

Order Below Exh 5

This is an application filed by the plaintiff pursuant to Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking temporary restraint against defendant no.1 and 2 from obstructing the peaceful possession of the plaintiffs over the suit property.

2. It is asserted in the application that Sudam Namdev Shinde, father of plaintiff no. 1 and 2, and the father of defendant no. 3 and 6 to 8, and husband of defendant no.9, Vithoba Namdev Shinde, were siblings. The suit property was inherited by Vithoba under section 32 (m) of the Maharashtra Tenancy and Agricultural Lands Act, 1948. Vithoba initiated a suit claiming injunction and declaration of ownership over the suit property against the plaintiffs and others vide RCS No. 296/2005 in Madha Civil Court. The court, in its judgment on 19/06/2019, ruled in favour of ownership of Vithoba. However, it also noted that neither Vithoba nor his legal heirs were in possession of the property since 1986. The court acknowledged that Sudama, father of plaintiffs, had been in possession since 10/09/1986, as per mutation entry no. 233. Following the demise of Sudama on 17/03/2003, the names of plaintiffs were duly mutated as his legal heirs, and they have remained in peaceful possession of the property for over 12 years.

3. In contravention of this possession, defendant no. 3 and 6 to 9 obstructed the peaceful possession of the plaintiffs over the property on 09/08/2020. Consequently, the plaintiffs initiated suit RCS No. 725/2020 seeking injunction and declaration. However, upon learning of this, the defendants colluded with the Talathi and Divisional Officer to remove the names of plaintiffs from the 7 x 12 extract of the suit

property via mutation entry no. 1777, without issuing any notice under section 149 of the Maharashtra Land Revenue Code to the plaintiffs. Moreover, the defendants, in an attempt to further hinder the case of the plaintiffs, filed a partition suit, RCS No. 199/2021, on 15/01/2021, and reached a compromise wherein they partitioned the property amongst themselves on 25/02/2021. Subsequently, the defendants obstructed the peaceful possession of the plaintiffs over the property. Hence, through this application, the plaintiffs seek to restrain the defendants from such actions, as they have rightful and peaceful possession of the suit property.

4. The suit has advanced in the absence of a written statement from defendants no. 1 to 4, 6, 7, and 9, as noted in the order issued below Exh 1 on 14/06/2022. Furthermore, proceedings have proceeded ex-parte against defendants no. 5 and 8, as documented in the order issued below Exh 1 on 18/01/2024.

5. Upon careful examination of the application, the pleadings of the plaintiffs, and the case record, along with hearing the arguments presented by Advocate Shri P.H. Deshmukh on behalf of the plaintiffs, the following points necessitate my determination, for which I hereby provide my findings, elucidated in the subsequent sections for the reasons delineated therein.

Sr. No.	Points	Findings
1.	Whether the plaintiffs have made out the <i>prima facie</i> case?	Yes
2.	Whether the balance of convenience lies in favour	Yes

	of the plaintiffs?	
3.	Whether the plaintiffs would suffer the irreparable loss if the temporary injunction is refused?	Yes
4.	What order?	The application is allowed.

Reasons

As to point no. 1 to 3

6. These interconnected points are deliberated collectively. The plaintiffs have instituted this suit seeking both declaration and injunction. During the proceedings, the advocate for the plaintiffs reiterated the contentions outlined in the present application and referred to the documents submitted on record. He emphasized that given the possession of the plaintiffs over the suit property, they possess a prima facie case in their favour. Furthermore, he argued that any obstruction caused by the defendants would result in irreparable loss, which cannot be adequately compensated in monetary terms. He asserted that the balance of convenience tilts in favour of the plaintiffs. Consequently, he prayed for the application to be allowed, thereby restraining the defendants from impeding the peaceful possession of the plaintiffs over the suit property.

7. At this juncture, it is essential to delineate the significance of the term "prima facie." A prima facie case necessitates the presence of a bona fide substantial question to be adjudicated during the hearing, with a probability that the plaintiff will be entitled to the relief sought.

Therefore, it is not imperative for the plaintiff to conclusively demonstrate the likelihood of success in the suit; rather, it suffices to establish a bona fide question regarding the existence of the claimed right, compelling the preservation of said right until the resolution of legal rights and conflicting claims before the court. Temporary injunction, being a provisional remedy, is invoked to maintain the status quo ante.

8. Considering the aforementioned, the plaintiffs are required to demonstrate the prima facie case in their favour. Upon examination of the documents presented, particularly those filed under Exh.04, it is evident that the names of plaintiffs were expunged from the 7 x 12 extract of the suit property through mutation entry no. 1777. Additionally, the contents of mutation entry no. 1777 indicate that this mutation was executed based on the judgment rendered in suit RCS No. 296/2005. A certified copy of this judgment has been duly submitted vide list at Exh 9. In the said judgment, the court, while acknowledging the defendants as owners of the suit property, also noted the possession of the present plaintiffs over the property, consequently rejecting the injunction relief sought by the present defendants in that suit. The plaintiffs contend that mutation entry no. 1777 was executed without proper notice served to them as mandated by the Maharashtra Land Revenue Code, suggesting collusion between the officials of Land records and the defendants. Despite being provided ample opportunities, the defendants have failed to contest the present application. Considering the entirety of the evidence, particularly the judgment in RCS 296/2005 and the extract of mutation entry no. 1777, it prima facie appears that the plaintiffs indeed hold possession of the suit property.

Hence, it can be inferred that the plaintiffs have a prima facie case in their favour. Consequently, point no. 1 is answered in the affirmative.

9. Moreover, the party seeking temporary injunction must not only establish a prima facie case but also demonstrate the irreparable and non-compensable loss that would ensue from the denial of interim injunction, along with establishing that the balance of convenience is in their favour. The principle of balance of convenience necessitates an equitable equilibrium between the parties involved, rather than being unilateral. In the present case, given the prima facie case in favour of the plaintiffs, it can be inferred that the balance of convenience lies with them. Thus, point number 2 is answered in the affirmative.

10. "Irreparable injury" refers to harm that cannot be adequately remedied by damages or monetary compensation. As discussed earlier, both the prima facie case and the balance of convenience favour the plaintiffs. Therefore, if injunction relief is not granted, the plaintiffs may indeed suffer irreparable injury. Accordingly, point no.3 is answered in the affirmative.

As to point number 4.

11. Having meticulously reviewed the arguments presented and the evidence submitted, it is prima facie apparent that the plaintiffs have satisfactorily established both a prima facie case and a favourable balance of convenience. The comprehensive presentation of facts, bolstered by the documentary evidence, prima facie underscores the strength of the claim plaintiffs of possession over the suit property. Moreover, the potential ramifications of denying the injunction weigh

heavily on the plaintiffs, as they stand to suffer irreparable harm if their peaceful possession is disrupted.

12. In light of these compelling circumstances and in adherence to the principles of equity and justice, it is my firm conviction that this matter warrants the granting of a temporary injunction. Such a course of action is imperative to prevent any further infringement upon the rights of the plaintiffs pending the adjudication of the present suit.

13. Therefore, with due consideration to the gravity of the situation and the overarching principles of fairness and equity, I hereby pass the following order.

ORDER

1. The application is allowed with costs.
2. Defendant no.1 and 2 or anyone on their behalf are temporarily restrained from causing any kind of obstruction to the peaceful possession of the plaintiffs over the suit property till final disposal of this suit.
3. Costs in main cause.

Date: 23/02/2024

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[**Shubham G. Laturiya**]
4th Jt. Civil Judge Junior Division,
Madha.