lands by conducting measurement of actual share and fixing the boundaries by any competent authority like the T.I.L.R. The Talathi map therefore, were not prepared and the parties have not even filed those on record. The extent of possession of the ancestors of the plaintiff and defendants was accurate or not, therefore, could not adjudged from any material placed on record. There is every possibility that, the parties may enter into a boundary dispute for lack of proper measurement of their lands. The separation of shares over the 7/12 extract would be only symbolic and it would be used to calculate the land revenue and the fiscal liability of the parties but this document would not, by itself, prove the actual, physical possession of the land belonging to the parties. There is no document to show the actual division of Gat No.326 and the contention of the plaintiff about division over 7/12 extract would suffice the purpose of partition is not entirely correct.

07. The defendants have not denied the right of way as well as the right over the common well available in favour of the plaintiff. The plaintiff has filed several documents below list at Exhibit 21 to show that, his right of way was violated by the defendants and hence, an order under Section 5 (2) of the Mamalatdar Courts Act was passed in his favour on 31.05.2024. The order passed by Tahsildar reflects that, the plaintiff had filed the 7/12 extract of the suit property as well as that of the property of the defendants, the village map issued by the T.I.L.R., sketch map of the disputed property,



photographs thereof and statements recorded during the spot inspection dated 21.05.2024. The order passed by Tahsildar finds mention of the fact that, inspection of the spot of dispute was conducted and it was observed that the customary right of way available to proceed towards Gat No.326/2 was cultivated and the right of plaintiff was hampered. The Tahsildar does not appear to be holding any record in his hand to locate the said land of Gat No.326/2, 326/1/A, 326/1/B and 325/6. It appears that, the learned authority had relied upon the sketch map to arise at its finding. The said sketch map is placed on record by the plaintiff and it is find by the Tahsildar, Akkalkot and it is not subject to any scale. Thus, this map cannot be said to be accurate and it is only a reference map. The map is not available for determining the rights of the parties at this stage of the suit.

08. There appears a boundary dispute between the parties as could be ascertained from the bare reading of the pleadings. The obstruction and interference pleaded by the plaintiff is required to be proved beyond any doubt. If the extent of ownership and possession itself is in dispute and there is no measurement map available on record to reach to any conclusion about the exact, accurate location of the suit property and the parties have not made any attempts to get it measured from competent authority itself shows that they are entering into disputes willingly. The ratio laid down by Hon'ble Bombay High Court in Mohanbhai (Supra) and relied upon by the plaintiff is not applicable to the present facts and circumstances of



the suit because in that suit there was dispute amongst trustees and about alleged breach of undertaking whereby it was submitted that, the defendants would not participate in the management of the trust and would not question the activities of the acting members and office bearers of the trust. The ratio laid down by the Hon'ble Bombay High Court in Margao Municipal Council (supra) is also not applicable in the present facts as it was a specific case regarding disobedience of the order of injunction. In the present suit, the plaintiff is stating a date 17.06.2024 when the defendants had obstructed his possession but it is not stated that, his right of way or right over common well was in any way violated by the defendants. There is thus, a statement about causing of obstruction but there is no pleading about the manner of obstruction whereby the plaintiff apprehended dispossession or threat to his possession. The fact of dispossession or its threat is not proved by any affidavit or any documents except the police reports which cannot be said to be sufficient in the light of these circumstances.

09. I am guided by the ratio laid down by Hon'ble Madras High Court in **N.Subramania Choudhry vs. S.Ramu (Dead) through LR's in Second Appeal No.97/2013, decided on 25.01.2022** wherein it was held that, in a suit for bare injunction, identification of property is must, and granting injunction in respect of the unidentified property is improper. The ratio laid down by the Hon'ble Kerala High Court in Sivarajan (supra) is also on the same lines regarding denying relief of injunction if property in question is



not subject to proper identity of its extent and lacks well defined boundary. The ratio laid down in Bandhu Das (supra) is pertaining to view proper description of the suit property in terms of Order VII Rule 3 of CPC but in the present case the property is properly described by the plaintiff in the plaint but its nature is such that it could not be said to be demarcated and accurate position of it could not be gathered and hence, it is distinguishable.

10. The partition deed between the defendants dated 26.08.2009 reflects a road for approaching the common well from southern to northern side of Gat No.326/1 by travelling through western side and from the common bandh between Gat No.325 and 326/1 but this right was admitted to be exercised by the holders of Gat No.325 and 326/1 and there is no mention of the holder of Gat No.326/2. Thus, the right of way as suggested by the plaintiff cannot be said to be proved with sufficient evidence at this stage of the suit. The plaintiff has failed to prove that, there was any obstruction caused by the defendants to his possession over the suit property and hence, there is no prima facie case in his favour and there is no evidence that the suit property is lying in an uncultivated state or the plaintiff is facing any trouble to cultivate it. There is no evidence at this stage of the suit to infer that, the plaintiff would suffer an irreparable loss. The plaintiff is not entitled to the equitable relief and hence, application at Exhibit 5 is liable to be rejected with cost. Hence, I answer point number 1 to 3 in the negative.



As To Point No.4 :-

11. The plaintiff has not proved that, he has prima facie case in his favour and he would suffer irreparable loss and balance of convenience lies in his favour. Hence, he is not entitled to the equitable relief of temporary injunction. Hence, in answer to point number 4, I proceed to pass the following order :-

ORDER

The application Exhibit 05 is hereby rejected with costs.

Date : 26.09.2024

[M.M.Kalyankar]
Civil Judge Jr. Dn.,
Akkalkot.



CERTIFICATE

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Stenographer : Mrs. A.S.Magnur (Grade-III).
Court : C.J.J.D. and J.M.F.C., Akkalkot.
Date : 26.09.2024.
Judgment / Order signed by P. O. on : 26.09.2024.
Judgment / Order uploaded on : 27.09.2024.